



Department of Justice to review FBI surveillance under Patriot Act

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The Department of Justice Inspector General is set to conduct a new review that will dig into “any improper or illegal uses” of the FBI’s surveillance activities carried out under the Patriot Act, with obvious implications for Americans’ privacy.

The Office of the Inspector General (OIG) will be delving into cases that involve possible abuse of the intelligence service’s power to collect phone records under the authority of Section 215 of the Patriot Act, which allows the FBI access to *“any tangible things,”* so long as the FBI *“specif[ies]”* that the order is *“for an authorized investigation . . . to protect against international terrorism or clandestine intelligence activities.”*

Section 215 of 2001’s Patriot Act, which was extended in its entirety for an additional four years by President Obama in May of 2011, has been the subject of heated debate between the intelligence community and members of Congress that believe it is a necessary component of the war on terror versus groups such as the Electronic Frontier Foundation and the ACLU. The latter think that the ability to collect communications data en masse without a warrant constitutes a breach of the Fourth Amendment.

According to an analysis of the OIG’s probe by Foreign Policy Magazine, the review is to examine the FBI’s use of both pen register and trap-and-trace authority under the Foreign Intelligence Surveillance Act.

Without delving into the historical definition of *“pen register”* and *“trap-and-trace”* devices, which harken back to basic pulse dialing on telephones, these both refer to the ability to collect data on the numbers dialed by a caller.

Likewise, as both pen register and trap-and-trace refer to technology in an outdated way, when combined with the powers offered by the Patriot Act and the secretive FISA courts, they have allowed intelligence services greater leeway to include computer software programs and internet surveillance.

The upcoming report by the OIG will clearly take on greater significance coming on the heels of revelations of far-reaching NSA surveillance of phone records from companies like Verizon, and other tools that are according to leaks by former intelligence contractor Edward Snowden allegedly collecting a sweeping amount of information on online activities.

This new review by the Department of Justice, which will cover a two-year period between 2007 and 2009, could therefore shed more light on what the US government has been doing with both

online surveillance data and phone records.

On Monday, the White House announced that it was tasking director of national intelligence James Clapper with an independent review of surveillance activities conducted by the NSA, a clear reaction to the widening number of Snowden's leaks. Though the move was welcomed by some, it was also quickly lambasted by groups like the EFF and the ACLU, who questioned both the role of Clapper following his untruthful responses to a Congressional hearing, as well as the impartiality of a probe under the control of the very agency it is investigating.

White House and administration officials countered on Tuesday that Clapper would not be leading the review.

"The White House is selecting the members of the Review Group, consulting appropriately with the Intelligence Community," a National Security Council spokesperson told The Hill newspaper.

Whereas the NSA review panel seems to be off to a rocky start, there is reason to expect some valuable information brought to light by the Inspector General's own inquiry.

"The IG has actually had a decent track record calling attention to abuses and misconduct by the FBI," said Julian Sanchez, a research fellow who studies surveillance law and technology at the Cato Institute who spoke with FP Magazine.

The IG will also be reviewing the use of drones within the US, including "policies, guidelines, controls, or restrictions" relating to privacy rights and civil liberties.

The Inspector General's office has so far not commented on when its review will be released.