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Every Secret Court Order for Your Data, Since the Patriot Act

FISA requests peaked in 2007 before dropping steeply, but now the binge has resumed.

By: Brian Fung – June 12, 2013

Every time the government wants access to your phone records, it has to produce what's called a FISA application—a plea to the secret Foreign Intelligence Surveillance Court (FISC) that then approves the request. And it's almost always approved; since the War on Terror began, FISC has handed down only 11 denials. How do we know? The Justice Department is required to submit an annual report to Congress. The report doesn't say who the FISA applications were targeting; just how many were made in a given year, how many were denied, and (sometimes) whether the requests were for electronic surveillance or physical surveillance.

The Federation of American Scientists hosts a number of these letters; I've compiled them into a single PDF that's available on *National Journal*. To help illustrate the expansion of the FISA system, I've also put together the chart above.

It's hard not to notice the sharp drop in the number of FISA requests starting in 2008. This probably has nothing to do with President Obama's election, as the decline begins in 2007 when George W. Bush still occupied the White House. Indeed, under Obama's watch from 2009 onward, the program begins to grow again. A former Bush administration official pointed out at the time that the dip coincides with congressional amendments to the PATRIOT Act; but Julian Sanchez, a tech policy expert at the libertarian-leaning Cato Institute, fretted that the numbers were masking wider surveillance.

He may have been on to something. Even as the use of FISA subpoenas tapered, the Federation of American Scientists was tracking the simultaneous rise of the national security letter—another way of requesting data from businesses, but one without the need for a court's oversight.