

Secret Spy Court Authorizes 100% of US Government Requests

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A secret federal court last year did not deny a single request to search or electronically spy on people within the United States “for foreign intelligence purposes,” according to a Justice Department report this week.

The [report \(pdf\)](#), which was released Tuesday to Senate majority leader Harry Reid (D-Nev.), states that during 2012, the Foreign Intelligence Surveillance Court (the “FISC”) approved every single one of the 1,856 applications made by the government for authority to conduct electronic surveillance and/or physical searches for foreign intelligence purposes.

This past year saw 5 percent more applications than 2011, though no requests were denied in either. Besides the numbers provided, no other information regarding the court and the court’s decisions are made public.

As *Wired*’s David Kravets [explains](#):

The secret court, which came to life in the wake of the Watergate scandal under the President Richard M. Nixon administration, now gets the bulk of its authority under the FISA Amendments Act, which Congress reauthorized for another five years days before it would have expired last year.

The act allows the government to electronically eavesdrop on Americans’ phone calls and e-mails without a probable-cause warrant so long as one of the parties to the communication is believed outside the United States.

Previous to its [2012 reauthorization](#), Senator Ron Wyden (D-Ore.) said during a debate on amending the FISA Act, “The public has absolutely no idea what the court is actually saying. What it means is the country is in fact developing a secret body of law so Americans have no way of finding out how their laws and Constitution are being interpreted.”

Putting the FISC in context, Kevin Gosztola at *FireDogLake* [writes](#), “America has a court that reviews surveillance requests in secret and makes rulings in secret that are kept secret.”

He goes on to cite a 2008 Harvard Law Review, which critiqued the unique arrangement of the secret court system, to explain why the court’s 100 percent acceptance rate may be unsurprising:

One of the most striking elements of the FISA system is the total absence of adversariality.

[t]he judge is forced not only to act as an arm of the prosecution in weighing the prosecution’s arguments about whether disclosure would or would not compromise national security, but also to act as a defense lawyer in determining whether the information is useful to the defendant.” Similarly, in reviewing a FISA application, the FISC must attempt the difficult, if not impossible, task of simultaneously occupying the roles of advocate and neutral arbiter — all without the authority or ability to investigate facts or the time to conduct legal research. **The judge lacks, a skeptical advocate to vet the government’s legal arguments, which is of crucial significance when the government is always able to claim the weight of national security expertise for its position.** It is questionable whether courts can play this role effectively, and, more importantly, whether they should. [emphasis added]

“Though depicted as some kind of check on Executive Branch behavior,” Glenn Greenwald [writes](#), the entire process “is virtually designed to do the opposite: ensure the Government’s surveillance desires are unimpeded.”

He adds that the lack of oversight is significant because of recent calls to create a ‘drone court’ under the same model, providing a similar process through which the president can target for execution people who have been charged with no crime.

He continues:

But like the Fisa court, such a “drone court” would be far worse than merely harmless. Just imagine how creepy and tyrannical it is to codify a system where federal judges – in total secrecy and with only government lawyers present – issue execution warrants that allow the president to kill someone who has never been charged with a crime. It’s true that the president is already doing this, and is doing it without any external oversight. But a fake, illusory judicial process lends a perceived legitimacy to his execution powers that is not warranted by the reality of this process.

The Justice Department report also noted that the government issued 15,229 National Security Letters last year. The letters, issued by the FBI compelling “internet service providers, credit companies, financial institutions and others to hand over confidential records about their customers,” were declared unconstitutional in March. However, the decision was stayed 90 days pending the White House’s expected appeal.

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