



Written by [Joe Wolverton, II, J.D.](#) on August 17, 2013

White House Denials of NSA Privacy Violations Prompt Legislative Furor

Reports that the National Security Agency (NSA) routinely breaks the law and violates court orders and the Constitution in order to collect private data of hundreds of millions of Americans has prompted some federal lawmakers to finally exercise a little oversight.



“Press reports that the National Security Agency broke privacy rules thousands of times per year and reportedly sought to shield required disclosure of privacy violations are extremely disturbing,” said House Minority Leader Nancy Pelosi (D-Calif.), [as reported by the Washington Post](#). The article in the Post also says Pelosi thinks “Congress should take steps to ensure that such incidents are not repeated.”

A pair of familiar congressional foes of the surveillance state joined the chorus calling for a change in the NSA’s atmosphere of unfettered authority.

In [their joint statement](#), the senators argued for more transparency.

The executive branch has now confirmed that the ‘rules, regulations and court-imposed standards for protecting the privacy of Americans’ have been violated thousands of times each year. We have previously said that the violations of these laws and rules were more serious than had been acknowledged, and we believe Americans should know that this confirmation is just the tip of a larger iceberg.

While Senate rules prohibit us from confirming or denying some of the details in today’s press reports, the American people have a right to know more details about of these violations. We hope that the executive branch will take steps to publicly provide more information as part of the honest, public debate of surveillance authorities that the Administration has said it is interested in having.

In particular, we believe the public deserves to know more about the violations of the secret court orders that have authorized the bulk collection of Americans’ phone and email records under the USA PATRIOT Act. The public should also be told more about why the Foreign Intelligence Surveillance Court has said that the executive branch’s implementation of section 702 of the Foreign Intelligence Surveillance Act has circumvented the spirit of the law, particularly since the executive branch has declined to address this concern.

We appreciate the candor of the Chief Judge of the Foreign Intelligence Surveillance Court regarding the Court’s inability to independently verify statements made by the executive branch. We believe that the Court is not currently structured in a way that makes it an effective check on the power of the executive branch. This highlights the need for a robust and well-staffed public



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advocate who could participate in significant cases before the Court and evaluate and counter government assertions. Without such an advocate on the court, and without greater transparency regarding the Court's rulings, the checks and balances on executive branch authority enshrined in the Constitution cannot be adequately upheld.

Despite Wyden and Udall's praise for the efforts of the judicial branch to restrain the executive branch of which the NSA is a part, the hard facts reveal that neither the legislative nor judicial branches of the federal government have made any substantive efforts to shackle the surveillance apparatus.

Consider, for example, the following [excerpts from an August 15 Washington Post](#) story that first chronicled the more than 2,000 examples of the NSA's violation of privacy laws.

With regard to Congressional oversight, the *Post* reported:

Senate Intelligence Committee Chairman Dianne Feinstein (D-Calif.), who did not receive a copy of the 2012 audit [showing thousands of violations] until The Post asked her staff about it, said in a statement late Thursday that the committee "can and should do more to independently verify that NSA's operations are appropriate, and its reports of compliance incidents are accurate."

As for the judiciary, the lack of checks on NSA surveillance is similarly non-existent:

The chief judge of the Foreign Intelligence Surveillance Court said the court lacks the tools to independently verify how often the government's surveillance breaks the court's rules that aim to protect Americans' privacy. Without taking drastic steps, it also cannot check the veracity of the government's assertions that the violations its staff members report are unintentional mistakes.

"The FISC is forced to rely upon the accuracy of the information that is provided to the Court," its chief, U.S. District Judge Reggie Walton, said in a written statement to The Washington Post. "The FISC does not have the capacity to investigate issues of noncompliance, and in that respect the FISC is in the same position as any other court when it comes to enforcing [government] compliance with its orders."

Finally, it seems certain that those in positions of power within the domestic spying system have adopted a laissez-faire policy when it comes to matters of internal control.

The NSA uses the term "incidental" when it sweeps up the records of an American while targeting a foreigner or a U.S. person who is believed to be involved in terrorism. Official guidelines for NSA personnel say that kind of incident, pervasive under current practices, "does not constitute a ... violation" and "does not have to be reported" to the NSA inspector general for inclusion in quarterly reports to Congress. Once added to its databases, absent other restrictions, the communications of Americans may be searched freely.

In one required tutorial, NSA collectors and analysts are taught to fill out oversight forms without giving "extraneous information" to "our FAA overseers."

FAA is a reference to the FISA Amendments Act of 2008, which granted broad new authorities to the NSA in exchange for regular audits from the Justice Department and the office of the Director of National Intelligence and periodic reports to Congress and the surveillance court.

Using real-world examples, the "Target Analyst Rationale Instructions" explain how NSA employees should strip out details and substitute generic descriptions of the evidence and analysis behind their targeting choices.



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Despite the overwhelming evidence of NSA abuses and congressional reluctance to stop it, [a statement released August 16](#) by the deputy White House press secretary Josh Earnest makes it sound as if the president believes the spy agency is doing nothing wrong. The press release reads:

As Chairman of the Senate Select Committee on Intelligence Feinstein has said today, the Committee has never identified an instance in which the NSA has intentionally abused its authority to conduct surveillance for inappropriate purposes not identified willful violations of the law; rather, the majority of the compliance incidents are unintentional. The documents demonstrate that the NSA is monitoring, detecting, addressing and reporting compliance incidents.

NSA Compliance Director John DeLong agrees with the president's positive spin. During a press conference on August 16, DeLong assured the media that the NSA is not involved in "willful violations" of the law.

"People need to understand there's no willful violations here," he said. "We really do look for them, detect them and correct them." "No one at NSA, not me or anyone else, thinks they are okay," he added.

He additionally claimed that the number of incidental violations of privacy laws is "minuscule ... a couple over the past decade."

One unwarranted wiretap, one unwarranted seizure of a phone record, one search of records of an individual's digital communications is too many. If we are a republic of laws, then the supreme constitutional law of the land must be adhered to. The standard is not whether or not the spies or their bosses think the deprivations are "okay." The standard is the Constitution — for every issue, on every occasion, with no exceptions. Anything less than that is a step toward tyranny.

Photo: AP Images

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