

Report confirms illegality of NSA bulk-collection programs

Eric London
27 January 2014

A report issued January 23 by the Privacy and Civil Liberties Oversight Board (PCLOB) on the legality of the government's domestic spying programs amounts to an admission that the programs are against the law and that the Obama administration may have violated the US Constitution. But far from representing a serious attempt to curb the growth of the police state apparatus, the panel's report is an exercise in damage control.

The make-up and history of the panel are indications of the panel's true character. PCLOB was formed in 2004 by Congress as a hollow response to the public opposition engendered by the anti-democratic measures of the Bush administration. But despite the government's repeated violations of civil liberties over the past decade, the panel had not held hearings on any substantive matter until November 2013.

Its five members—whose only “powers” are to make recommendations to the president—are hand picked by the president and confirmed by the Senate. The current members represent the pinnacles of the political establishment: they were respectively appointed from the Department of Justice, the federal judiciary, the Federal Trade Commission, and the Chamber of Commerce.

The content of the report makes clear that the authors are motivated not by a genuine desire to defend democratic rights, but rather by a desire to limit the damage that has been done by the Snowden revelations.

The report is notable for what it omits. It confines itself to the Section 215 bulk-collection programs and makes no reference to the slew of other ways in which the government regularly spies on the population of the world. No reference is made, for example, to the collection of emails, text messages, postal mail, and contact lists or to the NSA's successful efforts to hack into the arteries of the Internet. The myopic focus of the

report is not accidental—it underscores the report's purpose to limit the opposition engendered by the programs.

“In the aftermath of the Snowden disclosures,” the report reads, “there remains a deep well of distrust” felt by the American and international public and aimed at the government and political establishment.

The report states that the face of the police state apparatus must therefore be given a makeover if it is to continue to operate and expand: “it is critical to the integrity of the process that the public has confidence in [the FISA court's] impartiality and rigor.”

The government must “promote greater transparency for government surveillance policies more generally, in order to inform public debate on technology, national security, and civil liberties going beyond the current controversy.”

Though the report's authors propose a series of reforms—including a call to end the bulk-collection program—their desire to “inform public debate” in order to “go beyond the current controversy” is political doublespeak. These words convey a desire to counterbalance the “opinion” that the programs are facially unconstitutional by explaining to the public that the programs are justified by the need to fight “terrorism.”

“The threat of terrorism faced today by the United States is real,” the report reads. The authors assert PCLOB's belief that “this program has been conducted in good faith to vigorously pursue the government's counterterrorism mission and appreciates the government's efforts to bring the program under the oversight of the FISA court...”

Although the PCLOB takes as its starting position the legitimacy of the “war on terror,” its legal conclusions are nonetheless significant.

The authors are forced to recognize the unprecedented character of the bulk-collection program, which “raises concerns under both the First and Fourth Amendments of the United States Constitution” and that “in particular, the scope and duration of the program are beyond anything ever before confronted by the courts...”

The report lists several reasons why the bulk-collection of phone data does not fit within Section 215 of the USA PATRIOT Act—the statutory grant of power for the transfer of “business records” to the US government’s security apparatus.

First, the report states that “the telephone records acquired under the program have no connection to any specific FBI investigation at the time of their collection.” Second, the data, which “potentially encompass[es] all telephone calling records across the nation ... cannot be regarded as ‘relevant’ to any FBI investigation as required by the statute without redefining the word relevant in a manner that is circular, unlimited in scope, and out of step with the case law from analogous legal contexts involving the production of records.”

The report also claims that Section 215 grants surveillance powers only to the FBI and not the NSA, that the manner in which the state obtains the records from telecommunications companies violates the USA PATRIOT Act, and that the program additionally violates the Electronic Communications Privacy Act.

Additionally, PCLOB’s adoption of the lie that the programs are necessitated by the “war on terror” also produced one of the reports most notable admissions. The authors note that “we have not identified a single instance involving a threat to the United States in which the program made a concrete difference in the outcome of a counterterrorism investigation. Moreover, we are aware of no instance in which the program directly contributed to the discovery of a previously unknown terrorist plot or the disruption of a terrorist attack.”

Far from showing the program’s ineffectiveness, as the PCLOB authors argue, such facts reveal the true motives that underlie the US government’s erection of the foundations for a police state. Far from being intended to protect the country from “terrorism,” the bulk-collection program and other NSA spying programs are used to track, monitor and store the political sentiments of the populations of the United

States and of the world.

In the wake of last month’s ruling by federal district court Judge Richard Leon, who called the programs “almost Orwellian,” the PCLOB report, though limited and inadequate, further underscores the illegal character of the government’s spying operations.

Yet the Obama administration shrugged off claims that it is operating the programs illegally.

“We simply disagree with the board’s analysis on the legality of the program,” White House Press Secretary Jay Carney told reporters on Thursday. “The administration believes that the program is lawful.”

During his nationally televised speech on January 17, Obama said that “the folks at the NSA are our neighbors, they’re our friends and family ... Our intelligence community follows the law and is staffed by patriots.” Obama said that the NSA operatives “follow protocols designed to protect the privacy of ordinary people.”

That the entire political establishment, including the report’s authors, view the US Constitution as dead letter is made clear by the absence of calls for the impeachment and filing of criminal charges against Barack Obama and his operatives. Despite the fact that the president has been caught defending programs that are against the law and the Constitution, there are no calls for a federal investigation or even public hearings.

The silence is further proof that there is no section of the ruling class capable of defending the basic democratic rights of the population. Instead, the ruling class has given the president and his henchmen a carte blanche for the intensification of the assault on democratic rights.



To contact the WSWP and the
Socialist Equality Party visit:

wsws.org/contact