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Breaking a Promise on Surveillance

It is just a technical matter, the Obama administration says: We just need to make a slight change in a law to make clear that we have the right to see the names of anyone's e-mail correspondents and their Web browsing history without the messy complication of asking a judge for permission.

It is far more than a technical change. The administration's request, reported Thursday in The Washington Post, is an unnecessary and disappointing step backward toward more intrusive surveillance from a president who promised something very different during the 2008 campaign.

In a 1993 update to the Electronic Communications Privacy Act, Congress said that Internet service providers have to turn over to the F.B.I., on request, "electronic communication transactional records." The government says this includes the e-mail records of their subscribers, specifically the addresses to which e-mail messages were sent, and the times and dates. (The content of the messages can remain private.) It may also include Web browsing records. To get this information, the F.B.I. simply has to ask for it in the form of a national security letter, which is an administrative request that does not require a judge's signature.

But there was an inconsistency in the writing of the 1993 law. One section said that Internet providers had to turn over this information, but the next section, which specified what the F.B.I. could request, left out electronic communication records. In 2008, the Justice Department's Office of Legal Counsel issued an opinion saying this discrepancy meant the F.B.I. could no longer ask for the information. Many Internet providers stopped turning it over. Now the Obama administration has asked Congress to make clear that the F.B.I. can ask for it.

These national security letters are the same vehicles that the Bush administration used after the Sept. 11, 2001, attacks to demand that libraries turn over the names of books that people had checked out. The F.B.I. used these letters hundreds of thousands of times to demand

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records of phone calls and other communications, and the Pentagon used them to get records from banks and consumer credit agencies. Internal investigations of both agencies found widespread misuse of the power, and little oversight into how it was wielded.

President Obama campaigned for office on an explicit promise to rein in these abuses. “There is no reason we cannot fight terrorism while maintaining our civil liberties,” his campaign wrote in a 2008 position paper. “As president, Barack Obama would revisit the Patriot Act to ensure that there is real and robust oversight of tools like National Security Letters, sneak-and-peek searches, and the use of the material witness provision.”

Where is the “robust oversight” that voters were promised? Earlier this year, the administration successfully pushed for crucial provisions of the Patriot Act to be renewed for another year without changing a word. Voters had every right to expect the president would roll back authority that had been clearly abused, like national security letters. But instead of implementing reasonable civil liberties protections, like taking requests for e-mail surveillance before a judge, the administration is proposing changes to the law that would allow huge numbers of new electronic communications to be examined with no judicial oversight.

Democrats in Congress can remind Mr. Obama of his campaign promises by refusing this request.

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