

How the NSA's Surveillance Procedures Threaten Americans' Privacy

Newly released documents confirm what critics have long suspected that the National Security Agency, a component of the Defense Department, is engaged in unconstitutional surveillance of Americans' communications, including their telephone calls and emails. The documents show that the NSA is conducting sweeping surveillance of Americans' international communications, that it is acquiring many purely domestic communications as well, and that the rules that supposedly protect Americans' privacy are weak and riddled with exceptions.

The FISA Amendment Act, signed into law by President Bush in 2008, expanded the government's authority to monitor Americans' electronic communications. Critics of the law feared the NSA would use the law to conduct broad surveillance of Americans' international communications and, in the process, capture an unknown quantity of purely domestic communications. Government officials contended that the law authorized surveillance of foreign nationals outside the United States—not of Americans—and that it included robust safeguards to protect Americans' privacy. Last year, in a successful effort to derail a constitutional challenge to the law, the Obama administration made these same claims to the U.S. Supreme Court.

Now The Guardian has published two previously secret documents that show how the FISA Amendments Act is being implemented. One document sets out the government's "targeting procedures"—the procedures it uses to determine whether it has the authority to acquire communications in the first place. The other sets out national security cases.

The Procedures are complex, but at least some of their flaws are clear.

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also information about intelligence activities, the national defense, and even “the foreign affairs of the United States.” The Procedures weaken the limitation further. Among the things the NSA examines to determine whether a particular email address or phone number will be used to exchange foreign intelligence information is whether it has been used in the past to communicate with foreigners. Another is whether it is listed in a foreigner’s address book. In other words, the NSA seems to equate a propensity to communicate with foreigners with a propensity to communicate foreign intelligence information. The effect is to bring virtually every international communication within the reach of the NSA’s surveillance.

4. The Procedures permit the NSA to collect international communications, including Americans’ international communications, in bulk.

On its face, the Act permits the NSA to conduct dragnet surveillance, not just surveillance of specific individuals. Officials who advocated for the Act made clear that this was one of its principal purposes, and unsurprisingly, the Procedures give effect to that design. While they require the government to identify a “target” outside the country, once the target has been identified the Procedures permit the NSA to sweep up the communications of any foreigner who may be communicating “about” the target. The Procedures contemplate that the NSA will do this by “employ[ing] an Internet Protocol filter to ensure that the person from whom it seeks to obtain foreign intelligence information is located overseas,” by “target[ing] Internet links that terminate in a foreign country,” or by identifying “the country

The Procedures expressly contemplate that the NSA will collect attorney client communications. In general, these communications receive no special protection—they can be acquired,