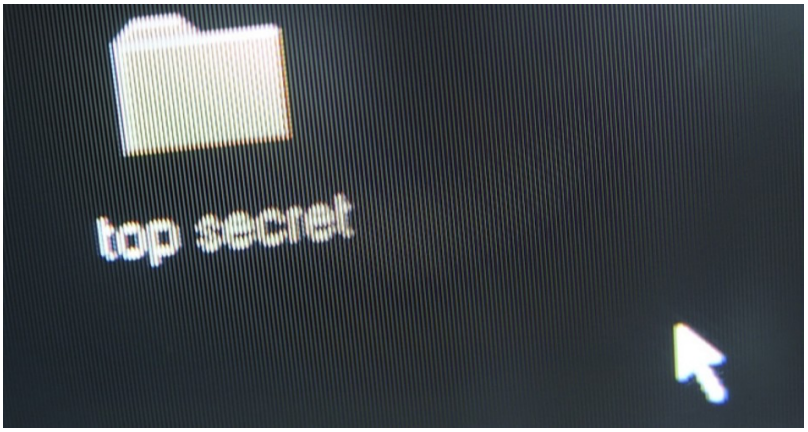
Written by **Thomas R. Eddlem** on August 5, 2013

Other Government Agencies Clamor for NSA Surveillance; Some Get It



The *New York Times* reported August 4 that the NSA intercepts of all Americans' phone records and Internet traffic are being sought by dozens of federal and state law-enforcement agencies for ordinary criminal enforcement, and Reuters wire service reported August 5 that the U.S. Drug Enforcement Agency has received some of this information for nearly two decades.

According to the August 4 *New York Times*, "The National Security Agency's dominant role as the nation's spy warehouse has spurred frequent tensions and turf fights with other federal intelligence agencies that want to use its surveillance tools for their own investigations, officials say." Among the agencies seeking NSA "metadata" and e-mail information are agencies charged with enforcing laws against "drug trafficking, cyberattacks, money laundering, counterfeiting and even copyright infringement."

Reuters Wire Service reported August 5 that the sharing of NSA intercepts has been ongoing for nearly two decades, noting that a "secretive U.S. Drug Enforcement Administration unit is funneling information from intelligence intercepts, wiretaps, informants and a massive database of telephone records to authorities across the nation to help them launch criminal investigations of Americans." Reuters noted that this special unit of the DEA is part of a multi-agency task force that has grown over the years: "The unit of the DEA that distributes the information is called the Special Operations Division, or SOD. Two dozen partner agencies comprise the unit, including the FBI, CIA, NSA, Internal Revenue Service and the Department of Homeland Security. It was created in 1994 to combat Latin American drug cartels and has grown from several dozen employees to several hundred."

Ironically, the *New York Times* noted that DEA officials are still complaining they need wider access to NSA data on Americans: "Officials complained that they were blocked from using the security agency's surveillance tools for several drug-trafficking cases in Latin America, which they said might be connected to financing terrorist groups in the Middle East and elsewhere."

While strict constitutionalists would point to how the NSA's warrantless surveillance of all Americans — in direct violation of the Fourth Amendment — is problematic, defenders of the NSA program claim that Americans have no reasonable expectation of privacy in their telephone calls and Internet traffic. For example:

Former NSA Chief Michael Hayden on Fox News Sunday August 4: "Look, this is metadata, business records. The court has held it had no expectation of privacy.… But the fact of the matter is, the court held that metadata, in essence our phone bills, has no expectation of privacy."

House Permanent Select Intelligence Committee Chairman Rep. Mike Rogers, in a tweet after debate on the Amash amendment: "SCOTUS ruled no expectation of privacy on phone records."

House Permanent Select Intelligence Committee Member Rep. Michele Bachmann, in debate on the Amash amendment July 24: "Is there a Fourth Amendment right to the record that you called someone on a certain day? No, there isn't. That's a record."

If indeed Americans have no claim to privacy in their Internet and telephone traffic, then the real question is: Why shouldn't the federal government share this information widely with other agencies? And taking the principle to its logical conclusion, what would be the harm in revealing the information publicly, as Edward Snowden has done?

Yet supporters of warrantless NSA surveillance continually stress — without any evidence — that they want to build privacy protections into the programs. Congressman Mike Rogers claimed on the floor of the House during debate on the Amash amendment (the amendment would have defunded the NSA warrantless wiretapping program): "I'll pledge to each and every one of you today, and give you my word, that this fall when we do the Intel Authorization bill, we will work to find additional privacy protections with this program that has no emails, no phone calls, no names, and no addresses." Of course, if there are no privacy expectations in telephone call records, then why would Rep. Rogers promise to work in new privacy protections at all? Why not work to actively share the information with all other federal law enforcement agencies, as well as state and local police?

The answer to that question is that supporters of NSA surveillance know that the American people do have a reasonable expectation of privacy from government surveillance under the Fourth Amendment. And they also know that this surveillance of all innocent Americans violates both the Fourth Amendment (which requires a warrant, probable cause, and particularity for a constitutional search) and even the far less stringent requirements of the Patriot Act (which requires only "relevance" to an ongoing investigation, equivalent to a grand jury subpoena). This open defiance of both the Constitution and statutory law was laid bare in a House Judiciary Committee hearing July 17 in a colloquy between Congressman Jerrod Nadler (D-N.Y.) and Deputy Attorney General James Cole:

Nadler: "Can you give us an example where ongoing bulk collection has been allowed by virtue of grand jury subpoena without a showing of a connection between those 'tangible things' and a specific, existing investigation?"

Cole: "Well, in this instance, we are showing it as a relationship to a specific investigation and a specific phone number. We have to show reasonable…

Nadler: "…Only for use of that information, not for collection of it. Now, the statute is talking about collection, you are trying to confuse us by talking about use."

Cole: "But the collection is only there and is only valuable if it is used."

Nadler concluded: "The problem obviously, Mr. Cole, with what we are hearing from this panel and with what we have heard generally about the 'relevance' standard is that everything in the world is relevant and that if we removed that word from the statute you wouldn't consider, or the FISA court wouldn't consider that it would affect your ability to collect metadata in any way whatsoever. Which is to say, you

are disregarding the statute entirely."

But the Republican chairman of the Permanent Select Intelligence Committee, Michigan's Mike Rogers, remains loyal to the NSA, to the point of repeating its false talking points. After debate on the Amash amendment, Rogers told CBS' *Face the Nation* July 28, "I knew I was in an education problem here. There are no recordings of phone calls. There are no dossiers. They do not record your e-mails. None of that was happening, none of it—- I mean, zero." While an NSA program collecting the audio of all Americans' phone calls has not been documented publicly, Rogers' claim that the NSA is not collecting the text of e-mails was proven false by the revelation of the XKeyscore program by Glenn Greenwald in the London *Guardian* July 31. With such misinformation coming from chairmen of congressional intelligence committees, it's not beyond reason to speculate that the NSA is collecting telephone audio as well under another program name.

Moreover, eavesdropping on phone calls and other private information of innocent Americans may not be limited to the NSA. In some instances, other agencies have waged court battles to create their own surveillance system parallel to the NSA's surveillance. According to an August 2 report on CNET.com, the FBI is seeking to get its own recording data installed on Internet service providers' servers (ISPs). The FBI's battle has had court battles with ISPs that "included threats of contempt of court."