Written by **Joe Wolverton, II, J.D.** on March 28, 2014

# Obama Plan: Little Change to NSA Metadata Collection


President Obama's proposal to curtail the collection capabilities of the National Security Agency (NSA) passes the buck for protecting the Constitution to a secret court that has proven less than firm in its resolve to restrict the reach of the surveillance apparatus.

The president's plan purports to severely shrink the NSA's authority to gather so-called metadata from calls made on traditional landline telephones, but could simultaneously remove similar checks on the spy agency's access to cellphone data. As reported by the *Los Angeles Times*:

> The compromise plan would also offer benefits for the NSA that might give privacy advocates pause. Most importantly, it would expand the universe of calling records the agency can access. After months of suggesting that they were collecting all the calling metadata, U.S. officials disclosed last month that a large segment of mobile phone calls were not covered by the program, and that as a result the NSA may only collect 30% of all call data in the country.

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Thirty percent of all call data is in itself something of a victory in light of recent revelations provided by documents leaked by former NSA subcontractor Edward Snowden. As *The New American* reported, the NSA "has the ability to record '100 percent' of the phone calls of a foreign country and then access those calls, replaying them months after they were made."

A closer look at President Obama's "compromise" reveals some substantial abridgments of constitutional standards. Again from the *LA Times*:

> Under the new arrangement, phone companies would be required to standardize their data and make it available on a continuously updated basis so the NSA could search it for terrorist connections. The NSA would have to obtain a court order for such a search, said an administration official who confirmed details of the program on condition of anonymity because it has not yet officially been released.

Since the date of the publication of that article, the plan has been made public.

On March 27, during a conference call, the White House revealed the president's plan for the NSA "not to collect or hold this data in bulk."

During the briefing, a senior administration official laid out the highlights of the president's proposal.

First, the government "would not collect these telephone records in bulk; rather, the records would remain at the telephone companies for the length of time that they currently do today."

Second, "absent an emergency situation, the government would obtain the records only pursuant to individual orders from the FISA Court approving the use of a specific number for queries, if a judge

agrees with the government based on national security concerns."

Third, "the records provided to the government by the provider in response to queries would only be within two hops of the selection term, or the number being used. And the government's handling of any of the records it acquires from the provider would be governed by minimization procedures that are themselves approved by the FISA Court."

Fourth, "the court-approved numbers could be used to query the data over a limited period of time without returning to the FISA Court for approval, and the production of records would be ongoing and prospective."

Finally, "the telephone companies and providers would be compelled to provide technical assistance to ensure that the records can be queried and produced, and the results are transmitted to the government in a usable format and in a timely way."

As anyone can see, the plan relies heavily on the FISA Court to perform the role of primary protector of constitutional standards of privacy. That's putting the wolves in charge of the sheep.

In fact, the FISA Court (officially the Foreign Intelligence Surveillance Court) has proven to be little more than a rubber stamp for government petitions to snoop on Americans.

As *The New American* reported last May:

> As required by provisions of the Foreign Intelligence Surveillance Act Amendments of 2008 (FISA) and the Patriot Act (as amended in 2005), the Department of Justice revealed to Congress the number of applications for eavesdropping received and rejected by the FISA Court.
>
> To no one's surprise (least of all to the architects and builders of the already sprawling surveillance state), the letter addressed to Senator Harry Reid (D-Nev.) reports that in 2012, of the 1,789 requests made by the government to monitor the electronic communications of citizens, not a single one was rejected.
>
> That's right. The court, established specifically to judge the merits of applications by the government to spy on citizens, gave a green light to every government request for surveillance.
>
> Not content to be a mere formality for electronic surveillance, the FISA Court also held the coats of the FBI while that agency carried out the searches and seizures set out in 212 applications.

The president will now seek to work out a compromise plan "in consultation with congressional leadership." That doesn't bode well for the Constitution, though, as the House plan currently being considered also leaves liberty in the hands of the FISA Court, and in all major points mirrors the Obama plan.

Under a scheme being cooked up by a bipartisan group of congressmen on the House Intelligence Committee, the individual phone companies would keep the metadata collected from its customers, and the NSA would have to obtain an order from the FISA Court before being granted access to the information.

This is hardly the stringent oversight citizens should expect from their representatives, particularly in light of the oath each of them swore to preserve, protect, and defend the Constitution.

Most importantly, there is not a single plan being discussed in Washington that would restore the protections of civil liberty provided by the Fourth Amendment. All of them are half measures designed to lull Americans into believing that their rights are being restored. Furthermore, they all ignore the

existence of even more penetrating surveillance programs such as PRISM.

With PRISM, the NSA and the FBI are "tapping directly into the central servers of nine leading U.S. Internet companies, extracting audio, video, photographs, e-mails, documents, and connection logs that enable analysts to track a person's movements and contacts over time," as reported by the *Washington Post* and *The Guardian* (U.K.).

This particular weapon of mass collection relies on Section 702 of the Foreign Intelligence Surveillance Act (FISA) for justification of the surveillance of Internet activity. None of the revealed plans makes any mention of Section 702, and thus PRISM is left completely intact.

Whether a federal lawmaker takes on the task of demolishing the entire surveillance skyscraper remains to be seen. That sort of quixotic endeavor requires a stiff spine and a political abandon that few denizens of the Potomac possess.

Witness the bipartisan betrayal of the Constitution as reported in a *USA Today* story on the president's announcement:

> Rep. Mike Rogers, R-Mich., chairman of the House Intelligence Committee, said requiring judicial approval for record searches in every case would slow down probes, giving terrorism suspects "greater protections than those given to U.S. citizens in criminal investigations every day in this country."
>
> Overall, however, Rogers said he's glad "the president has moved our direction" on an NSA overhaul.
>
> The general idea of ending government storage of metadata appears to have bipartisan support.
>
> House Speaker John Boehner, R-Ohio, said this week that the Intelligence Committee's bill starts "a bipartisan conversation" about surveillance programs, and he added, "I expect part of this effort will include the end of the government holding onto bulk data."

Sadly, the shell game continues and few seem willing to expose the hucksters. The federal government continues cleverly shifting metadata collection and cataloging from one place to the next, while misdirecting the attention of Americans from the Constitution to the care and concern of the president, secret courts, and congressional co-conspirators.

*Photo: AP Images*

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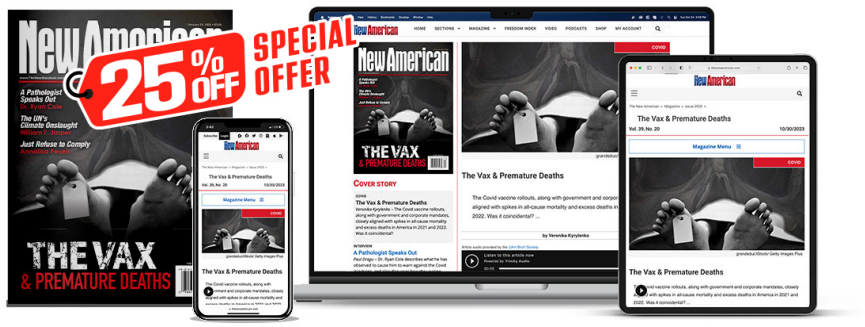


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