

U.S. Spying Law Threatens Privacy, Needs Restrictions, Watchdog Says

Government panel finds foreign surveillance tool used to prevent terrorism puts civil liberties at risk

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WASHINGTON—A sharply divided U.S. government panel has recommended Congress impose substantial restrictions on a powerful spying program that collects vast amounts of intercepted emails, texts and other electronic data, arguing the tool threatens Americans' privacy.

The findings, to be released Thursday in a report reviewed by The Wall Street Journal, are a blow to the Biden administration's efforts to cajole lawmakers to renew with minimal changes the expiring portion of [the Foreign Intelligence Surveillance Act](#), known as FISA, that lapses at the end of the year. Doing so, officials have said, is a top national security priority.

In a 3-2 split, the Privacy and Civil Liberties Oversight Board, a bipartisan government watchdog comprised of presidentially appointed surveillance law experts, said the program—which allows the National Security Agency to siphon streams of electronic data from U.S. technology providers such as Meta, Apple and telecom firms—is highly valuable to national security but “poses significant privacy and civil liberties risks.”

The majority's conclusions in the report, which differed from the minority's views on core assessments of the program's value and how it operates, are likely to bolster momentum behind lawmakers in both parties who have already been weighing [substantial changes](#) to the law, known as Section 702 of FISA. That provision of the law is intended to target foreign suspects overseas but is controversial due to how it ensnares an unknown volume of U.S. data without a warrant.

[The law's fate](#) is already in doubt following the disclosure of a [raft of recent abuses](#), largely by the Federal Bureau of Investigation, and it remains uncertain how or when lawmakers will seek to advance legislation that would renew it.

The Section 702 program, the majority on the board said, risks overbroad government collection of personal communications, allows for insufficient review and oversight and generates too much inadvertent surveillance of data belonging to Americans that holds no national security value.

Senior Biden administration officials have said the program is among the most important intelligence tools at their disposal, critical to preventing terrorism, [thwarting cyberattacks](#) and understanding the aims of adversaries such as China and Russia.

About 60% of intelligence that appears in the president's daily brief derives at least in part from Section 702 surveillance, officials have said. It was last renewed by Congress in January 2018.

A majority of the board didn't urge terminating the program, citing its immense value to a range of national security priorities. Instead, it offered 19 recommendations it said would preserve the functions of Section 702 with dramatic privacy protections, such as codifying recent self-imposed controls implemented at the FBI and elsewhere, strengthening transparency requirements for the secretive court that oversees the FISA and requiring stricter auditing of searches of data.

Most crucially, the majority recommended that spy agencies should be required to obtain FISA Court approval before accessing intercepted data that relies on search terms associated with American identities, except in limited circumstances. That differed from the findings of another recent review by a separate presidential panel of intelligence advisers, which also urged [restrictions on the FBI's access](#) to the program but stopped short of calling for the privacy panel's recommendation on grounds it would prevent the discovery of security threats.

Though intended for the communications of foreign national-security suspects living overseas, the database also holds information about Americans, gathered, for example, when a person living in the U.S. communicates with an intelligence target living overseas. Searches of U.S. data are the chief concern of lawmakers considering overhauls.

Biden administration officials have said a warrant requirement or similar imposition requiring court signoff for U.S. searches would be so burdensome as to render core functions of the program ineffective.

A warrant restriction would most primarily impact the FBI, which, the board noted, searched for U.S. data nearly five million times from 2020 to 2022. Currently, the FBI only needs a warrant when searching the database for evidence of a crime unrelated to national security. Though such searches are done rarely, the FBI hasn't adhered to that requirement since it became law, according to various government audits.

In a lengthy dissent that essentially functions as a dueling report, the other two members of the board accused the majority report of offering recommendations that would do more harm to privacy interests than good and said it "dwells on

speculative harms, untethered to operational realities or available evidence.” Their minority report said restrictions already made internally at the FBI and elsewhere were important improvements.

But the dissent also expressed frustrations at the repeated violations unearthed in recent years, particularly at the FBI, including improper searches of donors to a political campaign, [George Floyd demonstrators](#) and people investigated in relation to the Jan. 6, 2021, U.S. Capitol breach. The panel’s minority also made recommendations for changes, though less substantial than what the majority of the board offered.