

Newly-Released Documents Show Flaws in Domestic Intelligence Collection and Oversight

by [Harley Geiger](#) [1]
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Last Wednesday several U.S. intelligence agencies released previously classified [documents](#) [2] in response to FOIA litigation from EFF & ACLU. Among these was a [document](#) [3] reporting that the Department of Homeland Security had improperly investigated the Nation of Islam in 2007. DHS retracted the intelligence report on the black Muslim group hours after its release – but not before the report was disseminated widely to hundreds of other government agencies, private organizations and individuals. While it is a positive sign that DHS’ intelligence oversight managed to catch and retract the Nation of Islam report, the fact that the report was written at all suggests continuing confusion, at the working level, about what is the proper focus of domestic intelligence activity.

The government has spied on the Nation of Islam and its leaders for decades, but never obtained evidence that the organization was a terrorist outfit. So why was it under investigation yet again? Not because new evidence of violence or illegality surfaced, but because the group’s leader was sick.

The intelligence report on the Nation of Islam was not itself released to EFF and ACLU; what they got was the results of an internal investigation into the creation of the intelligence report. According to the heavily-redacted document, DHS’ Intelligence & Analysis Office released an “intelligence note” entitled *Nation of Islam: Uncertain Leadership Succession Poses Risk* in October 2007, which speculated on the direction the Nation of Islam might take if the group took on new leadership. At the time, the group’s then-leader Louis Farrakhan was recovering from treatment for prostate cancer.

In the released document, the Under Secretary for Intelligence & Analysis insisted the violations in the preparation of the “intelligence note” were unintentional and inadvertent. Nevertheless, the Under Secretary agreed that the “intelligence note” should never have been issued, stating “The organization – despite highly volatile and extreme rhetoric – has neither advocated violence nor engaged in violence. Moreover, we have no indications that it will change its goals and priorities, even if there is a near-term change in the organization’s leadership.”

If that is so, why was the Nation of Islam report written at all? The Under Secretary noted that intelligence collection and retention on the Nation of Islam and other U.S. Persons lasted more than six months, although how much more is unclear, before the report was issued. Presumably *someone* approved the decision to spend more than six months collecting and reviewing information on the Nation of Islam as a valid expenditure of counter-terrorism resources. When the report was shared, it was distributed via email to 482 recipients, including federal intelligence agencies, Congressional committees, at least one state government agency, and one educational institution. It was only then, not during the start of the investigation or the initial review of the report, that the government noticed the report was faulty and in violation of its own standards.

The government should not be investigating groups based on political beliefs without some evidence that illegality is afoot. Fishing expeditions are not just intrusive and contrary to the values of a pluralistic democracy, they divert law enforcement resources from analyzing real threats. Yet, as the Under Secretary noted in the released document, “intelligence organizations prepare intelligence assessments and analytic pieces on a vast array of issues where there are no 'specific tasking.'”

The Nation of Islam report is part of a much bigger problem: the growth of a domestic intelligence apparatus without adequate limits. Another facet of this problem is the government’s growing Suspicious Activity Reporting [initiative](#) [4], which institutionalizes the collection and distribution of information on innocent activities on a very thin predicate. Without strong data quality control and oversight measures, the usefulness of such strategies seems dubious.

In response to the Nation of Islam revelation, a DHS spokesperson [stated](#) [5] that since the incident, the agency “has implemented a strong and rigorous system of safeguards and oversight to ensure similar products are neither created nor distributed.”

Not so fast. The Nation of Islam report was distributed in 2007. A slew of similarly problematic reports were developed and distributed in the spring of 2009. During that period, government intelligence reports were leaked four times in three months, sometimes sparking widespread public condemnation. (CDT blogged about those events [here](#) [6], [here](#) [7] and [here](#) [8].)

The fiascos revealed a tendency among government agencies at all levels to investigate, or encourage investigation of, groups based on political beliefs, despite lacking evidence that these groups advocate or engage in violence or other illegal activity. That is precisely what occurred with DHS’ investigation of the Nation of Islam. Was the “strong and rigorous system of safeguards and oversight” implemented since last spring and does it apply to the entire domestic intelligence apparatus? Or is the information sharing oversight system that failed in 2007 and 2009 still failing behind the scenes today?

- [Uncertain Leadership Succession Poses Risk](#)
- [Suspicious Activity Reporting](#)
- [SAR](#)
- [FOIA](#)
- [Nation of Islam](#)
- [DHS](#)

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