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PERSPECTIVE COVER STORY

Spy plan's spawn emerges Stealth tracking morphs into new monster

By Jonathan Turley
COMMENTARY

THE DISCLOSURE last week of a secret databank operation tracking international financial transactions has caused renewed concerns about civil liberties in the United States. But this program is just the latest in a series of secret surveillance programs, databanks and domestic operations justified as part of the war on terror.

Disclosed individually over the course of the past year, they have become almost routine.

Yet, when considered collectively, they present a far more troubling picture, and one that should be vaguely familiar.

Civil-liberty-minded citizens may recall the president's plan to create the Total Information Awareness program, a massive databank with the ability to follow citizens in real time by their check-card purchases, bank transactions, medical bills and other electronic means.

The Defense Advanced Research Projects Agency, or DARPA, was assigned this task, but after its work was made public, Congress put a stop to it in September 2003 as a danger to privacy and civil liberties.

However, when Congress disbanded the Total Information Awareness program, it did not prohibit further research on such databanks, or even the use of individual databanks.

And, according to a recent study by the National Journal, the Bush administration used that loophole to break the program into smaller parts, transferring some parts to the National Security Agency, classifying the work and renaming parts of it as the Research Development and Experimental Collaboration program.

It was long suspected that Total Information Awareness survived, and the disclosure this week of another massive databank operation has only reinforced that fear.

The spawn of DARPA seem to be turning up in secret programs spread throughout agencies.

The administration learned that it could not create a network of databanks in one comprehensive system, but it could achieve the same results by creating smaller systems that could be easily daisy-chained at a later date into the same kind of massive computer bank that Congress thought it had shut down.

It is DARPA, albeit with assembly required for the ultimate user.

Consider some of the recent disclosures:

- A domestic surveillance program operated without warrants involving thousands of calls that are isolated by computers at the NSA.

- A massive databank that contains information on hundreds of millions of telephone calls of Americans that is described as the world's largest database.
- Access to information in a massive databank that carries 12.7 million messages each day on international financial transactions.
- Use of massive private databanks with access to an array of information on citizens, including at least 199 data-mining projects.
- Quiet support for a national registered-traveler program in which citizens voluntarily submit private information and subject themselves to background checks for faster passage through airport security. (The information would then be housed in a computer system accessible to the government.)

These computer databanks and programs are technically separate but collectively could exceed the dimensions of the DARPA program killed in 2003. Most of these systems have certain common characteristics, including the absence of congressional approval.

Indeed, the recently disclosed financial transaction program was created by the Bush administration as an emergency program, but it has continued for years.

Although the administration has refused to involve the courts in such programs, it actually contracted out the role of oversight -- according to the New York Times, it hired a private auditing firm to make sure that the monitoring of financial transactions was not being misused.

Such outsourcing of civil liberty protections is hardly what the framers foresaw when they created a system of checks and balances.

Most of these programs are designed to look for suspicious conduct from everyday transactions. By combining information, the government uses "link analysis" to find something suspicious among otherwise innocent-looking transactions. It also is a technique that necessarily exposes innocent citizens to constant forms of surveillance or monitoring -- the very danger of DARPA's Total Information Awareness program that Congress wanted to avoid.

It now appears that the administration has achieved by stealth what it could not achieve by persuasion in Congress: the creation of a computer network that follows millions of citizens to reveal their movements and transactions.

It is all part of this administration's insatiable desire for information.

With regard to its own conduct and information, the administration has fought against the notion of transparency -- from refusing to disclose meetings with lobbyists, to denying Congress information needed for oversight, to threatening journalists with prosecution for revealing secret programs such as the NSA domestic surveillance program.

Yet, when it comes to citizens, the administration demands total transparency to allow it to monitor everyday transactions and conduct.

It is perhaps the greatest danger that can face a free society: a government cloaked in secrecy with total information on its citizens.

For most of our history, one of the greatest protections for civil liberties has been the practical inability of the government to monitor a large number of citizens at one time. In the last couple of decades, those technological barriers have fallen away.

In the meantime, the Supreme Court has removed legal barriers to the government's acquisition of personal information by allowing it to obtain the records of banks, telephone companies and other businesses without a warrant.

This combination of legal and technological changes has laid the foundation for a fishbowl society in which citizens can be objects of continual surveillance.

Americans have long been defined by our privacy values. We have fiercely defended what Justice Louis Brandeis called "our right to be left alone."

It is only in the assurance of privacy that free thoughts and free exercise of rights can be truly exercised. Such privacy evaporates with doubt; it is why the Constitution seeks to avoid the chilling effect of uncertainty in government searches and seizures.

Yet, the problem has been that these programs have been revealed and analyzed in isolation.

Each insular program has been defended in insular terms. It is just domestic telephone numbers or just international transactions.

Citizens have become accustomed to a steady stream of secret programs and new forms of government monitoring. It is something that our fiercely independent ancestors would have never imagined.

Privacy is dying in America -- not with a fight but a yawn.

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