

Editorial: Obama needs to stop eavesdropping

Publisher's note: *This editorial is from the June 6, 2013, New York Times.*

Within hours of the disclosure that federal authorities routinely collect data on phone calls Americans make, regardless of whether they have any bearing on a counterterrorism investigation, the Obama administration issued the same platitude it has offered every time President Obama has been caught overreaching in the use of his powers: Terrorists are a real menace and you should just trust us to deal with them because we have internal mechanisms (that we are not going to tell you about) to make sure we do not violate your rights.

Those reassurances have never been persuasive – whether on secret warrants to scoop up a news agency's phone records or secret orders to kill an American suspected of terrorism – especially coming from a president who once promised transparency and accountability.

The administration has now lost all credibility on this issue. Obama is proving the truism that the executive branch will use any power it is given and very likely abuse it. That is one reason we have long argued that the Patriot Act, enacted in the heat of fear after the Sept. 11, 2001, attacks by members of Congress who mostly had not even read it, was reckless in its assignment of unnecessary and overbroad surveillance powers.

Based on an article in the *Guardian* published Wednesday night, we now know that the Federal Bureau of Investigation and the National Security Agency used the Patriot Act to obtain a secret warrant to compel Verizon's business services division

to turn over data on every single call that went through its system. We know that this particular order was a routine extension of surveillance that has been going on for years, and it seems very likely that it extends beyond Verizon's business division. There is every reason to believe the federal government has been collecting every bit of information about every American's phone calls except the words actually exchanged in those calls.

Articles in the *Washington Post* and the *Guardian* described a process by which the N.S.A. is also able to capture Internet communications directly from the servers of nine leading American companies. The articles raised questions about whether the N.S.A. separated foreign communications from domestic ones.

A senior administration official quoted in the *Times* online Thursday afternoon about the Verizon order offered the lame observation that the information does not include the name of any caller, as though there would be the slightest difficulty in matching numbers to names. He said the information "has been a critical tool in protecting the nation from terrorist threats," because it allows the government "to discover whether known or suspected terrorists have been in contact with other persons who may be engaged in terrorist activities, particularly people located inside the United States."

That is a vital goal, but how is it served by collecting everyone's call data? The government can easily collect phone records (including the actual content of those calls) on "known or suspected terrorists" without logging every call made. In fact, the Foreign Intelligence Surveillance Act was expanded in 2008 for that very purpose.

Essentially, the administration is saying that without any individual suspicion of wrongdoing, the government is allowed to know whom Americans are calling every time they make a phone call, for how long they talk and from where.

This sort of tracking can reveal a lot of personal and intimate information about an individual. To casually permit this surveillance – with the American public having no idea that the executive branch is now exercising this power – fundamentally shifts power between the individual and the state, and it repudiates constitutional principles governing search, seizure and privacy.

The defense of this practice offered by Sen. Dianne Feinstein, D-Calif., who as chairwoman of the Senate Intelligence Committee is supposed to be preventing this sort of overreaching, was absurd. She said on Thursday that the authorities need this information in case someone might become a terrorist in the future. Sen. Saxby Chambliss of Georgia, the vice chairman of the committee, said the surveillance has “proved meritorious, because we have gathered significant information on bad guys and only on bad guys over the years.”

But what assurance do we have of that, especially since Ms. Feinstein went on to say that she actually did not know how the data being collected was used?

The senior administration official quoted in the *Times* said the executive branch internally reviews surveillance programs to ensure that they “comply with the Constitution and laws of the United States and appropriately protect privacy and civil liberties.”

That’s no longer good enough. Obama clearly had no intention of revealing this eavesdropping, just as he would not have acknowledged the killing of Anwar al-Awlaki, an American citizen, had it not been reported in the press. Even then, it took him more than a year and a half to acknowledge the killing, and he is still keeping secret the protocol by which he makes such decisions.

We are not questioning the legality under the Patriot Act of the court order disclosed by the *Guardian*. But we strongly

object to using that power in this manner. It is the very sort of thing against which Obama once railed, when he said in 2007 that the surveillance policy of the George W. Bush administration “puts forward a false choice between the liberties we cherish and the security we provide.”

Two Democrats on the Senate Intelligence Committee, Ron Wyden of Oregon and Mark Udall of Colorado, have raised warnings about the government’s overbroad interpretation of its surveillance powers. “We believe most Americans would be stunned to learn the details of how these secret court opinions have interpreted Section 215 of the Patriot Act,” they wrote last year in a letter to Attorney General Eric Holder Jr. “As we see it, there is now a significant gap between what most Americans think the law allows and what the government secretly claims the law allows. This is a problem, because it is impossible to have an informed public debate about what the law should say when the public doesn’t know what its government thinks the law says.”

On Thursday, Rep. Jim Sensenbrenner, R- Wisc., who introduced the Patriot Act in 2001, said that the National Security Agency overstepped its bounds by obtaining a secret order to collect phone log records from millions of Americans.

“As the author of the Patriot Act, I am extremely troubled by the F.B.I.’s interpretation of this legislation,” he said in a statement. “While I believe the Patriot Act appropriately balanced national security concerns and civil rights, I have always worried about potential abuses.” He added: “Seizing phone records of millions of innocent people is excessive and un-American.”

Stunning use of the act shows, once again, why it needs to be sharply curtailed if not repealed.