

Financial Privacy Takes Another Hit

August 30, 2012 - The federal Right to Financial Privacy Act gives Americans the ability to shield some of their financial activities from monitoring by the National Security Agency and other government organizations. Of course, if the government suspects wrong doing and has some proof, they can always go to court and get a court order to pry, but they can't simply walk into your bank and demand records without a warrant and the NSA isn't supposed to monitor your financial transactions. That is, they can't do these things unless the bank transfers your information out of the country where the Right to Financial Privacy Act (RFPA) has absolutely no impact.

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That's precisely the scenario that got Bank of America sued. The bank had subcontracted services with overseas companies and it transferred the financial records of many of its customers to those subcontractors. The bank did this without the customers' permission, and that got them sued.

The suit claims that the bank's actions violated the privacy rights of its customers by essentially waiving their Fourth Amendment rights under RFPA. But US District Judge Reggie Walton has determined that the plaintiffs in the case don't have standing to sue. He's tossing the case out.

The basis for the judge's decision is that there is absolutely no evidence that Bank of America has cooperated with the NSA or other government organizations and turned records over to them without a warrant. Furthermore, there is no evidence that the plaintiffs have been injured by what the bank has done.

While his decision may be technically true, it is highly unlikely that the NSA is going to announce that Bank of America or

any other bank is cooperating with them on this type of a level. The decision leaves average citizens with almost no way to ensure that their rights under the law are not being violated.

The plaintiffs in the case plan to appeal. The plaintiff's attorney, Joseph Hennessey said of the ruling, "If there is no remedy, it creates a very troubling situation in a globalized economy where electronic communications across borders essentially make meaningless the restrictions imposed by the Fourth Amendment and statutes such as the Right to Financial Privacy Act." We have to agree.

byJim Malmberg

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