

NSA concedes violating surveillance limits and pledges curbs on US email collection

[theguardian.com /us-news/2017/apr/28/nsa-stops-surveillance-us-residents-foreign-targets](https://www.theguardian.com/us-news/2017/apr/28/nsa-stops-surveillance-us-residents-foreign-targets)

Spencer Ackerman

4/28/2017

Amid an unexpected fight over US surveillance powers from congressional Republicans, the National Security Agency has agreed to curb its highly controversial collection of Americans' emails that discuss foreign intelligence targets, although how comprehensive that stoppage is remains unclear.

According to a US official directly familiar with the decision, the NSA has agreed to cease so-called "about" surveillance under a critical 2008 legal authority, known as section 702 of the Foreign Intelligence [Surveillance Act](#) (Fisa).



Yet the NSA has other authorities available to it for collecting substantial amounts of the same sort of American communications, including a Ronald Reagan-era executive order, known as 12333. The [NSA](#) has not indicated whether or not the "about" collection will cease wholesale, or merely migrate to a different legal authority.

Though the NSA continues to defend the legality of the surveillance it is curbing, it conceded on Friday that the decision follows an internal review that determined it violated constraints agreed to with a secret surveillance court. It called those violations "inadvertent".

The US surveillance juggernaut has assured intelligence officials that it will limit its vast interception of US communications that transit the internet, known as "upstream" collection, under section 702 to those messages sent from or received by foreign intelligence targets.

It portrayed the decision, [first reported by the New York Times](#), as an optional measure to protect Americans' privacy, while not conceding a key point of its critics: that such "about" collection violated Americans' constitutional rights to privacy.

Though the NSA continues to insist "about" collection is legal, the intelligence agency has pledged to delete the "vast majority of its upstream internet data", it said in a statement.

"The changes in policy followed an in-house review of Section 702 activities in which NSA discovered several inadvertent compliance lapses", the agency said, which it reported to Congress and the foreign intelligence surveillance court.

It is far from the first time the NSA has conceded that its vast surveillance powers under section 702, a surveillance authority expiring in December, have surpassed the boundaries set with the Fisa court.

A Fisa court decision from 2011, [declassified in 2013](#), found that the agency had overcollected tens of thousands of purely domestic US emails in violation of the law, which permits warrantless interception of Americans' international communications so long as one party to the communication is a foreigner overseas.

The NSA at the time represented the 702 overcollection as an unavoidable consequence of its collection technology – a limit it cited on Friday to warn that the agency could not fully purge its hoards of data that it now pledges no longer to collect.

NSA reveals 100,000 foreign nationals under surveillance

 [cnn.com /2017/09/25/politics/fisa-section-702-surveillance-nsa/index.html](https://www.cnn.com/2017/09/25/politics/fisa-section-702-surveillance-nsa/index.html)

9/25/2017

Washington (CNN) The National Security Agency is currently conducting surveillance on more than 100,000 foreign nationals outside the US, several senior US officials revealed Monday, highlighting cases in which so-called Section 702 authorities have helped the intelligence community identify cybersecurity threats from hostile governments, stop malicious cyberattacks and disrupt ISIS terror plots.

Adopted under the 2008 [FISA act](#), [702 surveillance](#) allows the NSA to legally monitor emails and phone calls of foreign nationals outside of the US -- but the controversial statute could expire in December if it is not reauthorized by Congress.

[Spy Court Fast Facts](#)

While the surveillance authorities outlined in Section 702 are specifically limited to overseas foreign targets, the law is controversial because it sometimes incidentally collects communications of US citizens, too.

Democratic Sen. Ron Wyden of Oregon has consistently advocated for additional privacy protections and criticized Section 702 for threatening the liberties of Americans who could have their communications collected under parts of the statute.



In April, Wyden applauded the NSA's announcement that it would no longer collect emails on the basis that they were merely about foreign targets -- a practice previously allowed under Section 702.

"This change ends a practice that could result in Americans' communications being collected without a warrant merely for mentioning a foreign target," Wyden said [in a written statement](#) at the time.

"For years, I've repeatedly raised concerns that this amounted to an end run around the Fourth Amendment. This transparency should be commended," he said.

Efforts to reauthorize the law could face renewed opposition amid a broader debate over the intelligence community's assessment that Russia meddled in the 2016 US election.

[Five takeaways from that explosive Senate Intel hearing](#)

President Donald Trump has repeatedly doubted claims that Russia interfered in the election and raised [questions about the use of a surveillance practice known as "unmasking"](#) -- or revealing the identities of Americans who were communicating with foreign officials under surveillance by the US intelligence community.

"We've seen illegal leaking of classified materials, including the identities of American citizens unmasked in intelligence reports," White House press secretary Sarah Sanders told CNN earlier this month. "That's why the President called for Congress to

investigate this matter and why the Department of Justice and Intelligence Community are doing all they can to stamp out this dangerous trend that undermines our national security."



[Intelligence community briefs House members in attempt to sell FISA law](#)

However, the Trump administration is pushing Congress to reauthorize the Section 702 program without changes. Attorney General Jeff Sessions and Director of National Intelligence Dan Coats wrote to congressional leaders earlier this month, arguing that intelligence gathering under FISA has sufficient checks in place to protect against government overreach.

When asked if he was aware of any improper use of information about Americans incidentally collected through 702 surveillance by any administration, a senior government official authorized to speak for the NSA said: "Absolutely not ... totally zero" such cases.



'Irreplaceable' surveillance for NSA

Top intelligence and law enforcement officials have argued that Section 702 surveillance authorities protect the US from terrorism, weapons proliferation and foreign espionage despite public criticism from some lawmakers pushing for better privacy protections.

"This is clearly a major issue for the intelligence community," Coats told reporters on Monday. "It is one of our absolute top priorities this year."

A senior government official authorized to speak for the NSA called it "the single most important operational statute that the NSA has" and described it as "irreplaceable."

That same official also detailed a previously unknown example of where 702 surveillance allowed the NSA to identify a cybersecurity threat from a hostile foreign government and stop malicious cyberattacks against the US. And a senior NSA analyst who joined the agency three months before September 11, 2001 detailed how essential 702 surveillance has been to the agency's work since its adoption in 2008.

Prior to the adoption of 702, "US intelligence was fighting an information age threat with regulations written for the age of the telephone," the analyst said.

Its arrival in 2008 was a "game-changer" as it gave the NSA the "agility and flexibility" to fight terror threats, the analyst added, noting that the law "no longer gives a terrorist plotter in Pakistan the same protections as a US citizen."

The analyst and other senior government officials detailed the numerous protections and standards they still must follow under the 2008 statute, including at least three analysts reviewing any request, followed by a review by Justice Department attorneys.

A senior US official authorized to speak for the FBI added two additional examples in which 702 authorities were instrumental in disrupting terror plots.

Surveillance played a key role in stopping ISIS plots by attackers recruited by Shawn Parson -- a Trinidadian ISIS online recruiter who was later killed in Syria, according to that official.

[Istanbul nightclub attack suspect confesses, governor says](#)

It also helped identify the location of the Istanbul nightclub attacker in January 2017 -- later facilitating an arrest in that case.

Despite public criticism from lawmakers, a senior government official authorized to speak for the DOJ said they "all have full confidence Congress will reauthorize."

“Because of the limits of its current technology, [NSA] is unable to completely eliminate ‘about’ communications from its upstream 702 collection without also excluding some of the relevant communications directly ‘to or from’ its foreign intelligence targets. That limitation remains even today,” it said.

Yet the NSA’s authorities under executive order 12333 are vast, undisclosed and unconstrained by any need to explain its collections to the Fisa court. A former state department official who has warned Congress about 12333, John Napier Tye, has alleged that the NSA uses 12333 as a backup plan to route around legal restrictions on US surveillance.

“To the extent US person information is either stored outside the United States, routed outside the United States, in transit outside the United States, it’s possible for it to be incidentally collected under 12333,” Tye [told the Guardian](#) in 2014.

It is unclear to sources briefed on the matter whether such surveillance routing to the executive order is in effect.

But the decision to limit collection under 702 comes amid an unexpected political backdrop: resistance to renewing the expiring statute by the congressional Republicans charged with championing it on Capitol Hill.

With the Trump administration incensed at leaks over its communications with Russian officials that it blames on US intelligence, Republicans on the House intelligence committee have openly warned NSA that they [cannot guarantee the votes](#) for renewing the controversial surveillance power without a leak crackdown.

Since 2008, the Republicans have typically led a defense of 702 powers, particularly against the revelations of widespread surveillance provided by Edward Snowden. But in a partisan reversal, intelligence-panel Democrats on Friday looked past the admitted NSA violations and called for the statute’s renewal.

“Going forward, I will continue to expect strict compliance with the Fisa court orders and will push for Section 702’s reauthorization along with any additional reforms needed to further strengthen and institutionalize protections for privacy and transparency,” said Adam Schiff of California, the senior Democrat on the House intelligence committee.

Schiff’s Senate counterpart, Virginia Democrat Mark Warner, added: “I believe we can now look forward to Congress and, in particular, the Senate intelligence committee on which I serve as vice-chairman, quickly turning to the consideration and debate of this critical authority prior to its expiration set for December 31, 2017.”

Civil libertarians hailed the NSA decision while warning that surveillance checks need to go further.

“While we welcome the voluntary stopping of this practice, it’s clear that Section 702 must be reformed so that the government cannot collect this information in the future,” said Michelle Richardson of the Center for Democracy and Technology.