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FBI's New Rules to Give Agents More Leeway on Surveillance

By Judson Berger
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The FBI sought Monday to downplay its expanded surveillance powers for agents as civil liberty groups sounded an alarm that the new rules not only make it easier for agents to investigate suspects but give them startling leeway to spy on ordinary Americans.

The changes are expected to be outlined in a new edition of the Domestic Investigations and Operations Guide, a lengthy 2008 document detailing how far agents can go in tracking suspects. They

will expand the use of techniques ranging from dispatching surveillance teams to digging through trash cans.

Civil liberties groups were briefed on the policy changes in May, and came out of the meeting worried the changes would allow agents to investigate innocent people, with less oversight than before.

"It's the government saying we can know all about your private life, but you can't know what the government is doing," Michael German, a former FBI agent now working with the American Civil Liberties Union, told FoxNews.com.

For instance, the new rules would allow agents to look up people on various databases without opening up a low-level inquiry known as an "assessment." Currently, agents have to take that formal step before looking into someone's background and provide some semblance of justification.

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The new rules would also allow agents to use surveillance squads multiple times during the "assessment" phase. Currently, those teams can only be used once during that phase.

The FBI downplayed the changes.

"I would call these minor tweaks based on feedback from agents in the field who began operating under the original DIOG, which was new a couple of years ago. Not sweeping new powers," the FBI said in a statement to Fox News.

FBI General Counsel Val Caproni also said in a statement that the updates for the most part "clarify and enhance" the definitions of rules under current policy.



In this Oct. 6, 2010 file photo, FBI agents escort police officers and prison guards arrested in a major anti-corruption operation across the U.S. Caribbean territory to the Puerto Rico Federal Court Building in San Juan.

"Each proposed change has been carefully looked at and considered against the backdrop of the tools our employees need to accomplish their mission, the possible risks associated with use of those tools, and the controls that are in place. Overall, this is fine tuning, not any major change," Caproni said. "The FBI's authority to use specific investigative tools is determined through the U.S. Constitution, U.S. statutes, executive orders and the Attorney General's Guidelines for Domestic FBI Operations. The DIOG cannot and does not confer additional powers to agents beyond that provided by those controlling authorities."

German, who attended the May briefing, said another change would allow agents to secretly attend up to five meetings of organizations they are monitoring without disclosing their actions internally.

"It's reducing the internal oversight over the agents," German said.

The changes would also allow agents to administer lie-detector tests to and search the trash of potential informants. Currently, those techniques are reserved for people they are investigating.

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German said that during the briefing, he asked why the FBI was expanding that policy -- he was told the FBI might be able to "coerce" informants to cooperate if they found incriminating evidence in the trash.

"If you don't want to be an informant for your government, you should be able to just say no -- not have agents trolling through your garbage," German said. "It's an expansion of authority to investigate people who are completely innocent of anything and are not even suspected of wrongdoing."

Julian Sanchez, a fellow with the libertarian-leaning Cato Institute who specializes in civil liberties, said part of the concern is that the rules could open the door to abuse -- since agents will be allowed to do more independently. He also made a slippery slope argument, claiming the government already made significant changes in the last document and could be on the road to gradually loosening restrictions over time.

"To see that already they want to loosen them still further makes me worry that we're going to see sort of a death by a thousand cuts of civil liberties here," Sanchez said.

While the changes, first reported by The New York Times, have prompted complaints, they are touted as a way to give agents more flexibility.

The changes come as the FBI is increasingly focused on small-cell or lone-wolf plots. Last week, FBI Director Robert Mueller said new threats are forcing the FBI to transform itself into a "threat-based, intelligence-led agency."

"Over the past year we've seen an array of national security and criminal threats from terrorism, espionage, cyber attacks, and traditional crimes. These threats have ranged from al Qaeda and its affiliates to place bombs on airplanes, to lone actors seeking to detonate IEDs in public squares and on subways," Mueller told a Senate Judiciary Committee during a hearing to confirm an extension of his tenure for two years.

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