

San Francisco Chronicle

NSA call-records program is prudence, not prying

By Dianne Feinstein
Saturday, November 2, 2013

The Sept. 11, 2001, attack on the United States was highly organized and sophisticated and designed to strike at the heart of the American economy and government.

It succeeded in killing nearly 3,000 Americans in large part because our intelligence community lacked the tools to connect disparate pieces of information to uncover the plot, or failed to use them.

We know that terrorists remain determined to kill Americans and our allies. According to new findings by the National Consortium for the Study of Terrorism and Responses to Terrorism, more than 8,500 terrorist attacks worldwide killed nearly 15,500 people last year.

This is a 69 percent rise in attacks and an 89 percent jump in fatalities from the prior year. Several other attacks were prevented through a combination of intelligence programs.

Ever since Edward Snowden fled to Hong Kong and eventually Russia with millions of pages of classified national security secrets, the American intelligence community has been under siege.

This drip, drip, drip of disclosures - often without proper context and frequently just plain wrong - has eroded the confidence of the American people in the dedicated men and women of our intelligence community and the strong legal and constitutional protections already in place to prevent improper behavior.

One program that helps prevent another terror attack - but continues to be mischaracterized - is the National Security Agency's call-records program.

This program does not collect the content of calls but rather the type of information found on the average cell phone bill: phone numbers of calls placed and received, the time calls are placed, and their duration.

While the overwhelming majority of these records are never looked at - and are regularly destroyed - the program has proven successful in connecting the dots and helping to prevent terrorist attacks.

In fact, since its inception, this program has played a role in stopping roughly a dozen terror incidents in the United States. And it continues to contribute to our safety.

This is not a surveillance program.

Merriam-Webster's dictionary defines "surveillance" as "the act of carefully watching someone or something especially in order to prevent or detect a crime."

In the case of the call-records program, neither individuals nor their phone conversations are being listened to. No one is being monitored. And no one is being watched under the call-record program.

The records collected do not include names, locations or other identifying characteristics of calls. If the government wants to get a wiretap, it must obtain a warrant.

I recognize that for some people, any type of collection of their phone records creates unease, particularly those who are already distrustful of government. I also understand some believe Congress has not done enough to restrain or oversee these programs.

The question is: How do we preserve what I believe to be a vital national security program - one that has saved lives - while strengthening privacy protections and increasing transparency in order to address the legitimate concerns of the American people?

On Oct. 31, the Senate Intelligence Committee took the first step to restore that confidence and bridge the gap between preventing terrorism and protecting civil liberties by passing the bipartisan Foreign Intelligence Surveillance Act Improvements Act. The legislation:

- Makes a federal crime - punishable by up to 10 years in prison - of any unauthorized access to the call-records database. This will send a clear signal to the American people that abusing this authority will not be tolerated.
- Prohibits the collection of any content of a phone call without a warrant. Again, this means no listening to conversations and no collecting names.
- Requires an annual public report of the total number of database queries and the number of times the program leads to an FBI investigation or probable-cause warrant. Going forward, the American people will know the scope and frequency of the inquiries being conducted.

-- Requires the Foreign Intelligence Surveillance Court to impose a strict limit on the number of people at NSA who may authorize or query the call-records database, and then only after the court determines there is a "reasonable articulable suspicion" of an association with international terrorism.

-- Imposes a limit on retaining phone records up to five years and requires approval from the head of the Department of Justice - the attorney general - to query records older than three years.

It is important for the American people to be assured that while heroic efforts are made to protect our country from attack, equal attention is paid to protecting an individual's privacy and liberties.

Taken together, these reforms and others add prudent, responsible and essential privacy protections that will provide those assurances.

The threats we face - from terrorism, weapons proliferation and cyber attack, among others - are real, and they will continue.

For those who believe that any collection of phone records violates privacy, these reforms likely do not go far enough. I understand those concerns.

But the world is a dangerous place, and if we end this vital program, I believe the result will be a nation more vulnerable to another devastating terrorist attack.

California Democratic Sen. Dianne Feinstein is chairman of the Senate Intelligence Committee.