

# FISA records document “daily violations” by government spy agencies

**Tom Carter****14 September 2013**

FISA court records declassified Tuesday show that government spy agencies systematically violated court orders in order to conduct illegal spying on Americans, while lying in court as to the extent of their activities. Previously secret rulings show that the Obama administration was found to be committing “daily violations” of court orders related to its spying activities.

These records came to light as a result of litigation under the Freedom of Information Act (FOIA) by the American Civil Liberties Union (ACLU) and the Electronic Frontier Foundation (EFF). (The files can be accessed [here](#).) The Obama administration fought to keep the documents secret, maintaining that their release would result in “serious and exceptionally grave damage to the national security of the United States.”

The Foreign Intelligence Surveillance Court—called the “FISC” or “FISA court” after the 1978 Foreign Intelligence Surveillance Act that created it—is a shadowy government body that has been developed into a key mechanism for subverting constitutional rights. Under recent legislation amending the 1978 act, the FISA court purports to issue “authorizations” for entire government spying programs.

The FISA court is a “court” in name only. It convenes in secret, with “judges” presiding over a “courtroom” in which only one side—the government side—is present. For targeted individuals and groups, there is no right to be present in court or even to be notified of the court’s rulings.

All of the court’s records are sealed, and if a person should for some reason find out about one of the court’s rulings, a gag order can be entered prohibiting that person from disclosing that information to anyone else. The court bases its rulings on secret laws and secret interpretations of the Constitution. There is no

right to an attorney, no jury, no trial, and no appeal.

The totally illegitimate and anti-democratic character of this setup shines through in the FISA court records that were released on Tuesday.

These carefully chosen and redacted records concern just a small selection of the numerous overlapping programs administered by US government bodies such as the National Security Agency (NSA), Defense Intelligence Agency (DIA), Department of Homeland Security (DHS), Central Intelligence Agency (CIA), Federal Bureau of Investigation (FBI), Central Security Service (CSS), Drug Enforcement Administration (DEA), Bureau of Intelligence and Research (INR), Office of Intelligence and Counterintelligence, Air Force Intelligence, Surveillance, and Reconnaissance (AF ISR), Navy Intelligence, and others.

Many of the records released this week relate to one NSA program that gathers telephone-related information relating to ordinary Americans in bulk. This data—which in intelligence jargon is referred to as “telephony metadata”—includes the originator and recipient of each call, the call duration, the date and time, and other information.

The Obama administration prefers to focus attention on this program because it is less extensive than other spying programs exposed by NSA whistleblower Edward Snowden. Nevertheless, the phone-related data gathered through the program suffices to paint a very detailed picture of a person’s lifestyle, relationships, and political affiliations.

The court records show that the government systematically lied to the FISA court about all of the essential features of this program. These lies date, according to one court record, “since the earliest days” of the program in 2006.

It is in an indication of the utter contempt for the rule

of law that predominates within American ruling circles that the intelligence agencies cannot even be bothered to conform their conduct to the broad pseudo-legal framework erected by the FISA court.

When it originally authorized the “bulk telephony metadata” program, the NSA requested permission to conduct telephone spying on individuals about whom there was a “reasonable articulable suspicion” of links to terrorism.

Having obtained the FISA court’s authorization for the program, the NSA went on to use the program to spy indiscriminately without troubling itself to determine whether the targeted individuals and groups had any links to terrorism. In one case, the FISA court determined that only 10 percent of a set of nearly 18,000 telephone numbers the government had targeted through the program met that basic criteria set forth in the court’s original order.

“It has finally come to light that the FISC’s authorizations of this vast collection program have been premised on a flawed depiction of how the NSA uses the data that is collected, one judge wrote. “The government has compounded its noncompliance with the court’s orders by repeatedly submitting inaccurate descriptions” of its processes.

With respect to a separate internet spying program, the FISA court noted in one heavily-redacted opinion that the NSA had initially represented that it had procedures in place to prevent the acquisition of information pertaining to individuals residing within the US. “The Court now understands,” one judge wrote, “that NSA has acquired, is acquiring, and if the certifications and procedures now before the Court are approved, will continue to acquire, tens of thousands of wholly domestic communications” under the program. “In absolute terms, tens of thousands of non-target, protected communications annually is a very large number,” the judge declared.

In a footnote, the judge noted that the “government’s revelations regarding the NSA’s acquisition of Internet transactions mark the third instance in less than three years in which the government has disclosed a substantial misrepresentation regarding the scope of a major collection program.”

In another opinion, a FISA judge laments “inappropriate queries by NSA analysts,” as well as “dissemination outside the NSA of U.S. Person

information.”

At one point, the FISA court’s rulings contemplate an order shutting down an entire spying program on the basis of the NSA’s repeated lies and misrepresentations to the court as to who was being spied upon, how the information was being gathered, why it was being gathered, and who had access to that information.

In the US, ordinary litigants conducting themselves in this manner before a real court could easily find themselves being marched off to jail on charges of contempt, perjury, obstruction of justice, and so forth. In a statement that accompanies the release of the documents, Director of National Intelligence James Clapper attempts to justify the NSA’s conduct as the result of a “lack of a shared understanding among various NSA components” and “unintentional misrepresentations.”

Clapper himself was caught lying under oath before Congress earlier this year, but he has yet to face any consequences. Clapper was asked, “Does the NSA collect any type of data at all on millions or hundreds of millions of Americans?” Clapper responded, “No, sir.”

The documents declassified this week explode the Obama administration’s repeated assurances that its spying programs are subject to “checks” and “strict judicial oversight.” The FISA court records paint a picture of a system that is totally unable to restrain the activities of the NSA. The FISA court makes secret rulings, and the NSA secretly ignores them.

In one ruling, a judge writes, “The sheer volume of transactions acquired by the NSA … is such that any meaningful review of the entire body of the transactions is not feasible.”

The FISA court records demonstrate once again the impossibility of imposing any reforms on the military-intelligence complex. This vast criminal enterprise operates with utter indifference to laws and legality. A workers’ government is needed to abolish it, and all of the poison fruit of its illegal activities—records, databases and files on ordinary people in America and internationally—must be destroyed.



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