US Food and Drug Administration spies on scientists to shield GE

E. P. Bannon
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An article published in the July 14 *New York Times* exposes systematic surveillance by the US Food and Drug Administration (FDA) of scientists employed by the agency. The FDA accumulated more than 80,000 pages of documents, many of which were private e-mails between the employees and members of Congress, lawyers, labor officials, journalists and even President Obama.

What allegedly began as an inquiry into the possible leak of confidential information quickly grew into a hunt to identify and silence internal critics of the agency's medical review policy.

In 2010, the *New York Times* published an article citing several FDA scientists about concerns regarding a new line of CT scanning devices built by General Electric. The scientists claimed the devices emitted dangerously high levels of radiation.

Dr. Julian Nicholas, one of the scientists subsequently placed under surveillance, told the *Times* that the machines could "expose a number of Americans to a risk of radiation that is unwarranted and may lead to instances of solid organ abdominal cancer." Dr. Robert Smith, another team scientist, said that "the increased radiation exposure to the population could be substantial and would raise a serious public health/public policy issue."

General Electric was quick to react. In a letter addressed to the FDA, the company's legal counsel charged that agency employees had released confidential "proprietary" information to the public.

Bowing to corporate pressure, FDA officials submitted a formal demand for a criminal investigation regarding the leaked information to the FDA's parent agency, the Department of Health and Human Services (DHHS). The DHHS rejected the proposal, claiming that no crime been committed and that government employees had the right to release material when "matters of public safety" were involved.

With no other legal recourse, FDA officials took matters into their own hands. According to the *Times* account, the agency made extensive use of a spy software program called SpectorSoft, which was installed on 25 government employee laptops. The software tracked keystrokes, periodically captured screen shots, copied documents from personal thumb drives, and followed e-mails as they were being drafted. These included letters to a half-dozen congressional oversight committees as well as drafts for legal filings and grievances.

Dr. Smith's comments to the *New York Times* earned him the title of "point man" among the FDA officials monitoring him. He and three other scientists were fired later that year.

It is noteworthy how easily agency officials obtained the spyware. SpectorSoft is available for purchase online for $99.95.

"Monitor everything they do," reads the web site's product description. "Catch them red-handed by receiving instant alerts when keywords or phrases are typed or are contained in an email, chat, instant message or Web site."

The FDA, in addition, hired a private contractor to handle and sort through the thousands of pages of documents obtained through surveillance. The contractor accidentally posted the documents on a public web site, which one of the scientists discovered while entering a search on Google.

Upon learning of the surveillance, the scientists filed suit against the agency. The Office of Special Counsel has charged the DHHS to conduct a full investigation into the matter, and expects department head Kathleen Sebelius to deliver the findings at the end of July.

The Association of Health Care Journalists has come to the defense of the scientists, stating in an open letter to Sebelius that "the *Times* story confirms our worst fear: that the pushback on journalists seeking information from the DHHS and its agencies, coupled with the covert monitoring of scientists' communications with journalists and elected representatives, reflects a culture of cynicism within your department toward the principles of open government, free speech, and the public's right to know."

Although the details of the scandal are still largely unknown, it is increasingly apparent that the FDA's actions were intended to protect corporate interests. The manner in which the agency prepared its defense, for example, is quite telling. Officials attempted to brush aside the gravity of their actions by pointing out that their surveillance was limited to "only" five individuals. This makes it clear, however, that the FDA was concerned only with the activities of the five employees who were preparing to release documents revealing threats to public safety from the GE scanning devises.

Jeanne Ireland, the FDA commissioner for legislation, said in a public statement that the agency "has important obligations to ensure the integrity of the medical device premarket review process." In practice, these "important obligations" include shielding General Electric from any liabilities.

Margaret A. Hamburg, the head of the FDA, cynically reiterated "the FDA's commitment to protecting the rights of whistle-blowers," while reserving the agency's right to ensure that "commercial information" is not "inappropriately released." The implications of this statement are Orwellian. It amounts to declaring: "We protect the rights of whistle-blowers as long as they are not whistle-blowing."

The Government Accountability Project (GAP), a group that defends whistle-blowers, issued a public denunciation of the FDA. Amanda Hitt, head of the GAP's Food Integrity Program, contributed a particularly biting comment to the statement. "This foray into espionage," she stated, "is nothing more than a service the agency provides to its 'clients.'… Simply put, the FDA is spying on its own to protect the financial interests of the very corporations it is bound to regulate."

The Obama administration has maintained a virtual silence on the matter. Nick Papas, White House spokesperson, refused to comment directly on the FDA spying scandal. Instead, he issued a carefully worded, perfunctory statement: "This administration is committed to providing appropriate protections for whistle-blowers so workers can disclose wrongdoing without fear of retaliation."

Nothing is further from the truth. The Obama administration has prosecuted more whistle-blowers than any previous administration in history. Furthermore, the head of the FDA was appointed by Obama himself.

This scandal is one more demonstration of the extent to which the government has become the handmaiden of the major banks and corporations. The use of surveillance by the FDA, however, is by no means a new practice within government agencies.

In June, members of Congress raised the fact that the Transportation Security Administration (TSA) was soliciting spy software to monitor its employees. The TSA was specifically interested in monitoring employee correspondence with the Office of Special Counsel, the Department's Office of Inspector General, and the US Congress. The Federal Maritime Commission also has come under scrutiny for its use of spyware to monitor employees.