

Justice Department responds to lawmakers' wiretapping probe

By Winter Casey

Democrat John Conyers of Michigan dismissed as evasive and unresponsive the late Friday response from the Justice Department to a House Judiciary Committee inquiry into the National Security Agency program of wiretaps without warrants.

Justice's response said the agency, through the Foreign Intelligence Surveillance Act, could have legally monitored confidential communications between doctors and patients or attorneys and their clients.

"Although the program does not specifically target the communications of attorneys or physicians, calls involving such persons would not be categorically excluded from interception if they met" the program's criteria, the department said.

"The evasiveness of the department prevents Congress from exercising its constitutionally mandated oversight role and obstructs Congress' ability to draft meaningful legislation to provide guidelines for this activity," said Conyers, the ranking Democrat on the Judiciary panel. "Some of the department's responses leave open the possibility that other surveillance programs exist with a scope far beyond this program."

In its answers to 45 separate questions posed by Judiciary Committee Chairman James Sensenbrenner, R-Wis., and committee Democrats, the department acknowledged that no previous administration had authorized electronic surveillance.

Marc Rotenberg, director of the Electronic Privacy Information Center, said there is an "obvious need for the oversight committees to pursue these requests."

Many legal rights are implicated when the administration conducts such surveillance within the United States, he said.

"The laws of the United States, both before and after FISA's enactment, have long permitted various forms of foreign intelligence surveillance, including the use of wiretaps, outside the procedures of FISA," the department said. "If the question is limited to 'electronic surveillance' as defined by FISA, however, we are unaware of such authorizations."

Justice would not reveal how many people in the United States have been wiretapped under the program. In response to inquiries by the committee, the department repeatedly characterized the information as "classified and sensitive," and said it could "not be revealed in this setting."

Robert Turner, associate director for the Center for National Security Law, said he believes "the president has an absolute right to deny national security secrets to Congress."

But the American Civil Liberties Union said it has been repeatedly frustrated by the department's

refusal to answer basic questions about the wiretapping program.

"Knowing how many innocent Americans have had their privacy invaded by this lawless program is not an 'operational' secret. It's the very question a less partisan and more independent Congress asked and got answered in the 1970s," said Caroline Fredrickson, a director at the ACLU. "That's when Congress passed the Foreign Intelligence Surveillance Act to try to prevent warrant-less spying on Americans from happening again."

On the other side of the debate, Paul Kamenar, an attorney with the **Washington Legal Foundation**, said, "We support the program as far as what has been publicly released."

The foundation plans to file a brief in favor of the Justice Department in a pending ACLU case on the issue.