



Who Lied? Mike Rogers, the NSA, and XKeyscore

With the revelations by NSA whistleblower Edward Snowden and reporter Glenn Greenwald, there seem to be only two possibilities regarding claims by House Permanent Intelligence Subcommittee Chairman Mike Rogers: He either boldly lied about the breadth of NSA surveillance of the American people, or he didn't know and was therefore engaged in incompetent oversight of the NSA.

Either possibility has huge implications for American constitutional government: If Rogers didn't know, what does that say about congressional oversight of these shadowy NSA programs? And if he did know, and was willingly lying to the American people, is that any better?

Rogers, a liberal Michigan Republican (51 percent cumulative [Freedom Index score](#), one of the lowest scores among Republicans), [claimed in debate](#) on the Amash amendment, which would have forbidden the NSA from spending any of its funding on the bulk collection of Americans' electronic messages, July 24: "We should have time and education on what actually happens in the particular program of which we speak. And I'll pledge 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."

The Amash amendment — sponsored by libertarian-leaning Republican Justin Amash (94 percent cumulative Freedom Index rating) of Michigan — narrowly failed by a vote of [205-217](#). A switch of just seven votes would have meant adoption of the amendment. False denials on the House floor that the NSA was collecting the American people's e-mails, such as Rogers', may have swayed enough votes to ensure the amendment's defeat.

The following weekend, Rogers — a leading Republican candidate for the open U.S. Senate seat in Michigan being vacated by Democrat Carl Levin — [repeated the claim on CBS' Face the Nation](#) July 28:



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“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.”

On July 31, Glenn Greenwald broke the [story](#) in the *Guardian* (U.K.) that the NSA’s XKeyscore program was indeed collecting the e-mails of all Americans and permanently storing them in databases, proving Rogers’ statements false.

And that leads to the questions: Did Rogers know all along? Was he lying to the American people? Or was he just engaged in incompetent oversight of the NSA?

Since the time that Director of National Intelligence James Clapper lied to Senator Ron Wyden back on March 12 of this year, [claiming that the NSA did not “wittingly” collect information on millions of Americans](#), the NSA has pointedly failed to deny that it has been collecting the American people’s e-mails. Clapper later admitted his lie, telling NBC’s Andrea Mitchell that it was the “least untruthful” reply he could think of at the time. Since the March 12 Clapper lie was exposed by Edward Snowden (and Snowden [claimed](#) Clapper’s lie was partly what prompted his whistleblowing), NSA officials have [not denied](#) that the agency collects the e-mails of American citizens. Rather, NSA officials have claimed it does not “target” American citizens after it collects the data.

For his part, Rogers seems to be retreating from his most recent claims about the NSA (i.e., post-XKeyscore story), saying now that it does indeed collect all Americans’ e-mails, but doesn’t “target” American citizens in its XKeyscore program. The Michigan congressman [tweeted](#) July 31 that “#xkeyscore doesn’t target US citizens — tool used by our intel analysts to understand foreign intel, including terrorist targets overseas.”

Of course, there’s a world of difference between “targeting” Americans in an investigation and gathering all their e-mails into a database without a warrant so that they can be searched later. But Rogers’ tweet seems to indicate that he had lied to his congressional colleagues and the American people in debate on the Amash amendment, rather than that he had been fooled by the NSA.

Rogers appears to be publicly relying upon the idea that XKeyscore has some sort of a legal lock-box after it unconstitutionally collects the American people’s e-mails, [tweeting](#) July 31 that “#xkeyscore story once again ignores the legal constraints, comprehensive training, and layers of oversight built into all NSA programs.” But the *New York Times* reported back in June 2009 that NSA staffers had [inappropriately accessed the private e-mails of former President Bill Clinton](#). If even former presidents are not safe from NSA warrantless snooping, what hope can there be for ordinary Americans in retaining their privacy rights?

The 2009 revelation that Bill Clinton’s e-mails had been hacked by the NSA also put the lie to Rogers’ [claim](#) of NSA surveillance on Face the Nation that “there’s zero privacy violations on this in its entire length of the program.” Rogers clearly doesn’t have a literal take on the restrictions of the Constitution on the federal government, as the [Fourth Amendment](#) bans searches without “probable cause” and a “warrant” from a judge “particularly describing the place to be searched, and the persons or things to be seized.” His congressional web page described what Rogers [wrote](#) about the expectation of privacy on third-party records:

Rogers posted today that the U.S. Supreme Court has ruled that certain information about phone calls, like the length of calls or the numbers dialed, is not protected by the Fourth Amendment. Plus, Rogers said the court determined that Americans lose an expectation of privacy whenever they voluntarily give information to a third party, like Verizon or any other phone company.



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Of course, Congress has passed numerous laws to protect the privacy of records held by third parties, such as the healthcare privacy [HIPAA law](#), the [Right to Financial Privacy Act](#), and even the [privacy of records of the purchase of firearms](#). The privacy of these, and many other third-party records, is protected by various federal laws.

[Rogers](#) has held elected office since retiring from the FBI in 1994, and has been chairman of the Permanent Committee on Intelligence since 2011. He has represented Michigan's 8th Congressional District since 2001.



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