

# FBI illegally obtained thousands of phone records

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The US Federal Bureau of Investigation illegally obtained thousands of telephone records between 2002 and 2006, according to documents leaked to the *Washington Post*.

Among the information harvested were the call records of journalists from the *New York Times* and *Washington Post*, some of whom had previously exposed illegal activity by government agencies. The FBI acknowledged that it had spied on the reporters in August of 2008, and they received a public apology from FBI Director Robert S. Mueller, III.

But it has now come out that the FBI obtained these records illegally, on the basis of manufactured links to terrorist cases. An FBI lawyer disclosed to the *Washington Post* that the bureau violated the Electronic Communications Privacy Act when it collected phone records without linking the investigations to “emergency terrorist threats.”

FBI officials told the *Washington Post* that an investigation by the Justice Department into illegal data harvesting is expected to find that the FBI routinely violated the law.

The FBI had acknowledged in 2007 that it had made 22 illegal requests for call records. But the latest results show that illegal data gathering by the FBI was far more widespread than initially reported.

The memos were leaked by an anonymous government employee outside of the agency, who obtained them while investigating the agency’s data harvesting activity.

Prior to the September 11, 2001, terrorist attacks, the FBI could only obtain phone records through grand jury subpoenas or “National Security Letters” (NSLs) issued by the FBI director or other high-level government officials in relation to alleged cases of terrorism or espionage.

The USA Patriot Act allowed lower-level officials to issue these letters, but, as the *Washington Post* noted, the letters had to be in relation to “emergencies” pertaining to existing cases of terrorism.

Among the documents obtained by the *Washington Post* was a memo from former FBI Assistant Director for Counterterrorism Larry Mefford that authorized FBI supervisors to gather data without NSLs, on the condition that these letters would be obtained after the fact.

But FBI officials told the *Washington Post* that “of 4,000 records obtained through such means, half had no National Security Letters” provided for them, mostly because they were not linked to actual terrorism cases.

To deal with the backlog of cases without National Security Letters attached to them, FBI lawyers recommended opening a number of generic cases, including “threats against transportation facilities,” “threats against individuals” and “threats against special events,” to which they could append the existing cases.

Then the bureau leadership apparently shifted its stance, and Assistant Director for Counterterrorism Joseph Billy signed a single “blanket” National Security Letter covering the entire backlog of cases, according to a leaked email exchange between FBI lawyers. When an FBI lawyer asked Billy if he had done this, he replied, “I have no recollection of signing anything blanket.”

By this time, the Justice Department had begun investigating the use of “exigent circumstances letters” in the FBI, after which illegal spying of this form apparently stopped in November 2006.

As one commentator pointed out, the number of National Security Letters multiplied exponentially following the passage of the US Patriot Act. The

number of these letters jumped from 8,500 in 2000 to 39,346 in 2003, and 47,221 in 2005. But even this was apparently not enough to satisfy FBI investigators.

The *Washington Post* article notes that the journalists who were targeted—including Ellen Nakashima of the *Post* and Raymond Bonner and Jane Perlez of the *New York Times*—had all been based at one point in Jakarta, Indonesia.

The FBI's spying on journalists without any link to known cases of terrorism suggests that the journalists were the victims of political intimidation and retaliation by the FBI for exposing illegal government programs. Ellen Nakashima has written extensively on domestic wiretapping and government intrusions into privacy, while Raymond Bonner's articles include exposes on detainee abuse and illegal surveillance.



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