

Privacy Advocates Object to FBI's New Online Surveillance Rules

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The Federal Bureau of Investigation's latest draft edition of its Domestic Investigations and Operations Guide is raising online privacy concerns among civil liberties groups.

The *New York Times* reported in June the FBI has drafted revisions to its guide—last updated in 2008—that expand the authority of the bureau's agents to investigate suspected criminal and terrorist activities by allowing them to search online databases without officially opening an investigation.

Julian Sanchez, a research fellow at the Cato Institute in Washington, DC who closely follows developments in online privacy, says he is alarmed by the FBI's new guide because it allows FBI agents to open an investigation on any person without any evidence, allowing the agents to go through people's online databases.

"This is another example of removing limitations on how the government can monitor Americans," Sanchez said. "With this new FBI guide, the FBI can open an assessment without any basis in fact, and they can comb through all these databases on people with no real evidence that the person has done anything wrong or that the person is relevant to any real investigation.

"What worries me is that it seems that we keep seeing a series of changes every three years, or what they call 'tweaks'," Sanchez added. "In 2008, the FBI created what is called an assessment. An assessment is an investigation into an American, but it is not called an investigation. It is called an assessment. That [development] was really worrying."

'Controversial Surveillance Activities'

Jennifer Lynch, a policy analyst at the San Francisco-based Electronic Frontier Foundation, has also been closely following the changes the FBI is implementing in its new guide. She calls the new changes "troubling."

The Bureau most recently updated the DIOG in 2008, after then-Attorney General Mukasey introduced new guidelines reducing restrictions on certain surveillance protocols by allowing agents to open investigative assessments on individuals and organizations, explained Lynch.

"The FBI has once again updated the Domestic Investigations and Operations Guide to further relax restrictions on invasive investigatory techniques," Lynch said. "These changes are especially troubling as they come on the heels of the Obama administration's efforts to extend FBI Director Robert Mueller's term and on recent reports that the Bureau has once again engaged in controversial surveillance activities directed at prominent peace activists and politically active labor organizers."

'Easily Abused'

Sanchez said the greater ability of individual FBI agents to sweep through databases, gathering information on anyone they wish, allows FBI agents to see private and personal information without judicial oversight.

"The databases we are talking about here are often vast," Sanchez explained. "Beyond what they have already collected and put in their own database, these vast commercial databases have stuff like what Lexis-Nexus has. They are these commercial data aggregators, and they possess pretty stunning information, including individual habits of Americans, their preferences for this or that, what we do day-to-day. I think to a lot of people this is all a little bit disturbing, because they can start an online assessment of someone without stating a purpose. There is no record of it—if there is, it does not exist for long."

Sanchez notes the FBI system is easy to abuse, and one of the main reasons is because no one is ever fired for abusing it.

"This is an organization of 14,000 people. Most of them are honest and well-intentioned, but a few people will misuse their public authority for illegitimate private purposes, and I am not aware of anyone getting fired for violating the rules. If such a thing did happen, we never heard about it," he said.

"If you look at the abuse of the FBI with the National Security letters," Sanchez continued, "what you find is supervisors trying to implement record-keeping, and sending all these requests to do that, asking why the FBI agents are calling these people, what Web sites they are visiting and why, whose information they are getting and why. But when the supervisors tried to track it and record-keep it, it did not happen."

'A Little Disturbing'

In addition, the FBI's record-keeping is very poor, Sanchez says, so it is hard to know if an FBI agent has looked at, say, the private information of an ex-lover or a neighbor. "It might be the case that the data companies, whose data is used by the FBI, do keep a record of the FBI agent accessing their data, but it is not clear that the FBI keeps their own records that the query happened, and how long that information is stored.

"So what is a little disturbing," said Sanchez, "is if the FBI opened an assessment two years ago on an American, and you wanted to go back a year and see what or where they had looked, and what information they pulled online about that person, it would be hard. Plus, there is no statement of purpose now required for that assessment to be launched in the first place. No suspicion, no statement on why this FBI query was credible from the beginning," he said.

"And the higher-up people are still there," Sanchez wrote. "Without an allegation of a crime, without stating a purpose for the assessment, the FBI can do it with this new guide. That's bad."

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Internet Info:

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