NSA Admits Spying on Congressional Phone Habits

Senator Bernie Sanders of Vermont wrote to the NSA asking if the agency collects the telephone records of members of Congress, and CNN received a response claiming that it does collect congressmen's phone records because "Members of Congress have the same privacy protections as all U.S. persons." In other words, congressmen have no privacy from the prying eyes of the NSA either.

Sanders wrote to NSA Director General Keith Alexander on January 3:

> I am writing today to ask you one very simple question. Has the NSA spied, or is the NSA currently spying, on members of Congress or other American elected officials? "Spying" would include gathering metadata on calls made from official or personal phones, content from websites visited or emails sent, or collecting any other data from a third party not made available to the general public in the regular course of business.

The NSA responded by asserting that they collect all of the information related to telephone calls of members of Congress just like they collect information on the telephone habits of every other American. "NSA's authorities to collect signals intelligence data include procedures that protect the privacy of U.S. persons. Such protections are built into and cut across the entire process. Members of Congress have the same privacy protections as all U.S. persons," the NSA told CNN on January 4.

The NSA statement above may sound like the NSA is protecting the privacy of Americans' phone habits, but the NSA and the Obama administration have admitted that the NSA collects information from all "telephone calls within, to, or from the United States," according to a White House *White Paper* on the subject published in August. The *White Paper* also explained what kind of information was collected in its "telephony metadata" program: "Information responsive to an authorized query could include, among other things, telephone numbers that have been in contact with the terrorist-associated number used to query the data, plus the dates, times, and durations of the calls." The White House *White Paper* stressed that no American has any expectation of privacy in any phone call made in America:

> The telephony metadata collection program also complies with the Constitution. Supreme Court precedent makes clear that participants in telephone calls lack a reasonable expectation of privacy for purposes of the Fourth Amendment in the telephone numbers used to make and receive their calls.

The *White Paper* made no exception on calls made by members of Congress, which is certainly consistent with the NSA statement to CNN. Moreover, judicial officials deciding the constitutionality of NSA surveillance are under the same impression that this surveillance is conducted without exception. Judge William H. Pauley III noted in his December 27 decision in the case of *ACLU v. Clapper*, "This blunt tool only works because it collects everything. Such a program, if unchecked, imperils the civil liberties of every citizen. Each time someone in the United States makes or receives a telephone call, the telecommunications provider makes a record of when, and to what telephone number the call was placed, and how long it lasted. The NSA collects that telephony metadata. If plumbed, such data can reveal a rich profile of every individual as well as a comprehensive record of people's associations with one another."

Pauley — who bizarrely upheld the constitutionality of warrantless surveillance by the NSA — inadvertently pointed out the fundamental contradictions in the government's position: 1. Federal officials have at the same time asserted that pulling all Americans' phone records yields no information of significance about American citizens but immensely intimate information about terrorists. 2. Obama administration officials assert that while no American has any right to expect any privacy whatsoever from their telephone call records, federal officials have gone out of their way to claim they have set almost impossibly high restrictions on access to those records.

General Keith Alexander told the House Permanent Select Committee on Intelligence on June 18, 2013 that "in the open press there's this discussion about pattern analysis — [that the Government is] out there doing pattern analysis on this. That is absolutely incorrect. We are not authorized to go into the data, nor are we data mining, or doing anything with the data other than those queries that we discuss, period. We're not authorized to do it. We aren't doing it. There are no automated processes running in the background pulling together data trying to figure out networks…. The only time you can do pattern analysis is, once you start the query on that query and where you go forward."

Likewise, the White House *White Paper* dated August 9, 2013 on the NSA surveillance reports that "The program is carefully limited to this purpose: it is not lawful for anyone to query the bulk telephony metadata for any purpose other than counterterrorism, and Court-imposed rules strictly limit all such queries." But despite White House protestations to the contrary, it's been widely reported that federal officials have used the data for a variety of offenses. The *San Francisco Chronicle* reported just five days earlier, on August 4, 2013, that the NSA has turned over its surveillance data of all Americans for drug cases, and even regular criminal cases.

Senator Sanders — a self-described "socialist" who caucuses with Democrats, and whose cumulative score in *The New American's* "Freedom Index" is 27 percent — has wide-ranging support for his inquiry, especially from constitutionalist congressmen who take seriously their oath of office to "support and defend" the U.S. Constitution. His letter was seconded by Republican Representative Thomas Massie of Kentucky ("Freedom Index" cumulative rating: 100 percent), who noted on his Facebook page: "This is an important question, that [brings up] another question: Are some members of Congress voting for unconstitutional spending at the NSA due to a concern that their personal phone call logs, internet browsing histories, and emails are archived at the NSA? Hopefully the NSA will answer the first question … unambiguously, quickly, and honestly."

Asked if he was worried the NSA was watching him, Senator Rand Paul told the Fox News Channel: "I don't really think so, but I think the potential for this kind of abuse exists. Think of it in this context: We now have an administration that has used the IRS to monitor people who are of conservative political bent or have certain religious beliefs. So they have already shown that they will use what is supposed to be impartial — the IRS — to do it."

In related news, the Obama administration filed an appeal in a second case challenging the constitutionality of warrantless surveillance from the District Court of Washington, D.C. The December 16 decision by Judge Richard Leon (*Klayman vs. Obama*) concluded that "surely, such a program infringes on 'that degree of privacy' that the founders enshrined in the Fourth Amendment." The Fourth Amendment text bans government searches that don't have a warrant issued by a judge "upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

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