

IN LAST TWO YEARS, FBI DEVELOPED INTRUSIVE FILES ON 77,100 INNOCENT AMERICANS

Charlie Savage has a story reporting on the number of assessments the FBI opened in the last two years that turned into preliminary investigations. It shows that over the period, the FBI has conducted assessments of 77,100 Americans whom they determined were not a cause for concern. Their investigations of 3,315 others turned into preliminary investigations.

Data from a recent two-year period showed that the bureau opened 82,325 assessments of people and groups in search for signs of wrongdoing. Agents closed out most of the assessments, the lowest-level of F.B.I. investigation, without finding information that justified a more intensive inquiry.

[snip]

The disclosure, covering March 25, 2009, to March 31, 2011, focused on assessments, which an agent may open “proactively or in response to investigative leads” and without first having a particular factual basis for suspecting a target of wrongdoing, according to the F.B.I. manual. Former Attorney General Michael Mukasey issued guidelines for the bureau creating that category in 2008.

During an assessment, agents may use a limited set of techniques, including searching databases about targets, conducting surveillance of their movements and sending a confidential informant to an organization’s meetings. But to use more intrusive techniques, like secretly reading e-mail, agents must open a more traditional “preliminary” or “full” investigation. Such inquiries require agents to first have a

greater reason to start scrutinizing someone: either an "information or allegation" or an "articulable factual basis" indicating possible wrongdoing.

According to the data, during the 2009-11 period agents opened 42,888 assessments of people or groups to see whether they were terrorists or spies. A database search in May 2011 showed that 41,056 of the assessments had been closed. Information gathered by agents during those assessments had led to 1,986 preliminary or full investigations.

The data also showed that agents initiated 39,437 assessments of people or groups to see whether they were engaged in ordinary crime. Of those, 36,044 had been closed, while 1,329 preliminary or full investigations had been opened based on the information gathered.

The FBI would like to spin this as good news. Some of these investigations, Valerie Caproni explains in the story, would have been full-blown preliminary investigations in the past. But, as Mike German points out, the FBI is keeping records of all these searches.

The threat assessment conducted on Antiwar.com provides a really good example of what this means, even though it dates to an earlier period. That assessment—conducted in April 2004—fell under slightly different categories than the ones that generated these data. Nevertheless, the general guidelines (what FBI Agents could do to investigate these people) are roughly similar.

And what we saw in the threat assessment was the collection (and dissemination) of information that tied incidences of First Amendment protected activities of other people—an explosives suspect surfing the web, antiwar activists handing out literature at a peaceful protest—to criminal investigations. The result flips the notion of criminality on its head for

the way other people's potential criminal behavior gets lumped onto Antiwar's free speech.

The Antiwar.com threat assessment also shows what this kind of assessment means in reality. The FBI searched somewhere between 2-4 public databases for information on Eric Garris and Justin Raimondo that they don't want even to even admit searching publicly (they've exempted the disclosure under investigative techniques exemption).

Finally, the Antiwar.com threat assessment shows the kind of logic the FBI uses to advance to the next level: it found that Raimondo uses his middle name, that Antiwar.com posted a publicly available document (the watch lists showing terrorist suspects), and that some unsavory characters like white supremacists and explosives suspects had read their work. And from that—partly because Antiwar.com relies on donations for funding—the FBI decided it had sufficient basis to conduct a preliminary investigation into whether Garris and Raimondo are spies.