

EDWARD SNOWDEN, THE NSA, AND MASS SURVEILLANCE

Edward Snowden worked as a computer systems contractor for the National Security Agency (NSA), which collects intelligence information for U.S. spy agencies. In 2013, Snowden gave journalists thousands of secret NSA documents. They revealed mass surveillance of terrorist suspects and of innocent Americans as well.

Created in 1952, the NSA monitors, collects, and analyzes foreign spy information, or “intelligence” on suspected enemies of the United States. Those who work for the NSA must have a security clearance and promise never to reveal the NSA’s secrets.

To correct certain abuses by the Central Intelligence Agency (CIA) in the 1960s and 70s, Congress passed the Foreign Intelligence Surveillance Act of 1978 (FISA). FISA set up monitoring of the NSA, CIA, and other intelligence agencies so that they would target foreign threats, not American citizens.

The FISA law also established a secret Foreign Intelligence Surveillance Court to which intelligence agencies could seek permission to conduct surveillance and collect information from foreign suspects. The Chief Justice of the U.S. Supreme Court appoints the FISA Court’s 11 judges. A special court can review the FISA Court’s decisions.

In 1979, the U.S. Supreme Court decided that law-enforcement agencies did not need a search warrant to get the phone numbers called by criminal suspects. The Supreme Court ruled that phone callers had “no reasonable expectation of privacy” in numbers dialed into a telephone. Today, phone numbers, dates, and the duration of phone calls are called “metadata” and do not include the actual content of conversations.

Following the terrorist attacks on September 11, 2001, the NSA and other intelligence agencies shifted from investigation of criminal suspects to *prevention* of terrorist attacks and were desperate to improve their use of technology. Within days of 9/11, Congress passed the USA PATRIOT Act (Patriot Act), which greatly increased the NSA’s surveillance powers.

Who Is Edward Snowden?

Between 2006 and 2012, Edward Snowden, a young high school dropout and computer whiz, worked for the CIA as well as major tech contractors for the NSA. He maintained computer systems and received security clearance which gave him access to secret documents. He says that while working at a secret NSA facility in Hawaii, he first complained to supervisors about the NSA’s “illegal activities,” but that they ignored his complaint.



The Wikileaks Channel/Wikimedia Commons (CC BY 3.0)

Edward Snowden in Moscow, Russia, October 2013.

Later, at the same Hawaii facility, he persuaded co-workers to let him borrow their passwords and without their knowledge copied secret NSA documents onto laptop hard drives. Snowden believed the U.S. was violating the privacy rights of American citizens as well as international law.

In December 2012, Snowden anonymously contacted a few journalists and passed on to them samples of secret NSA documents. In May 2013, Snowden met his contacts in Hong Kong, where he identified himself for the first time and handed them the thousands of NSA documents he had copied.

On June 5, *The Guardian* newspaper in London published the first of numerous articles and documents that revealed many secret mass surveillance programs. Soon American newspapers, such as the *New York Times*, began to publish material from the “Snowden leaks.”

Snowden, now age 29, planned to seek political asylum in South America. But the U.S. had suspended his passport so he could not fly any further than Russia, which granted him temporary asylum and later extended it to three years.

At the Moscow airport, Snowden made his first statement to the world’s press about what motivated him:

I did what I believed right and began a campaign to correct this wrongdoing. I did not seek to enrich myself. I did not seek to sell U.S. secrets. I did not partner with any foreign government to guarantee my safety. Instead, I took what I knew to the public, so what affects all of us can be discussed. . . .

What Did Snowden Reveal?

The public learned from Snowden's leaks that between 2001 and 2006, President George W. Bush secretly authorized the NSA to collect the phone metadata of virtually all Americans, or "bulk collection" of metadata. The idea was to amass a government database that the NSA could search by linking the phone number of a suspected foreign terrorist to other numbers in a chain of phone calls to help NSA agents identify a potential terrorist network. They were unable to do this before 9/11. The NSA said it destroyed any metadata collected of innocent Americans.

The public also learned that in 2006 President Bush handed over the job of the bulk collection of metadata to the secret FISA Court. The FISA Court had to have legal authority to do this and found it in Section 215 of the Patriot Act, which authorized the FBI to apply for FISA Court orders on behalf of the NSA to produce "tangible things" relevant to an approved foreign intelligence investigation.

The FISA Court interpreted producing "tangible things" to mean a blanket court order for bulk collection of metadata rather than issuing individual search warrants typically required under the Fourth Amendment. The FISA Court also relied on the ruling of the 1979 Supreme Court that people had no reasonable expectation of privacy in phone numbers called.

After his election, President Obama continued the NSA's bulk collection program. The FISA Court has rarely turned down an intelligence agency application for a surveillance order or search warrant. One reason may be that only the government was permitted to make its case before a FISA Court judge. No opposing side was allowed to challenge an application for a surveillance order.

Snowden also gave to *The Guardian* a copy of the secret FISA Court order of May 24, 2013, that directed Verizon to give the NSA metadata of all its customers. The revelation set off a firestorm of protest.

In addition, Snowden unveiled NSA's PRISM program, which collected the *content* of emails, photos, and other media from the servers of nine Internet service companies (Microsoft, Google, Apple, Yahoo, AOL, Facebook, YouTube, Skype, and Paltalk). This surveillance program was limited to individuals "sharing content" with a terrorist suspect "reasonably believed to be located outside the United States." PRISM surveillance required approval of the FISA Court but not of the Internet service companies.

Snowden's documents showed that the NSA collected other data in its search for terrorists outside and inside the U.S., including Internet usage, transactions at

commercial websites, health and financial records, publicly posted social media, GPS location of individuals, and Google Map searches. FISA Court orders or Fourth Amendment search warrants were sometimes needed, sometimes not.

Snowden also revealed that the NSA spied on friendly nations. The NSA listened in on the phone calls of some of America's allies, which caused an angry reaction abroad, embarrassing the U.S. government.

Reaction to Snowden's Leaks

Snowden's stunning leaks caused many people to criticize the previously secret NSA surveillance programs, which only a few in the government knew existed. Many were outraged over what they saw as violations of the Fourth Amendment. Internet service companies protested how they were being used by the NSA to scoop up data on their customers.

Snowden's revelations forced the government to defend its surveillance programs. Defenders assured Americans everything was legal and approved by Congress, the president, and the FISA Court. No evidence has turned up that the NSA intentionally invaded the privacy of innocent U.S. citizens. But neither has evidence revealed that the bulk collection program stopped any terrorist attack against the United States.

Snowden, remaining in Russia, was celebrated as a hero by his many supporters and condemned by those who called him a criminal. President Obama expressed concern about leaks of secrets: "If any individual who objects to government policy can take it in their own hands to publicly disclose information, then we will not be able to keep our people safe. . . ."

The U.S. Justice Department quickly charged Snowden with stealing government property and two violations of the Espionage Act.

Damage From Snowden's Disclosures

While most of the immediate controversy over Snowden's massive leaks of secret NSA documents focused on privacy violation claims, another issue arose about how his leaks damaged national security. Michael Hayden, a former director of the NSA and CIA, warned that the Snowden leaks will let terrorists know about U.S. intelligence "tactics, techniques, and procedures."

Director of Intelligence James Clapper reported that showing our adversaries the NSA's programs damaged America's ability to prevent another 9/11. "This is the most destructive [bleeding] of American secrets in history," he declared, "and very few of them had anything to do with American privacy." ▶

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The Snowden leaks also revealed information about the spying methods of U.S. allies. Britain's Home Secretary, Theresa May, argued that Snowden's leaks caused intelligence damage around the world. For example, "safe houses" used by British spies had been identified, putting them at risk. She added that the Islamic State had even made a video with tips drawn from the Snowden leaks on how to avoid detection.

In December 2013, the Department of Defense (Pentagon) completed a top secret report on the impact of the leaks. The Pentagon declassified 12 pages for release to the public in May 2014, but most of the text was blocked out of caution that details might give sensitive information to terrorists.

The censored report stated that the Pentagon assessed that the Snowden leaks will have "a grave impact on U.S. national defense." The report concluded: "The scope of the compromised knowledge related to U.S. intelligence capabilities is staggering."

House of Representatives Intelligence Committee Chairman Mike Rogers read the complete uncensored Pentagon report. He said, "The report confirms my greatest fears — Snowden's real acts of betrayal place America's military men and women at greater risk."

Others point out that the public and the press have not been provided details about the damage from Snowden's disclosures. It is hard to assess, they say, whether the disclosures actually caused any damage at all. Britain's Business Secretary Vince Cable said that even though a "large amount of genuinely important intelligence material" was disclosed, the disclosures emphasize a need for "proper political oversight of intelligence services." NSA Director Admiral Michael S. Rogers also downplayed the damage caused by Snowden, saying in 2014 that he did not believe "the sky is falling." He wanted the NSA to get "out of the data-retention business" altogether.

The USA FREEDOM Act

In January 2014, after considering reforms made by his own study commission, President Obama proposed that Congress keep the bulk collection metadata program, but put possession of its huge database in the hands of a non-government party like the telephone companies. Congress debated these and other issues raised by Snowden's disclosures. Some members of Congress wanted to keep the metadata program as it was. Others called for it to be eliminated.



National Security Agency

The National Security Operations Center (NSOC) floor in 2012. NSOC is part of the NSA and maintains constant monitoring of intelligence information.

On June 2, 2015, Congress passed the USA FREEDOM Act (Freedom Act), a compromise that President Obama promptly signed into law that included key reforms. Under the new law, the NSA could no longer collect metadata but could gain access to the records stored by telephone companies through a FISA Court order if it could show it had a "reasonable articulable suspicion" that certain metadata was linked to terrorism. Phone companies would destroy metadata after 18 months. Advocates with security clearance could raise issues of privacy or civil liberties before the FISA Court, and significant rulings of the FISA Court must be made public.

Snowden: Criminal or Hero?

Snowden and his supporters call him a "whistle-blower." This is usually a government employee who makes public some sort of government wrongdoing. Laws protect whistle-blowers with access to secret information from criminal prosecution. These laws, however, require whistle-blowers to report their concerns to the intelligence agencies' inspector general or to members of the intelligence committees of Congress. Snowden did not do this.

Snowden said he believed he was not protected as a whistle-blower because he was a contractor for a private company, not a government employee. The law is not clear how much protection Snowden would have had if he had followed the correct procedure.

Snowden succeeded in provoking a major debate over America's mass surveillance programs. Did the NSA endanger the right to privacy, or was it just doing its job to keep Americans safe? The compromise Freedom Act seemed to answer yes to both questions. But what should we do about Snowden, who started the whole controversy? Is he a criminal or a hero?