



Written by [Michael Tennant](#) on August 2, 2010

Obama Seeks Expanded Internet Surveillance Authority

Just one week after the American Civil Liberties Union issued a report castigating the Obama administration for its extension and expansion of Bush-era policies that infringe on civil liberties, the Washington Post reported on July 29 that the “administration is seeking to make it easier for the FBI to compel companies to turn over records of an individual’s Internet activity without a court order if agents deem the information relevant to a terrorism or intelligence investigation.”



The White House wants to amend the Electronic Communications Privacy Act to allow the FBI to issue “national security letters” (NSLs) to Internet service providers in order to obtain “the addresses to which an Internet user sends e-mail; the times and dates e-mail was sent and received; and possibly a user’s browser history,” government lawyers told the *Post*, adding that the administration is not asking for the ability to issue NSLs to obtain the actual content of email or other Internet communication.

The administration claims it needs this authority because of an ambiguity in the statute, saying that one clause of the act requires ISPs to turn over “electronic communication transactional records” to the FBI in response to an NSL while the next clause states that the only subscriber data the FBI can obtain through an NSL are name, address, length of service, and toll billing records — not the additional transactional records the administration wants. As a result, the Justice Department, in one of its rare rulings in favor of individual privacy, said in 2008 that those four categories of subscriber data are “exhaustive.”

What are NSLs? “These missives,” explains the *Post*, “which can be issued by an FBI field office on its own authority, require the recipient to provide the requested information and to keep the request secret. They are the mechanism the government would use to obtain the electronic records.”

Unlike regular search warrants, NSLs do not require a judge’s approval and thus have the potential to be greatly abused. In fact, says the *Post*,

The use of the national security letters to obtain personal data on Americans has prompted concern. The Justice Department issued 192,500 national security letters from 2003 to 2006, according to a 2008 inspector general report, which did not indicate how many were demands for Internet records. A 2007 IG report found numerous possible violations of FBI regulations,



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including the issuance of NSLs without having an approved investigation to justify the request. In two cases, the report found, agents used NSLs to request content information “not permitted by the [surveillance] statute.”

The *Post* also points to a serious defect in the law and the administration’s proposed amendment: There is no statutory definition of “electronic communication transactional records.” Hence, the government, if given the authority to seek such records via NSLs, might very well sweep up far more subscriber data than the administration is suggesting it would. Adds the *Post*: “‘Our biggest concern is that an expanded NSL power might be used to obtain Internet search queries and Web histories detailing every Web site visited and every file downloaded,’ said Kevin Bankston, a senior staff attorney with the Electronic Frontier Foundation, which has sued AT&T for assisting the Bush administration’s warrantless surveillance program.”

The *New York Times* justifiably [lambasted](#) President Obama for his administration’s proposal, terming it “an unnecessary and disappointing step backward toward more intrusive surveillance from a president who promised something very different during the 2008 campaign.”

The *Times* detailed some of the abuses of NSLs that took place under Obama’s predecessor. The Bush administration used them to “demand that libraries turn over the names of books that people had checked out.” The FBI used them “hundreds of thousands of times to demand records of phone calls and other communications, and the Pentagon used them to get records from banks and consumer credit agencies.”

Obama, said the *Times*, “campaigned for office on an explicit promise to rein in these abuses,” promising he “would revisit the Patriot Act to ensure that there is real and robust oversight of tools like National Security Letters, sneak-and-peek searches, and the use of the material witness provision.” Instead, as President he “successfully pushed for crucial provisions of the Patriot Act to be renewed for another year without changing a word” and is now “proposing changes to the law that would allow huge numbers of new electronic communications to be examined with no judicial oversight,” the paper lamented.

“Democrats in Congress can remind Mr. Obama of his campaign promises by refusing this request,” concluded the editorial. Indeed they can and should.

They, and like-minded Republicans, should also remind Obama of his oath of office, in which he solemnly swore to “preserve, protect and defend the Constitution of the United States.” That includes the Fourth Amendment, which requires a warrant for any search — not a letter issued at will by the executive branch and kept secret but a warrant “supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

NSLs clearly violate the Fourth Amendment. Not only should Obama stop seeking to expand the information that can be obtained with NSLs; he should also put an end to NSLs altogether.



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