



Written by [C. Mitchell Shaw](#) on March 18, 2016

FBI Harvests NSA Data Without Warrants; Promises to Make Secret Changes

All through 2014 and into 2015 the FBI was given direct access to all of the data the NSA was vacuuming up from the Internet, according to a report by the Privacy and Civil Liberties Oversight Board (PCLOB). This means that all the while FBI Director James Comey (shown) was complaining about the “going dark” problem and a shrinking pool of surveillance tools, his agency had nearly limitless amounts of the very data he claimed he was missing out on.



Now, it appears, that may be changing. But, considering the lack of honesty with which the surveillance hawks — Comey certainly included — deal with the American people, it is just as likely that the FBI is playing a shell game [similar to the one the NSA was caught playing last year](#).

As the *Guardian* [reported](#) last week: “The FBI has quietly revised its privacy rules for searching data involving Americans’ international communications that was collected by the National Security Agency, US officials have confirmed to the *Guardian*.”

The *Guardian*’s report also said that the PCLOB “confirmed in a 2014 report that the FBI is allowed direct access to the NSA’s massive collections of international emails, texts and phone calls — which often include Americans on one end of the conversation.” Furthermore,

FBI officials can search through the data, using Americans’ identifying information, for what PCLOB called “routine” queries unrelated to national security. The oversight group recommended more safeguards around “the FBI’s use and dissemination of Section 702 data in connection with non-foreign intelligence criminal matters”.

As of 2014, the FBI was not even required to make note of when it searched the metadata, which includes the “to” or “from” lines of an email. Nor does it record how many of its data searches involve Americans’ identifying details — a practice that apparently continued through 2015, based on documents released last February. The PCLOB called such searches “substantial”, since the FBI keeps NSA-collected data with the information it acquires through more traditional means, such as individualized warrants.

The FBI would have little interest in data on non-Americans living abroad since the agency’s focus is domestic. The NSA is supposedly focused on spying abroad. So, it is difficult to see why the incestuous relationship whereby the FBI harvests data from the NSA is of any real benefit to the FBI. But as the *Guardian* reported,

The watchdog confirmed in a 2014 report that the FBI is allowed direct access to the NSA’s massive collections of international emails, texts and phone calls — which often include Americans on one end of the conversation. The activists also expressed concern that the FBI’s “minimization” rules, for removing or limiting sensitive data that could identify Americans, did not reflect the



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bureau's easy access to the NSA's collected international communications.

And:

While the NSA performs warrantless collection, internal rules permit the FBI to nominate surveillance targets. Those targets are supposed to be non-Americans abroad, but Americans' data is often swept up in the surveillance.

So, what the FBI has been routinely doing is "nominating" targets for the NSA and then harvesting the data the NSA collects. Since the FBI is focused on Americans, it stands to reason that those "nominations" are American targets who have contacts living abroad. This is an obvious example of the FBI making an end-run around its obligation to obtain warrants for those searches. All of this has been happening while FBI Director Comey spends an inordinate amount of his time bemoaning both the "lack of available intelligence" and the problem of potential terrorists "going dark."

After the 2014 report PCLOB, the FBI revised its procedures to meet some of PCLOB's recommendations. Christopher Allen, a spokesman for the FBI, confirmed that changes had taken place, but would not say what they were. "Changes have been implemented based on PCLOB recommendations, but we cannot comment further due to classification," he said.

PCLOB also could not comment about what changes had been implemented. As the *Guardian* reported:

Sharon Bradford Franklin, a spokesperson for the PCLOB, said the classification prevented her from describing the rule changes in detail, but she said they move to enhance privacy. She could not say when the rules actually changed — that, too, is classified.

So, the FBI has been harvesting NSA data on Americans but says it will change the way it does so. The agency won't say what it will change or when it will change it and cites classification as the reason for keeping the American public in the dark. Timothy Barrett, a spokesman for the office of the director of national intelligence, indicated that "the changes may not be hidden from public view permanently," according to the *Guardian*.

This is all reminiscent of the way the NSA claimed to have discontinued one of its most controversial spying programs when in reality it had simply moved the functions of that program to a new program. As *The New American* reported in November 2015:

When Edward Snowden released a trove of documents in 2013 revealing the depth and breadth of NSA surveillance of Americans, the agency admitted that it previously had a program that captured information about citizens' e-mails, but claimed it had discontinued the program in 2011. Now, newly released documents shows that — par for the course — the agency was telling half the truth. The same surveillance has continued all along under a subsequent program.

As *The New York Times* reported:

While that particular secret program stopped, newly disclosed documents show that the N.S.A. had found a way to create a functional equivalent. The shift has permitted the agency to continue analyzing social links revealed by Americans' email patterns, but without collecting the data in bulk from American telecommunications companies — and with less oversight by the Foreign Intelligence Surveillance Court.

So, the NSA has been caught playing a shell game with the American people. It admitted the existence of the first program only when it was pointless to deny it, and then basically said, "But don't worry. We're not even using that program now." Deliberately withheld was the fact that the



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program was replaced by something worse. With even less oversight.

Given the typical smoke-and-mirrors approach the cloak-and-dagger crowd takes in dealing with the American people, it is difficult to believe that the new FBI rule “changes” will really change anything. In fact, it would be foolish to take them at their word.

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