

# United States Senate

WASHINGTON, DC 20510

May 5, 2017

The Honorable Richard Burr  
United States Senator  
Chairman, Select Committee on Intelligence  
Washington, D.C. 20510

The Honorable Mark Warner  
United States Senator  
Ranking Member, Select Committee on Intelligence  
Washington, D.C. 20510

Dear Chairman Burr and Ranking Member Warner,

As a follow-up to my previous letters dated April 10, 2017, I want to bring a troubling news article to your attention. Please find enclosed a copy of a recent news account alleging that the previous administration distributed intelligence reports with unredacted names of Americans—names that included not only members of the Trump campaign and transition, but also members of Congress and their staff.

Specific to these allegations, I am requesting a clear answer on whether your committee received a Gates notice related to me or to members of my staff.

I reiterate my previous request that your committee promptly investigate whether my name or the names of other Members of Congress, or individuals from our staffs or campaigns, were included in queries or searches of databases of the intelligence community, or if their identities were unmasked in any intelligence reports or products.

Please keep me and any other affected Members apprised of the investigation and findings. I look forward to your reply.

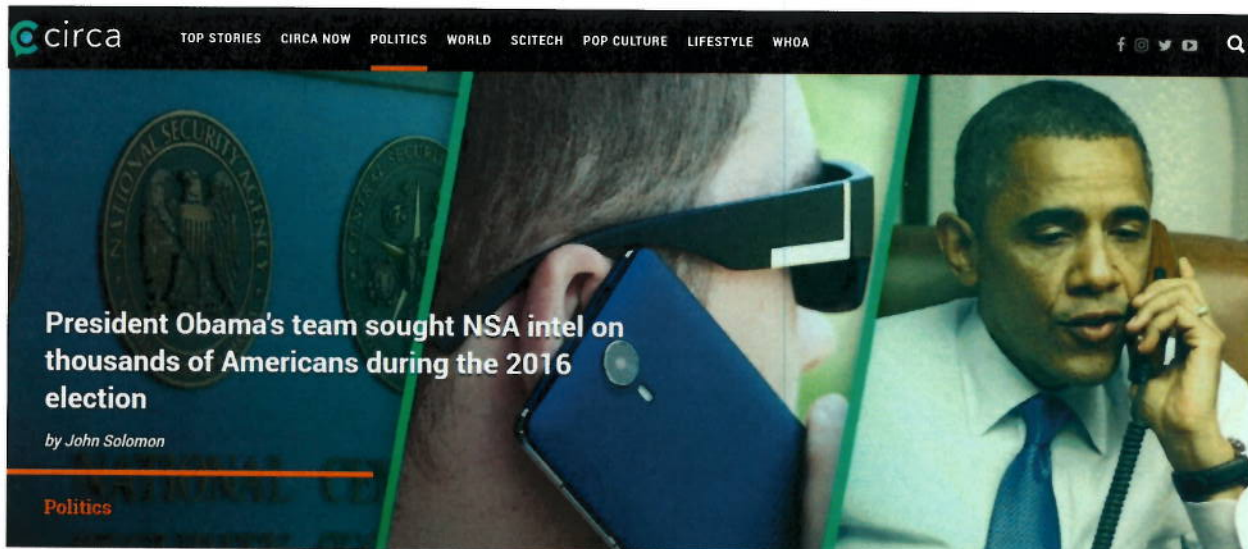
Sincerely,



Rand Paul, M.D.  
United States Senator

Enclosure

Cc: Senator Ron Wyden, Member, Select Committee on Intelligence



<http://circa.com/politics/president-obamas-team-sought-nsa-intel-on-thousands-of-americans-during-the-2016-election>

**May 4, 2017**

During his final year in office, President Obama's team significantly expanded efforts to search National Security Agency intercepts for information about Americans, distributing thousands of intelligence reports across government with the unredacted names of U.S. residents during the midst of a divisive 2016 presidential election.

The data, made available this week by the Office of the Director of National Intelligence, provides the clearest evidence to date of how information accidentally collected by the NSA overseas about Americans was subsequently searched and disseminated after President Obama loosened privacy protections to make such sharing easier in 2011 in the name of national security. A court affirmed his order.

The revelations are particularly sensitive since the NSA is legally forbidden from directly spying on Americans and its authority to conduct warrantless searches on foreigners is up for renewal in Congress later this year. And it comes as lawmakers investigate President Trump's own claims that his privacy was violated by his predecessor during the 2016 election.

In all, government officials conducted 30,355 searches in 2016 seeking information about Americans in NSA intercept metadata, which include telephone numbers and email addresses. The activity amounted to a 27.5 percent increase over the prior year and more than triple the 9,500 such searches that occurred in 2013, the first year such data was kept.

The government in 2016 also scoured the actual contents of NSA intercepted calls and emails for 5,288 Americans, an increase of 13 percent over the prior year and a massive spike from the 198 names searched in 2013.

The searches ultimately resulted in 3,134 NSA intelligence reports with unredacted U.S. names being distributed across government in 2016, and another 3,354 reports in 2015. About half the time, U.S. identities were unredacted in the original reports while the other half were unmasked after the fact by special request of Obama administration officials. Among those whose names were unmasked in 2016 or early 2017 were campaign or transition associates of President Trump as well as members of Congress and their staffers, according to sources with direct knowledge.

The data kept by ODNI is missing some information from one of the largest consumers of NSA intelligence, the FBI, and officials acknowledge the numbers are likely much higher when the FBI's activity is added.

"There is no doubt that there was a spike in the requests to search for Americans in the NSA database," a U.S. official familiar with the intelligence told Circa, speaking only on condition of anonymity because of the sensitive nature of the data. "It's simply easier for people to make requests. And while we have safeguards, there is always concern and vigilance about possible political or prurient motives that go beyond national security concerns."

A top lawyer for the American Civil Liberties Union, which has long raised concerns about the NSA's ability to spy on Americans, said the rise in searches is a troubling pattern that should concern members of both political parties because it has occurred with little oversight from the courts or Congress.

"I think it is alarming. There seems to be a universal trend toward more surveillance and more surveillance that impacts Americans' privacy without obtaining a warrant," said Neema Singh Guliani, the ACLU's legislative counsel. "This data confirms that there is a lack of acknowledgment that information is being specifically and increasingly mined about Americans for investigations that have little or nothing to do with international terrorism," she added.

The ACLU's concerns were heightened by the release last month of a previously classified Foreign Intelligence Surveillance Court document that revealed that then NSA has a "potentially very large and broad" collection of data on U.S. persons that was never intended under the law.

U.S. intelligence officials confirmed the growth in queries about Americans' data held by the NSA but declined to explain the reasons, except to say the requests for access grew after intelligence agency officials became more comfortable with Obama's 2011 order. They stressed the NSA has strict rules in place to govern when searches for Americans are being conducted and when a U.S. person's identity can be unmasked. They also hailed the release of the new data as a step toward greater transparency."

As a community, we look for new ways to enhance transparency,” said Alex Joel, who leads ODNI’s Office of Civil Liberties, Privacy, and Transparency. “Our goal is to provide relevant information, distilled into an accessible format. This year’s report leans forward in that direction, providing significant information beyond what’s statutorily required, and reflecting our concerted effort to enhance clarity.”

The data emerges just weeks after Circa first reported that Obama substantially eased the rules starting in 2011 allowing for government officials, including political appointees, to unmask and obtain information about Americans in NSA intercepts.

The easing allowed appointees like former National Security Adviser Susan Rice to request and review the unmasked names of Trump campaign or transition officials intercepted in foreign conversations late last year. And it also resulted in the frequent unmasking of members of Congress and their staff, as often as once a month, Circa reported.

NSA Activity	2013	2014	2015	2016
Number of US names searched in contents of actual intercepts	198	NA	4,672	5,288
Number of searches on US names in intercept metadata	9,500	17,500	23,800	30,355
Number of NSA intel reports with names of Americans exposed	NA	NA	3,354	3,134

Source: Office of Director of National Intelligence

The NSA is allowed to spy on foreign powers without a court warrant under Section 702 of the Foreign Surveillance Intelligence Act but is forbidden from targeting Americans. For years, the NSA was required to follow strict rules to protect the accidental intercepts of Americans from being consumed by other government agencies. The rules required a process known as minimization, where the identity of an intercepted American is redacted or masked with generic references like “American No. 1.”

But the intelligence community fought hard over the last decade starting under President George W. Bush and continuing under Obama to gain greater access to NSA intercepts of Americans overseas, citing the growing challenges of stopping lone wolf terrorists, state-sponsored hackers, and foreign threats. Obama obliged with a series of orders that began in 2011, moves that were approved by the FISC.

Today, the power to unmask an American’s name -- once considered a rare event in the intelligence and civil liberty communities -- now resides with about 20 NSA officials. The FBI also has the ability to unmask Americans’ names collected under FISA to other intelligence professionals and policymakers, though it hasn’t provided data on its frequency.

And the justification for requesting such unmasking can be as simple as claiming “the identity of the United States person is necessary to understand foreign intelligence information or assess its importance,” according to a once-classified document that the Obama administration submitted in October 2011 for approval by the Foreign Intelligence Surveillance Court.

That memo laid out specifically how and when the NSA could unmask an American’s identity.

Intelligence officials try to assuage concerns by saying that FISA Section 702 activities are really focused only on foreign powers and stopping national security threats, an argument FBI Director James Comey struck anew Wednesday during testimony before the Senate Judiciary Committee.

“702 is a critical tool to protect this country and the way it works is we are allowed to conduct surveillance again, under the supervision of the Foreign Intelligence Surveillance Court on non-U.S. persons who are outside the United States if they’re using American infrastructure; an email system in the United States, a phone system in the United States. So it doesn’t involve U.S. persons and doesn’t involve activity in the United States,” Comey testified.

But numerous civil liberty experts, including the ACLU’s Guliani, say such representations aren’t accurate because the NSA accidentally collects so much information on Americans and then shares it after the fact. The FBI, for instance, regularly queries the NSA database and the declassified court document in March said “there is no requirement that the matter be a serious one nor that it have any relation to national security.”

“I think it shows that the facade that government gives that these programs are just targeted at foreigners is just that, a façade,” Guliani told Circa. “The reality is we have an invasive surveillance program and the data we have shows the impact on Americans is quite substantial.”

A federal judge in Washington has ruled in 2013 and again in 2015 that the NSA collection of data on Americans violates the 4th Amendment of the Constitution, but that ruling is winding its way through appeals. The FISA court, meanwhile, continues to support the intelligence community’s continued use of the data, as recently as in 2015. Circa is in the process of filing what’s called a “Mandatory Declassification Review,” the legal process that asks the government to declassify certain information.

The process is pretty long, so, in the meantime, share your thoughts: Should the U.S. government declassify the unredacted information of citizens who were compromised in the NSA data sweep?