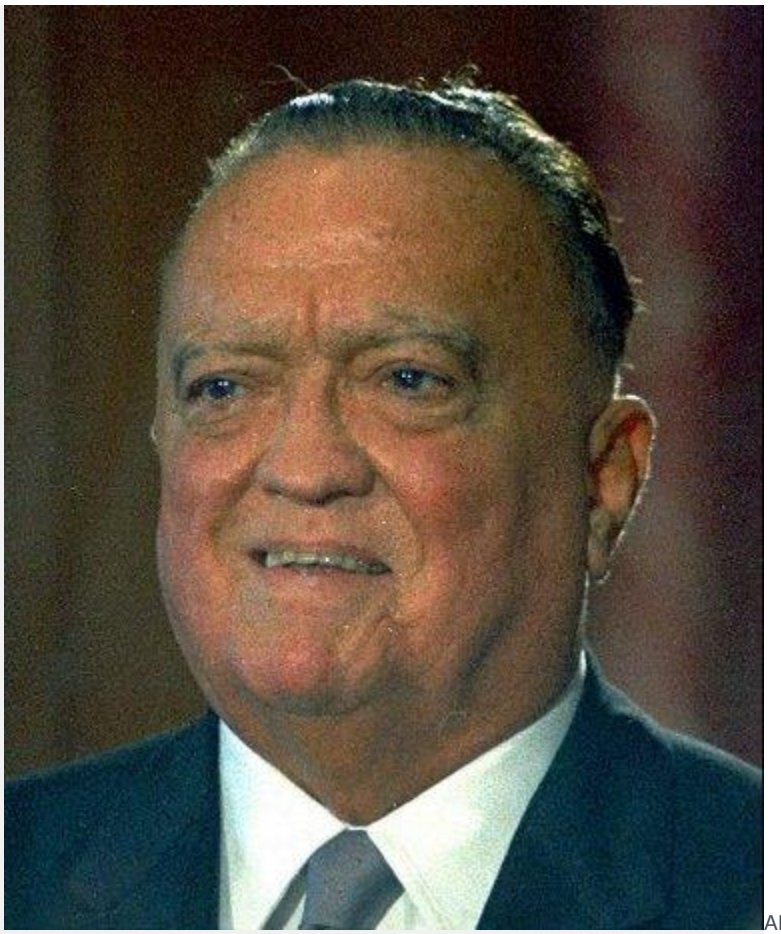
New privacy guidelines would give FBI leeway to abuse privacy


AP Photo/FileF.B.I director J. Edgar Hoover is shown in this Sept. 25, 1970, file photo.

Twenty-five years ago, Congress passed and President Gerald Ford signed the Federal Privacy Act. In an effort to end the abuses committed by the FBI against anti-war and civil rights activists that director J. Edgar Hoover disliked, Section (e)(7) of that Act prohibited any agency of the federal government from "maintaining records describing how any individual exercises rights guaranteed by the First Amendment . . . unless pursuant to and within the scope of an authorized law enforcement activity."

The FBI and the federal courts have spent the last 25 years honoring that statute in the breach; and Congress seems perfectly satisfied to let them do so. And **as reported in the New York Times** on June 13, the FBI is again about to amend its Domestic Investigations and Operations Guide to further thumb its nose at the privacy act.

The new guidelines, according to the Times, will allow some 14,000 FBI agents more leeway to search databases, go through household trash or use surveillance teams to scrutinize the lives of people who have attracted their attention.

I first challenged the FBI's abuse of the Privacy Act in the 1980s, on behalf of a precocious sixth-grader who decided to compile his own encyclopedia of world governments. As part of his project, young Todd wrote to all countries, seeking their promotional and tourist guides. His survey included what were then Iron Curtain countries, such as the Soviet Union and Hungary.

As a consequence, an FBI agent showed up one day at Todd's home to inquire as to why someone there was communicating with Communist governments. His mother showed the agent Todd's room, with his neatly indexed files on each country.

When Todd's parents asked the FBI to explain what kinds of records they were maintaining on their son, the federal agency refused. Since Todd had aspirations of being a foreign service worker, the family was concerned about an FBI file. Enter the ACLU.

Unable to breach the FBI's wall of silence, we finally filed suit, charging a violation of Section (e)(7) of the Privacy Act, which prohibits the maintenance of records describing how anyone exercises First Amendment rights, which clearly encompass mail correspondence. The FBI responded that its activity was allowed by the Privacy Act, pursuant to the exemption for "authorized law enforcement activity."

Do you know on what grounds the FBI claimed that its investigation of Todd — and the continued maintenance of a file on him retrievable under his name — was an "authorized investigation"? No?

Well, you are not alone. I don't know either, and I was Todd's lawyer.

The FBI announced that it would jeopardize national security to reveal any information about the nature of its investigation, or its reasons for maintaining a file to Todd or his attorney. Instead, it filed its response under seal for a judge's eyes only. The Court of Appeals upheld this procedure as perfectly acceptable, and decided that the FBI was in compliance with the law.

Other litigants have fared no better than Todd. Not even when the FBI put all its cards on the table, as exemplified by the case of Lance Lindblom.

Lindblom was the president of the J. Roderick MacArthur Foundation, which provided grants to organizations involved with various political, social and economic issues. As the opinion of the Court of Appeals stated, "Lindblom occasionally met with foreign leaders and political dissidents."

At some point, the foundation got wind of the fact of the FBI's interest in its activities and asked why such files were being maintained in the face of the clear command of the Privacy Act. The FBI contended that since the initial investigation was "pertinent to an authorized law enforcement activity," perpetual maintenance of the file — retrievable by Lindblom's name — also was allowed, even though it acknowledged that it had no "current interest" in him or his activities.

Lindblom sued to have the files expunged. As the dissenting judge on the three-member court observed, the majority "effectively read the word 'maintain' out of the term's statutory definition." The U.S. Supreme Court denied review and that appears to be the last serious attempt at enforcing Section (e)(7).

And now, the FBI seems to feel no compunction at all about returning to the bad old days of J. Edgar Hoover.

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