

As Congress prepares to expand Patriot Act

Report documents stepped-up FBI surveillance of ordinary Americans

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Utilizing a provision in the Patriot Act, passed in October 2001, the FBI has employed “national security letters” to spy on tens of thousands of residents, including many who are not suspected of committing any crimes, an article in the *Washington Post* on November 6 has revealed (“The FBI’s Secret Scrutiny” by Barton Gellman).

The new report comes as congressional negotiators prepare a final version of a bill to make permanent many provisions of the Patriot Act that would otherwise expire by the end of the year. Also under consideration are measures that would expand some of the provisions of the anti-democratic legislation, including the section on national security letters.

The part of the Patriot Act dealing with national security letters broadened a law originally enacted in the 1970s, which enabled the FBI to secretly acquire and review the customer records of individuals for which there was “specific and articulable” reason to suspect of being foreign agents or terrorists. The Patriot Act expanded the power of the FBI to subpoena records of any individuals, so long as the bureau asserted that the records were somehow “relevant to” investigations having to do with terrorism or foreign agents.

In practice, this means that anyone may be subject to having his or her activities spied upon by the FBI. The act broadened a loosening of restrictions on the issuing of national security letters begun in 1993 under the Clinton administration.

The *Post* reports that the FBI “now issues more than 30,000 national security letters a year, according to government sources, a hundredfold increase over historic norms. The letters—one of which can be used to sweep up the records of many people—are extending the bureau’s reach as never before into the telephone calls, correspondence and financial lives of ordinary Americans.” The letters are generally sent to companies, Internet service providers, libraries and other organizations to demand records relating to the individuals being investigated.

The powers are far reaching, with the sharp increase in the number of letters due primarily to greater spying on individuals who are not suspected of any crimes, according to FBI officials cited by the *Post*. “Casual or unwitting contact with a suspect—a single telephone call, for example—may attract the attention of investigators and subject a person to scrutiny about which he never learns,” the report states.

“The records it yields,” notes the article, “describe where a person makes and spends money, with whom he lives and lived before, how much he gambles, what he buys online, what he pawns and borrows, where he travels, how he invests, what he searches for and reads on the Web, and who telephones or e-mails him at home and at work.”

In addition to loosening restrictions on the use of national security letters, Section 505 of the Patriot Act also imposes an unlimited gag order on any individual or company who receives a letter from the FBI, forbidding them from talking to anyone about the order, including the person being investigated. This makes it very difficult and perhaps illegal to challenge the order in court, since discussions with lawyers are also prohibited.

The *Post* notes that “national security letters do not need the imprimatur of a prosecutor, grand jury or judge. They receive no review after the fact by the Justice Department or Congress. The executive branch maintains only statistics, which are incomplete and confined to classified reports. The Bush administration defeated legislation and a lawsuit to require a public accounting, and has offered no example in which the use of a national security letter helped disrupt a terrorist plot.”

In other words, the act essentially sets up the framework of a secret police, which can solicit information on anyone, is unaccountable to any government body and can punish those who dare to expose its activities.

In addition to expanding government spying powers, the Bush administration has also implemented a new policy that

allows information gathered to be kept permanently in government databases and shared among government agencies. According to the *Post*, “Two years ago, [Former Attorney General John] Ashcroft rescinded a 1995 guideline directing that information obtained through a national security letter about a US citizen or resident ‘shall be destroyed by the FBI and not further disseminated’ if it proves ‘not relevant to the purposes for which it was collected.’ Ashcroft’s new order was that ‘the FBI shall retain’ all records it collects and ‘may disseminate’ them freely among federal agencies.”

Ashcroft directed the FBI to develop a database that could be used for “data mining,” a method of culling information from large quantities of data. Similar plans were developed by the Pentagon as part of the so-called “Total Information Awareness” program. While this program was at least nominally disbanded after its existence was leaked to the press, it is clear that similar structures for massive spying on the public have continued, including in the FBI.

The *Post* article described one effort carried out in late 2003 to collect information on everyone going in and out of the city of Las Vegas, Nevada, which has about 300,000 tourists a day. The information collected is presumably still stored in FBI databases. The effort was based on an unsubstantiated warning of a potential terrorist attack on the city; however, it is clear that a similar operation could be, or already has been, carried out for any city or any resident.

The law as it relates to national security letters is currently being challenged by the American Civil Liberties Union (ACLU) in federal courts. A US district court judge ruled in September that the gag order imposed by the Patriot Act is an unconstitutional violation of the First Amendment. This decision is being appealed by the government.

The new revelations come as a joint committee of the Senate and the House of Representatives meet to forge an agreement on the renewal of certain provisions of the Patriot Act. When the Act was passed into law, 16 of the more controversial provisions, including the expansion of wiretapping authority and the monitoring of library activity, were set to expire at the end of this year unless they are renewed. With substantial bipartisan support, both the House and the Senate voted to make permanent 14 of these provisions, while extending for several years the remaining two.

The provision dealing with national security letters is not one of the temporary measures, so it does not need to be renewed. Both the House and the Senate have approved an amendment to the law that would make noncompliance with a national security letter a criminal offense, while the House version imposes a prison sentence on anyone breaching the secrecy of the order.

The House version of the bill also includes a provision that would make the federal death penalty easier to implement. It greatly expands the number of charges for which the death penalty can be applied, including so-called “material support” for terrorism, an extremely vague charge that is often used by the government in terrorism-related cases. It would also allow smaller juries to decide on executions, while allowing the government to retry cases if a jury deadlocks over sentencing.

These expansions of police powers come amidst other indications of the FBI’s gross abuse of its powers. An article in the *Post* on October 24 reported that the FBI “has conducted clandestine surveillance on some US residents for as long as 18 months at a time without proper paperwork or oversight.... In other cases, agents obtained e-mails after a warrant expired, seized bank records without proper authority and conducted an improper ‘unconsented physical search,’ ” according to documents obtained by the *Post* from the Electronic Privacy Information Center. The cases covered by the documents were only a handful out of several hundred potential FBI violations reported to the federal Intelligence Oversight Board.

The vast increase in domestic spying powers over the past several years has been justified as part of the “war on terrorism”; however, its main aim is to expand the ability of the intelligence agencies to monitor all organizations and individuals opposed to government policy. It is part of a broad attack on fundamental civil liberties in the US.

Over the past year, several reports have come out documenting FBI spying on political groups, including groups opposed to the war in Iraq and the Bush administration. A document prepared in 2002 by the Detroit FBI office included among the groups cited as potential terrorist threats an antiwar group and a pro-affirmative action group.

The ACLU initiated a lawsuit in 2005 charging that the FBI was engaged in systematic intimidation of antiwar, civil liberties, and environmental organizations. And in 2004, the FBI and the New York Police Department engaged in surveillance of organizations planning protests at the Republican National Convention.



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