



Court Said Wiretap Violated Constitution's 4th Amendment

By Laura Litvan - Jul 21, 2012 2:12 PM ET

On “at least one occasion” the federal government violated the Constitution’s ban on unreasonable searches in using its power to wiretap people in the U.S. without a warrant, a federal court said.

The Foreign Intelligence Surveillance Court’s finding was disclosed without any details in a letter yesterday to Democratic Senator [Ron Wyden](#) of [Oregon](#) from a top aide to Director of National Intelligence James Clapper. Wyden is a member of the Senate Intelligence Committee and a critic of the law permitting warrantless wiretaps.

The letter, also sent to the Senate committee chairman, Democrat [Dianne Feinstein](#) of [California](#), and ranking Republican [Saxby Chambliss](#) of [Georgia](#), says Clapper concluded “the public interest in disclosure outweighs the damage to the national security that might reasonably be expected from disclosure.”

The July 20 letter provides a rare glimpse into the government’s use of its wiretapping authority, which was expanded after the Sept. 11 terrorist attacks on the U.S. and continued under the Obama administration.

The FISA court considers government requests for electronic surveillance and physical searches of foreigners in the U.S. suspected of engaging in espionage or terrorism. It approved all 1,674 federal government applications to conduct

electronic surveillance in 2011, according to an April 30 [Justice Department](#) report to congressional leaders.

Declassifying Opinions

The Obama administration created a process to consider declassifying FISA court opinions starting in 2010, after lawmakers called for greater transparency. On May 8, the Justice Department said in response to a public records request that no court rulings had been cleared for release.

Members of Congress are debating a proposed five-year extension of the warrantless wiretap authority, which Wyden threatens to block until he and other lawmakers get more information about whether the government is intercepting and reviewing communications of “law-abiding Americans.”

The 2008 law would expire at the end of the year if it’s not extended. The House Judiciary Committee voted 23-11 on June 19 to reauthorize the post-Sept. 11 law. On July 20, by a 10-8 party-line vote, the Senate Judiciary Committee approved a measure that would extend FISA for three years.

Addressing Concerns

The letter to Wyden from Clapper’s director of legislative affairs, Kathleen Turner, clears the way for Wyden to argue publicly that he believes the government’s implementation of the 1978 Foreign Intelligence Surveillance Act “has sometimes violated the spirit of the law.”

A spokesman for Clapper said in a telephone interview that the [Office of the Director of National Intelligence](#) has addressed the concerns raised in secret by the FISA court, a point the letter stressed to Wyden. Clapper’s office coordinates the work of 16 U.S. intelligence agencies, including the National Security Agency, which conducts electronic surveillance.

“We’ve identified and we’ve admitted that there were some concerns, but FISC has continued to approve the collection as consistent with the statute and reasonable under the [Fourth Amendment](#),” said Mike Birmingham, a spokesman for Clapper.

Tom Caiazza, a spokesman for Wyden, said the agency’s decision allows the senator to speak out about some problems in implementing the law that he’s been aware of for some time.

“We can start this transparent debate,” Caiazza said.

Wyden is scheduled to speak on the issue at a July 25 [forum](#) on “The Surveillance Iceberg: The FISA Amendments and Mass Spying Without Accountability,” at the [Cato Institute](#), a Washington policy research organization.

To contact the reporter on this story: Laura Litvan in Washington at llitvan@bloomberg.net

To contact the editor responsible for this story: John Walcott at jwalcott9@bloomberg.net