

FBI ASPIRES TO BE THE STASI

Charlie Savage describes changes the FBI is making to its Domestic Investigations and Operations Guide. On its face, the changes he describes are downright bad. The changes allow FBI agents to:

- Make a database “assessment” search of a group or person “proactively” without making a record of that search
- Tail people during a “proactive” assessment more than once
- Search a potential informant’s trash to gather information to use to force the informant to snitch for the government
- Attend up to five meetings of a group undercover
- Eliminate extra supervision of investigations of politicians or journalists if they are witnesses, not suspects, in the investigation
- Eliminate such protection altogether for “low-profile” blogs

These new rules allow all sorts of fishing expeditions of people based on nothing more than a lead. Moreover, it would make it easy for the FBI to surveil targets with almost no evidence against them until they could be trumped up on some crime.

To some degree they feel like an effort to clean up past illegal activity (as the FBI did with its exigent letters program).

But consider how much worse these guidelines are in consideration of what else we know, or suspect.

We suspect, after all, that our government collects generalized databases of geolocation using Section 215. Since that information need only be "relevant" to a foreign intelligence investigation, it may well include records on all of us.

These new rules would allow the FBI to search such a database without recording that search. Aside from the obvious invitation for abuse—some agent wondering whether his girlfriend was hanging out with his best friend—it also eliminates the evidence that the FBI used such a controversial technique as geolocation as the premise for further investigation. It makes it easier for the FBI to investigate someone because of nothing more than who they know.

Then there's the new rules allowing the FBI to conduct investigations of what a journalist "witnessed" without supervision. Remember that after the FBI decided James Risen had "witnessed" a leak of classified information, they collected his business records and emails, collecting much of the evidence they needed to indict Jeff Sterling. This rule would seem to virtually eliminate any real protection for journalists' sources.

Finally, there's the invitation to snoop through a potential informant's trash. As I have pointed out, as far back as 2002, the government explicitly described using FISA to collect information, even on potentially unrelated crimes like rape, on potential informants so they could blackmail them into serving as snitches. Taken together, these rules would allow the FBI to search through existing databases (potentially including telecommunications metadata showing who a person

communicated with and hung out with, as well as some financial information) to find potential snitches. The agent could search those databases with no apparent limits or record. And then the agent could sift through the potential informant's trash to get the evidence to blackmail him to become an informant.

These rules seem ripe to snare a bunch of totally innocent people in the FBI's investigative web. And even if it doesn't, it may well serve to increase the paranoia of average people.