

FBI snooping tactic ruled unconstitutional (Update)

March 15 2013, by Glenn Chapman

A US judge has ordered the FBI to stop its "pervasive" use of National Security letters to snoop on phone and email records, ruling Friday that the widespread tactic was unconstitutional.

The order issued by US District Court Judge Susan Illston in San Francisco came as a blow to a measure heavily used by the administration of President Barack Obama in the name of battling terrorism.

The Patriot Act passed after the September 11 attacks gave the Federal Bureau of Investigation strong authority to order that people's telecom records be handed over, without such requests having to be disclosed.

But in her ruling, Illston said evidence indicated that tens of thousands of NSLs are sent out every year, and that 97 percent of them are fettered with the provision that recipients never mention the requests.

"This pervasive use of nondisclosure orders, coupled with the government's failure to demonstrate that a blanket prohibition on recipients' ability to disclose the mere fact of receipt of an NSL is necessary to serve the compelling need of national security, creates too large a danger that speech is being unnecessarily restricted," Illston said in her written decision.

Illston set her ban on NSLs to take effect in 90 days to allow US lawyers to appeal the decision given "the significant constitutional and national

security issues at stake."

The judge's ruling came in a lawsuit filed in 2011 by Internet rights law group Electronic Frontier Foundation (EFF) on behalf of an unnamed telecom company.

"We are very pleased that the court recognized the fatal constitutional shortcomings of the NSL statute," said EFF Senior Staff Attorney Matt Zimmerman.

"The government's gags have truncated the public debate on these controversial surveillance tools."

It was the potential for gag orders accompanying NSLs to violate the First Amendment right of free speech that prompted the ruling, according to Zimmerman.

NSLs are used to get companies to secretly turn over private information such as websites visited, phone records, email addresses, and financial data.

Google early this month made the unusual move of adding NSLs to its transparency report about requests by governments for data about users of the Internet giant's various online products and services.

But Google said it was only allowed to provide broad ranges of numbers: in the years from 2009 to 2012, for example, it received between zero and 999 requests.

The requests affected between 1,000 and 1,999 accounts, except in 2010, when the range was 2,000 to 2,999 accounts.

"You'll notice that we're reporting numerical ranges rather than exact

numbers," said a blog post from Google law enforcement and information security director Richard Salgado.

"This is to address concerns raised by the FBI, Justice Department and other agencies that releasing exact numbers might reveal information about investigations."

The numbers, while inexact, were believed to be the first data from a private company about the requests, criticized by civil liberties groups for giving the government too much power to conduct surveillance without a warrant.

The EFF calls the letters "dangerous" and has challenged the authority, along with the American Civil Liberties Union.

Google's actions are "an unprecedented win for transparency," EFF's Dan Auerbach and Eva Galperin said at the time.

Despite a lack of exact data, "Google has helped to at least shed some limited light on the ways in which the US government uses these secretive demands for data about users," they added in a blog post.

"While we continue to be in the dark about the full extent of how the law is being applied, this new data allays fears that NSLs are being used for sweeping access to large numbers of user accounts—at Google, at least."

The EFF said public records have documented the FBI's "systemic abuse" of the power.

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Citation: FBI snooping tactic ruled unconstitutional (Update) (2013, March 15) retrieved 16 April 2024 from <https://phys.org/news/2013-03-fbi-snooping-tactic-unconstitutional.html>

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