



Written by [Joe Wolverton, II, J.D.](#) on August 16, 2013

## NSA Ignores Laws and Constitution to Conduct Domestic Surveillance

The National Security Agency (NSA) regularly monitors telephone calls and e-mails of innocent Americans, ignoring privacy laws, court orders, and the Constitution. This revelation comes from results of an internal audit and other classified reports.



On Thursday, [the \*Washington Post\* published details of documents](#) leaked to the paper this summer from former NSA contractor Edward Snowden.

According to the *Post's* story, the documents display “a level of detail and analysis that is not routinely shared with Congress or the special court that oversees surveillance.”

As well, earlier this week, Representative Justin Amash (R-Mich.) posted a message on his Facebook page claiming that documents were withheld by the House Permanent Select Committee on Intelligence (HPSCI) relating to the scope of the NSA's domestic surveillance activities.

Specifically, the constitutionally consistent freshman congressman claimed that the committee refused to disclose a declassified 2011 document that outlined the very portion of the NSA's program that Amash tried to defund.

[As was reported by \*The New American\*](#), the House of Representatives narrowly defeated an amendment to the defense appropriations that was sponsored by Republican Congressman Justin Amash (shown) of Michigan and Democratic Congressman John Conyers, also of Michigan.

The [Amash Amendment](#) would have revoked authority “for the blanket collection of records under the Patriot Act. It would also bar the NSA and other agencies from using Section 215 of the Patriot Act to collect records, including telephone call records, that pertain to persons who are not subject to an investigation under Section 215” of the Patriot Act.

Despite the threat to the establishment (or perhaps because of it), Amash's measure failed by a vote of 205-217.

A spokesperson for the HPSCI [responded](#) to Amash's claim, arguing that the congressman had ample access to the purportedly withheld document and others containing similar information.

Prior to voting on the PATRIOT Act reauthorization ... Chairman [Michigan US Rep. Mike] Rogers hosted classified briefings to which all Members were invited to have their questions about these authorities answered....

Additionally, over the past two months, Chairman Rogers has hosted four classified briefings, with officials from the NSA and other agencies ... and has invited all Republican Members to attend and receive additional classified briefings on the use of these tools from Committee staff.

At Ft. Meade (headquarters of the NSA), withholding information is not only a suggestion, it seems to



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be a commandment. The story in the *Washington Post* reports that the documents it obtained reveal that “the NSA decided that it need not report the unintended surveillance of Americans.”

For its part, the NSA echoes the “unintended” excuse in order to explain away its habitual disregard for legal restraints on its power. For example, in one case discussed in the recently released documents, the agency claims that a “programming error confused the U.S. area code 202 for 20, the international dialing code for Egypt,” a mix-up that led to the unwarranted and illegal monitoring of phone calls into and out of D.C.

Regarding the errors, the *Post* quotes testimony offered to Congress by Deputy Attorney General James Cole. In a hearing, Cole said, “Every now and then, there may be a mistake.”

Just how occasional were these mistakes made? Over 2,000 times. As the *Post* reports:

The [NSA audit obtained by \*The Post\*](#), dated May 2012, counted 2,776 incidents in the preceding 12 months of unauthorized collection, storage, access to or distribution of legally protected communications. Most were unintended. Many involved failures of due diligence or violations of standard operating procedure. The most serious incidents included a violation of a court order and unauthorized use of data about more than 3,000 Americans and green-card holders.

In response to questions put to the NSA by the *Washington Post*, an unnamed NSA official speaking with permission of the president, issued a statement insisting that the agents at the NSA attempt “at the earliest possible moment, implement mitigation measures wherever possible, and drive the numbers down.”

“We’re a human-run agency operating in a complex environment with a number of different regulatory regimes, so at times we find ourselves on the wrong side of the line,” the anonymous “senior official” added.

At times, the *Washington Post’s* language sounds less incriminating and more exculpatory. For example, the article claims “There is no reliable way to calculate from the number of recorded compliance issues how many Americans have had their communications improperly collected, stored or distributed by the NSA.”

It seems incredible that an agency with technology capable of capturing, recording, cataloging, and collating hundreds of millions of phone calls, texts, e-mails, social media posts, and every other form of digital communication would be unable to calculate how many times it violates the law and the Constitution.

In fact, given that all of the surveillance is accomplished with computers (otherwise there would be no Edward Snowden), it strains the limits of credulity to believe that every instance of unwarranted surveillance isn’t tracked and tallied.

Of course, managers of the monitors have hidden behind mathematical shortcomings before.

[In July of 2011, and again in May 2012, Senators Mark Udall \(D-Colo.\) and Ron Wyden \(D-Ore.\)](#) wrote a letter to Director of National Intelligence James R. Clapper, Jr., asking him a series of questions regarding the activities of the NSA and other intelligence agencies regarding domestic surveillance.

In one of the questions, Senators Udall and Wyden asked Clapper if “any apparently law-abiding Americans had their communications collected by the government pursuant to the FISA [Foreign Intelligence Surveillance Act] Amendments Act” and if so, how many Americans were affected by this surveillance.



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Regarding the Wyden-Udall inquiry, in a letter dated June 15, 2012, I. Charles McCullough III informed the senators that calculating the number of Americans who've had their electronic communications "collected or reviewed" by the NSA was "beyond the capacity of his office" and dedicating sufficient additional resources would likely impede the NSA's mission.

In other words, the NSA is too busy illegally recording our private e-mails, texts, Facebook posts, and phone calls to figure out how many of us are already caught in their net. And, furthermore, there is nothing Congress can do about it.

Naturally, Senators Udall and Wyden didn't take kindly to Inspector General McCullough's brush off. In a response to the response, the senators told McCullough that they just wanted a "ballpark estimate" of the number of American citizens who have been monitored under the authority of the FISA. In an additional statement released by Senator Wyden, he expressed concern that the figure is likely very high:

I am concerned, of course, that if no one has even estimated how many Americans have had their communications collected under the FISA Amendments Act, then it is possible that this number could be quite large. Since all of the communications collected by the government under section 702 are collected without individual warrants, I believe that there should be clear rules prohibiting the government from searching through these communications in an effort to find the phone calls or emails of a particular American, unless the government has obtained a warrant or emergency authorization permitting surveillance of that American.

Given the intelligence community's disdain for not only the Constitution but for congressional oversight, it is unlikely that the information requested by Senators Udall and Wyden will ever be forthcoming.

When agents do conduct unwarranted surveillance of Americans, managers instruct them to fudge records so that "overseers" do not catch on. The first and greatest NSA commandment: admit nothing.

The real reason for the thousands of examples of the NSA's "incidental" surveillance of innocent Americans will likewise never be known. What is certain, however, is that barring an uprising of Americans weary of being constantly kept under the never-blinking eye of the federal government, everyday the walls of the Panopticon will get higher and higher.

As former head of the NSA Michael Hayden admitted recently, the agency will continue collecting more and more information from more and more Americans. And, when it comes to the hope some Americans retain of the restoration of constitutionally protected liberty, [Hayden told CBS News' Face the Nation](#), "Some steps to make Americans more comfortable will actually make Americans less safe."

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