

GANNETT

TN representatives complaining about media snooping supported it with their votes, advocates say

By: Paul C. Barton – May 24, 2013

Although they denounced the Obama Administration's recent seizure of reporters' records, some Tennessee members of Congress have supported even more powerful tools for snooping on the news media and other Americans, privacy advocates contend.

They did so, the advocates say, through their votes for the Patriot Act, the anti-terrorism legislation first passed in 2001 just weeks after attacks on New York City and Washington. It was reauthorized in 2006 and several of its most controversial aspects were further extended in 2011.

The recent controversy over the Justice Department subpoenaing phone records of the Associated Press and e-mails and phone records of a Fox News reporter ought to ignite debate about the surveillance powers Congress has handed over to the executive branch, privacy experts say.

"We would welcome that debate," said Alexander Abdo, a specialist on national security issues for the American Civil Liberties Union.

At least one member of the Tennessee delegation says it's time to review use of the act.

"It is imperative that Congress conduct aggressive oversight in how the President is implementing laws including the Patriot Act," said Rep. Stephen Fincher, R-Frog Jump.

"We must ensure that the Administration implements the Patriot Act with the right balance between keeping our citizens safe and ensuring our liberties are protected."

But instead, some fear, the public is complacent about laws that could be used against ordinary citizens as well as the press.

"With all the scandals unfolding in Washington, this is the one that most concerns me as a historian," John Baick, professor at Western New England University, said in an interview. "It's not a question of the legality, it's a question of the attitude of the culture."

The general public would be shocked about the kinds of information related to their communications and finances that is stored indefinitely in computers and available to federal law enforcement officers, privacy groups say.

In addition to multiple provisions of the Patriot Act, the Electronic Communications Privacy Act of 1986 also provides the government with tools for snooping. Under the 1986 law, federal officials using a secret grand jury subpoena can go to a communications or Internet provider and request all sorts of information about telephone calls made and received and Internet addresses visited.

Although the Justice Department has not said for certain, it is widely believed it used the 1986 law to go after the AP records.

Some privacy advocates believe the government just as easily could have used a Patriot Act provision known as "National Security Letters." The letters allow the FBI to order third parties to release information on their customers if it perceives they might be related to threats of international terrorism or foreign intelligence activities.

Julian Sanchez, who follows electronic privacy issues for the Cato Institute, wrote that the recent seizure of AP records was probably not as unprecedented as many believe.

The government does not have to disclose the use of an NSL and third parties — like phone or Internet companies — are subject to a gag order when they receive them.

"The FBI does not believe ordinary rules for getting press records apply," Sanchez said in an interview.

The letters also don't require the approval of a judge or grand jury. In the 12 years since 9/11, the FBI has issued tens of thousands of the letters every year, according to the ACLU, the Electronic Privacy Information Center and other privacy groups.

Although the letters existed before 9/11, the Patriot Act — both as originally passed in 2001 and renewed in 2006 — greatly enhanced the types of information that could be pursued with them.

Another privacy group, the Electronic Frontier Foundation, says the letters "allow the FBI to secretly demand data about ordinary American citizens' private communications and Internet activity without any meaningful oversight or prior judicial review."

Of major importance is how the government interprets threats related to international terrorism and foreign intelligence activities. It's a squishy concept, privacy advocates say.

"We don't know how broadly the government is interpreting its already broad powers under the NSL statute," Abdo said.

Previous to the Patriot Act, EPIC says, the FBI could use NSLs to request information only if it had "specific and articulable facts giving reason to believe that the customer or entity whose records are sought is a foreign power or an agent of a foreign power."

The Patriot Act relaxed it so that NSLs could be issued to request information merely "relevant" to such investigations.

"The government takes the position that if it is investigating a crime, even if committed by a reporter, the NSL protection for First Amendment activities is no bar to the investigation," added Abdo of the ACLU.

The Justice Department's inspector general is among those who have cited the FBI for abusing the letters. And the Electronic Frontier Foundation has just obtained a ruling from a federal district court in Northern California that the gag orders imposed under them are unconstitutional.

Among current members of the Tennessee congressional delegation, Republican Sen. Lamar Alexander joined Reps. Marsha Blackburn, R-Brentwood, and Jim Cooper, D-Nashville, in voting for the 2006 reauthorization of the Patriot Act, including its NSL provisions.

Blackburn declined to be interviewed for this article. Cooper said he was "always open to improvements in the Patriot Act" but didn't say what they should be.

Alexander said he was worried about the "chilling effect" the targeting of reporters would have on free speech, a sentiment echoed by his fellow Republican, Sen. Bob Corker.

Several other controversial provisions of the Patriot Act that privacy advocates say could also be used against the press were reauthorized by Congress in 2011, with the support of eight of the 11 members of the state's congressional delegation.

Only Reps. Steve Cohen, D-Memphis; John Duncan Jr., R-Knoxville; and Phil Roe, R-Johnson City, opposed them.