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Arizonans split on balancing privacy, security

Dennis Wagner and Jon Kamman

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The commander of Arizona's Counter Terrorism Information Center says he understands why the National Security Agency would want an ocean of data on domestic phone calls, but he has misgivings about the legalities of a secret program that collects intelligence on average citizens.

"I've got to tell you, I do have some problems with this," said Maj. Norm Beasley, who also heads the Department of Public Safety's Intelligence Bureau. "The danger comes in because this is still America. We still operate under a constitution, and a core of that is privacy."

Beasley said law enforcement agents often analyze phone-call lists for drug syndicates and other criminal organizations. "That's Basic Detective 101. The intelligence people don't like to say it's connecting the dots, but that's exactly what you're doing."

His remarks were part of a cacophonous response Thursday to reports in *USA Today* that the government has secretly obtained databases containing records on tens of millions of domestic phone calls. The NSA is not eavesdropping on conversations but gathering the information to track calling patterns of terrorism suspects.

The revelation immediately spawned a debate on privacy rights, legalities of the program and terror-fighting tactics.

Beasley said that police generally obtain phone numbers by applying for a warrant based on evidence of unlawful activity and that exceptions should occur only when there is the imminent threat of a terrorist attack. Yet the NSA reportedly collected the phone numbers with no showing of probable cause and with unclear oversight.

The agency's actions did not trouble everyone.

"It's sad that the security and civil liberties of the American people are being used as political theater," said Rep. J.D. Hayworth, R-Ariz. "The fact is that if you don't associate with terrorists you have nothing to worry about. But if you're planning another attack on American soil . . . you better stay off the phone."

Jon Kyl, a Republican member of the Senate Judiciary Committee, said news reports falsely implied that the NSA is monitoring private calls. "We are not listening in on conversations or intercepting e-mails," Kyl said. "As the president said, this (leaks to the media about what is being done) makes us a little bit less safe."

On the other side of the argument, Alessandra Soler Meetz, executive director of the American Civil Liberties Union of Arizona, said the government has proved itself dishonest: "They say, 'Trust us! Trust us! We're only doing surveillance on potential

terrorism suspects.' But this is a clear example that they've been lying to us."

"It's a threat to the Constitution, and it's illegal," added Rebecca Jeschke of the Electronic Frontier Foundation, a national non-profit group dedicated to privacy rights.

Jeschke's organization has a lawsuit pending against AT&T, claiming the company divulged private customer records unlawfully to the NSA.

"This (*USA Today*) story just bolsters what we've been saying all along," Jeschke said. "We do not want the government to stop investigating terrorism. But, instead of casting the net around everyone, they should be targeting terrorists."

Marc Rotenberg, executive director of the Electronic Privacy Information Center, another advocacy group, said the NSA and phone companies violated federal wiretap laws by obtaining phone records without a court order.

"Even members of Congress don't know what's going on," he said. "They have to read about it in the newspapers."

Rotenberg said U.S. history is rife with instances where corrupt officials employed power and secrecy to abuse citizens. He mentioned two examples: FBI Director J. Edgar Hoover's smear campaign in the 1950s against civil rights leader Martin Luther King Jr. and the FBI's surveillance and disruption effort, Operation COINTELPRO, directed against political dissidents a decade later.

Two Arizona State University specialists in constitutional law said the legal issues are fuzzy.

"My reaction is neither an immediate, 'Oh, it's outrageous,' nor, 'Oh, it's perfectly acceptable,'" said Professor James Weinstein, who labels himself as mostly liberal. "I would keep an open mind on something like this."

Paul Bender, a law professor who has argued numerous cases before the U.S. Supreme Court, said the NSA may argue that merely collecting phone numbers does not constitute a search-and-seizure act requiring court approval. As a constitutional issue, he added, the legality hinges on whether U.S. phone users have a "reasonable expectation of privacy."

Bender said that the volume of information and how it is employed could be factors in deciding the legality: "The data could be used in terrible ways."

Beasley, the Arizona DPS commander, said he wants to believe the NSA has policies and practices to prevent abuses of intelligence data.

"It all boils down to leadership and guts," he said. "That's why it's so critical that people working these operations are apolitical and not afraid to stand up and say . . . what's right and what's wrong."

Reach the reporter at dennis.wagner@arizonarepublic.com or (602) 444-8874.

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