



Written by [Thomas R. Eddlem](#) on January 20, 2010

FBI Says It Violated Fourth Amendment

The FBI has used the terrorism as an excuse to subpoena some 2,000 telephone records from phone carriers without a warrant or even a National Security Letter, according to the Washington Post for January 18. "The FBI illegally collected more than 2,000 U.S. telephone call records between 2002 and 2006 by invoking terrorism emergencies that did not exist or simply persuading phone companies to provide records," the Post found.



Under the [Fourth Amendment](#) to the U.S. Constitution, all involuntary searches must include a warrant, probable cause, be supported by an oath, and describe both what is being searched and what is sought by the search. The amendment bans "unreasonable" searches and uses the above-mentioned tests as defining a reasonable search. The post-September 11 Bush-era Justice Department crafted an "exception" to the explicit wording of the U.S. Constitution via National Security Letters stating that the executive branch of the federal government didn't need to follow the Constitution's requirement for a warrant or probable cause if they sent telecommunications carriers a "National Security Letter" claiming that the search was necessary for national security reasons.

National Security Letters act as administrative subpoenas that include a gag order (until the gag order was [struck down](#) by a U.S. District Court), but an internal review by the FBI's Inspector General found that the FBI routinely claimed national security as the reason for its searches between 2002 and 2006 even when that was clearly not the case. Often, the FBI failed to even provide telephone carriers the National Security Letter after requisitioning the telephone records.

The *Washington Post* story [found](#) that the Inspector General report is expected to conclude that the "FBI frequently violated the law with its emergency requests" and these numerous requests had been "approved by the top level of the FBI." The phone records in question did not include any actual conversations or audio recordings, but were limited to digital records of the time and numbers called that would be equivalent to what appears on a cellphone bill. The demands for the records continued for two years after whistleblowers inside the FBI sounded the alarm that the FBI was flouting the law.



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News that the FBI had broken even the permissive and unconstitutional search rules crafted by the Bush administration perhaps shouldn't be a surprise. Once the constitutional limits on searches were lifted for one reason, it was only natural for government agencies to want to get around constitutional limits on other grounds using national security as a pretext. Moreover, the [National Security Agency has reportedly](#) forced an arrangement with all telephone and Internet carriers to wiretap all foreign and domestic traffic, and is reportedly keeping a permanent record of that traffic. In addition, it has wiretapped the actual conversations of Americans in as many as several million phone calls. If one federal agency has totally ignored the Fourth Amendment, one might argue, why should the rest of the federal government continue be forced to follow the Constitution as well?

The FBI Inspector General's report is being written just as the American Civil Liberties Union has released a [report](#) on the Obama administration's first year progress on a variety of issues. On issues of electronic privacy for Americans, the ACLU report essentially flunked the Obama administration as a carbon copy of the Bush administration. "Our hope a year ago was that the Obama administration would restore our nation's long tradition of respect for privacy and the rule of law by rolling back the privacy-invading domestic security policies enacted by the Bush administration," ACLU Executive Director Anthony Romero [said](#) of the report. "Unfortunately, many of those policies have not been reversed, and we now run the risk of seeing them become a permanent part of American life."



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