

# Obama to Place Some Restraints on Surveillance

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By [PETER BAKER](#) and [CHARLIE SAVAGE](#)

WASHINGTON — President Obama will issue new guidelines on Friday to curtail government surveillance, but will not embrace the most far-reaching proposals of his own advisers and will ask Congress to help decide some of the toughest issues, according to people briefed on his thinking.

Mr. Obama plans to increase limits on access to bulk telephone data, call for privacy safeguards for foreigners and propose the creation of a public advocate to represent privacy concerns at a secret intelligence court. But he will not endorse leaving bulk data in the custody of telecommunications firms, nor will he require court permission for all so-called national security letters seeking business records.

The emerging approach, described by current and former government officials who insisted on anonymity in advance of Mr. Obama's widely anticipated speech, suggested a president trying to straddle a difficult line in hopes of placating foreign leaders and advocates of civil liberties without a backlash from national security agencies. The result seems to be a speech that leaves in place many current programs, but embraces the spirit of reform and keeps the door open to changes later.

The decision to provide additional privacy protections for non-American citizens or residents, for instance, largely codifies existing practices but will be followed by a 180-day study by the director of national intelligence about whether to go further. Likewise, instead of taking the storage of bulk data out of government hands, as recommended by a review panel he appointed, Mr. Obama will leave it in place for now and ask lawmakers to weigh in.

The blend of decisions, to be outlined in a speech at the Justice Department and in a presidential guidelines memorandum, will be Mr. Obama's highest-profile response to the disclosures about the National Security Agency made in recent months by Edward J. Snowden, a former N.S.A. contractor who has fled to Russia.

But as intelligence officials have sorted through Mr. Obama's evolving position, they have been divided about how significant his adjustments will be.

Some officials complained that the changes will add layers of cumbersome procedure that will hinder the hunt for potential terrorists, while others expressed relief that Mr. Obama is not going further and confidence that they could still work within the new guidelines without sacrificing much.

“Is it cosmetic or is there a real thumb on the scale in a different direction?” asked one former government official who worked on intelligence issues. “That’s the question.”

The White House said the president’s review is incomplete and would not comment further Tuesday.

The developments came as the nation’s judiciary waded into the highly charged debate. In a [letter](#) made public on Tuesday, a judge designated by Chief Justice John G. Roberts Jr. to express the views of the judicial branch warned that some changes under consideration would have a negative “operational impact” on a secret foreign intelligence court.

Judge John D. Bates, a former chief judge of the Foreign Intelligence Surveillance Court, urged Mr. Obama and Congress not to alter the way the court is appointed or to create an independent public advocate to argue against the Justice Department in secret proceedings. Any such advocate, he wrote, should instead be appointed only when the court decided one was needed.

Judge Bates objected to the workload of requiring that courts approve all national security letters, which are administrative subpoenas allowing the F.B.I. to obtain records about communications and financial transactions without court approval.

And he raised concerns about greater public disclosure of court rulings, arguing that unclassified summaries would be “likely to promote confusion and misunderstanding.”

[The judge’s letter](#), versions of which he sent to the leaders of several congressional committees, was released as all five members of Mr. Obama’s surveillance review group testified Tuesday before the Senate Judiciary Committee, seeking support for their recommendations.

Illustrating the cross-pressures on the president, the advisers argued for the appointment of the independent version of a public advocate, a recommendation the president is expected to follow, though it is not clear how he will structure the position.

“We admire Judge Bates and respect his views,” said Cass R. Sunstein, of Harvard Law School and a former Obama White House official who served on the review panel. “We respectfully disagree with that one, on the ground that the judge sometimes is not in the ideal position to know whether a particular view needs representation and that in our tradition, standardly, the judge doesn’t decide whether one or another view gets a lawyer.”

The judge’s objection to the proposal on national security letters dovetailed with that of the F.B.I. director, James B. Comey, who argued it would be inefficient to have to go to a judge each time records were sought. Mr. Obama has decided not to require court approval in every case, but might still require it in some circumstances, according to one administration official.

Mr. Obama will cut back on the number of people whose phone records can be examined by the N.S.A. through its bulk data program. Currently the agency can scrutinize call records of people as far as three steps, or “hops,” removed from a suspect. Mr. Obama’s review panel proposed

limiting searches to people just two steps removed. He is also likely to cut down the number of years such data can be retained; currently it is deleted after five years.

But the president will not, at least for now, back the panel's suggestion that telecommunications firms keep such data and that the government be allowed to tap into those databases only when necessary.

Intelligence officials complained it would be inefficient to have to go to multiple companies, so some officials proposed creating an independent consortium to store the data instead.

Mr. Obama has decided against keeping the data at the private providers because they do not want that responsibility, officials said, and no independent consortium currently exists. As a result, he will ask Congress to work with him to determine the best way to store the data.

He also appears likely to reject the idea of separating code breakers and code makers. Some critics of the N.S.A. were disturbed that the agency's encryption team charged with bolstering online security systems against hackers was working with the team that tries to penetrate computer systems used by terrorists.

The letter by Judge Bates was accompanied by 15 pages of often specific comments about possible surveillance reforms.

It is highly unusual for judges to weigh in on public policy debates involving the other two branches of government, but Judge Bates, the director of the Administrative Office of the United States Court, said that Chief Justice Roberts had designated him to "act as a liaison" and that he had consulted other judges.

The judge emphasized that his comments were meant to address smooth operation of the court and were "not intended as expressions of support or opposition to particular introduced bills."

Still, his comments went beyond workload issues. He objected to a proposal by Mr. Obama's review group to take away Chief Justice Roberts's sole power to appoint the 11 judges of the surveillance court and have them picked instead by the chief judges of the appeals courts.

Ten of the 11 current judges were appointed by Republican presidents, and critics have called for more diversity. "The chief justice is uniquely positioned to select qualified judges," Judge Bates argued.