

# Bloomberg

## How Dangerous Are Government Leaks? Let's Find Out

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It's hard to feel comfortable with the Barack Obama administration's aggressive pursuit of national security leaks. Last week, the Justice Department acknowledged seizing phone records from Associated Press reporters in connection with a leak concerning a 2012 counterterrorism operation in Yemen. This week, we learned that Fox News correspondent James Rosen's e-mail was examined to track down unauthorized disclosures about North Korea. In this case, the Justice Department went so far as to call the reporter a "co-conspirator."

Has the administration overreacted? Probably. But that doesn't mean there aren't legitimate national security issues to weigh.

The AP case is complicated. With the help of foreign intelligence agencies, an undercover informant worked his way into the confidence of al-Qaeda in the Arabian Peninsula. When the AP reported on a foiled plot in Yemen to blow up a U.S. airliner, it inadvertently exposed the informant. After the AP report was published, the administration itself leaked additional information, perhaps to defuse speculation among the news media and political opponents that a terrorist plot had just narrowly missed its goal.

U.S. officials had hoped the informant would lead them to Ibrahim Hassan al-Asiri, the terrorist group's innovative bomb maker. Given the lost opportunity, it's not surprising that the administration has hunted for the leaker who blew the agent's cover.

What's less clear is how this and similar cases in the future should be handled. Leaks are an especially vexing problem because they are routine and an important means of informing the public. Yet the Yemen leak, according to the administration, was exceptionally damaging.

### *Avoiding Embarrassment*

Like its predecessors, the Obama administration reserves the right to define what a national security leak is. What the news media -- and all Americans -- should fear is that those in power might use "national security" as a catchall to pursue leaks that don't threaten security so much as cause embarrassment.

The balance between information and security has never been easy to achieve, with the government typically overreaching in eras when fear is especially pronounced. The vast expansion of national security bureaucracies and capabilities since the Sept. 11 attacks has only made it more difficult to find equilibrium. The U.S. government now engages in

an unprecedented volume of snooping. In 2011 alone, a single telecommunications company, Sprint Nextel Corp., received more than half a million subpoenas from U.S. law enforcement.

While the government has developed extraordinary powers of surveillance, the protocols for policing such powers haven't kept pace. Why does one leak initiate a government manhunt -- or worse in the case of the Fox News reporter, an invocation of a dubious 1917 espionage statute -- while another is studiously overlooked by the same administration?

Devising better protocols to confine the government's reach poses a challenge. Because of the inherent sensitivity of intelligence gathering, real-time second-guessing of government investigations is problematic. For the same reason, a reporters' shield law, which the Obama administration says it supports, wouldn't resolve the most difficult issues. When the government asserts that national security is at stake in real time, judges tend to be extremely accommodating.

A more promising approach -- at least a first step -- is to look backward. Julian Sanchez, a research fellow at the libertarian Cato Institute in Washington, has proposed that Congress conduct a comprehensive audit of previous government leak investigations. The decade after Sept. 11 provides ample case studies.

A review of past practices, including the deployment of databases, the grounds for issuing subpoenas and the pursuit of reporters' records, could point the way to necessary changes in light of new technologies and enhanced national security powers. As the furor over the AP case makes plain, the rules at the very least need clarification; it's only a matter of time before the next legal battle over an unauthorized leak.

### *Conflicting Interests*

The interests of the government and the press are not, and generally should not, be aligned. But stalemate is not inevitable. A forensic analysis of past leak investigations would enable Washington to move to the ultimate goal: a more comprehensive -- and comprehensible -- set of ground rules to sustain the delicate balance of national security and freedom of information. Neither side of that equation is free of risks. We should better understand those risks -- and their costs.