



Published: 12.23.2005

White House defends its domestic spying in letter to Congress

THE ASSOCIATED PRESS

WASHINGTON — The Bush administration formally defended its domestic spying program in a letter to Congress late Thursday, saying the nation's security outweighs privacy concerns of individuals who are monitored.

In a letter to the chairs of the House and Senate intelligence committees, the Justice Department said President Bush authorized electronic surveillance without first obtaining a warrant in an effort to thwart terrorist acts against the United States.

"There is undeniably an important and legitimate privacy interest at stake with respect to the activities described by the president," wrote Assistant Attorney General William E. Moschella. "That must be balanced, however, against the government's compelling interest in the security of the nation."

Bush has acknowledged he authorized such surveillance and repeatedly defended it in recent days.

But Moschella's letter was the administration's first public notice to Congress about the program in which electronic surveillance was conducted without the approval of a secret court created to examine requests for wiretaps and searches in the most sensitive terrorism and espionage cases.

Moschella maintained that Bush acted legally when he authorized the National Security Agency to go around the court to conduct electronic surveillance of international communications into and out of the United States by suspects tied to al-Qaida or its affiliates.

Moschella relied on a Sept. 18, 2001, congressional resolution, known as the Authorization to Use Military Force, as primary legal justification for Bush's creation of a domestic spying program.

He said Bush's powers as commander in chief give the president "the responsibility to protect the nation."

The resolution "clearly contemplates action within the United States," Moschella wrote, and acknowledges Bush's power to prevent terrorism against the United States.

Congress adopted the resolution in the chaotic days after the Sept. 11, 2001, terrorist attacks, authorizing the president to wage war against al-Qaida and other terrorist groups that pose a threat to the United States.

Moschella said the president's constitutional authority also includes power to order warrantless foreign intelligence surveillance inside the United States. He said that power has been affirmed by federal courts, including the secret Foreign Intelligence Surveillance Act court. The FISA court was created in 1978 after public outcry over government spying on anti-war and civil-rights protesters.

The administration deliberately bypassed the FISA court, which requires the government to provide evidence that a terrorism or espionage suspect is "an agent of a foreign power." The foreign intelligence law makes it a crime for anyone to "intentionally intercept" a communication without a warrant.

Moschella said Bush's action was legal because the foreign intelligence law provides a "broad" exception if the spying is authorized by another statute. In this case, he said, Congress' authorization provided such authority.

Moschella also maintained the NSA program is "consistent" with the Fourth Amendment — which prohibits unreasonable searches and seizures — and civil liberties.

For searches to be reasonable under law, a warrant is needed, Moschella said. But, outside criminal investigations, he said, the Supreme Court has created exceptions where warrants are not needed, finding that the "reasonableness of a search" depends on "the totality of the circumstances."

"Foreign intelligence collection, especially in the midst of an armed conflict in which the adversary has already launched catastrophic attacks within the United States, fits squarely within the 'special needs' exception to the warrant requirement," Moschella wrote.

"Intercepting communications into and out of the United States of persons linked to al-Qaida in order to detect and prevent a catastrophic attack is clearly reasonable."

● *Congress approves one-month extension of Patriot Act / A6*

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