



Written by [Raven Clabough](#) on January 15, 2015

Report Shows FBI Expanded Its Surveillance Program

A newly declassified report reveals that the Federal Bureau of Investigation has become increasingly involved in warrantless surveillance. The 231-page report follows a study conducted by the Justice Department's inspector general regarding the FBI's activities under the FISA Amendments of 2008, which authorized the surveillance.

According to the report, in 2008, the FBI began to review e-mail accounts the National Security Administration had wanted to collect via "PRISM," a electronic surveillance data mining program, but couldn't under U.S. law. The e-mails, which came from providers such as Yahoo and Google, belonged to foreigners. In fact, FBI top lawyer Valerie Caproni created procedures to ensure that the accounts did not belong to Americans.

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By 2009, according to the report, the FBI had begun to retain for analysis copies of communications of foreign nationals that had been obtained without warrants.

The inspector general's report was completed in 2012 and remained classified until the government recently made public a semi-redacted version of the report in response to a Freedom of Information Act lawsuit filed by the *New York Times*. That lawsuit was filed after there were a number of declassifications about government surveillance actions in response to leaks by intelligence contractor Edward Snowden.

[According to documents](#) leaked by Snowden to *The Guardian* newspaper, while the NSA and other agencies were prohibited from collecting intelligence on American citizens, the FBI was permitted to search SIGINT (signal intelligence from foreign targets, such as communication systems) data for details on suspect individuals, including American citizens, if the individuals were referenced in data exposed during investigations concerning non-U.S. citizens.

In 2013, the White House established a panel to review the intelligence community's surveillance programs. The panel had determined that aspects of the program pushed the boundaries of "constitutional reasonableness." According to that panel's report,

Although US persons may not be targeted under Section 702, communications of or concerning US persons may be acquired in a variety of ways. An example is when a US person communicates with a non-US person who has been targeted, resulting in what is termed "incidental" collection. Another example is when two non-US persons discuss a US person. Communications of or concerning US persons that are acquired in these ways may be retained and used by the





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government, subject to applicable rules and requirements. The communications of US persons may also be collected by mistake, as when a US person is erroneously targeted or in the event of a technological malfunction, resulting in “inadvertent” collection. In such cases, however, the applicable rules generally require the communications to be destroyed.

Cindy Cohn, legal director of the Electronic Frontier Foundation, later stated that the panel’s recommendations failed to ensure that proper civil rights protections were in place for American citizens. “The board skips over the essential privacy problem with the 702 upstream program: that the government has access to or is acquiring nearly all communications that travel over the internet,” she wrote. “The government’s collection and search of Americans’ communications without a warrant or individually approved court order is barred by the Constitution and must be stopped.”

Still, the declassified inspector general’s report ultimately concludes that the FBI conducted itself appropriately in ensuring that the e-mail accounts targeted in its warrantless activities belonged to noncitizens outside of the United States.

The agency’s surveillance team had “implemented its targeting procedures with commendable deliberation, thoroughness and professionalism,” the inspector general determined.

But as observed by the *New York Times*, parts of the report remain redacted. The *Times* writes:

For example, there was only one uncensored reference to the Prism system. It was not clear why the Justice Department had redacted all the other references to Prism in the report; the name of that program and many details about it have been declassified and were discussed in a July 2014 report by the Privacy and Civil Liberties Oversight Board.

NYT lawyer David McCraw indicates that the newspaper may later challenge the redactions.



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