

Decomposed USAPATRIOT Act Monitoring Proposal for Somerville

Somerville Bill of Rights Defense Committee

Summary:

The city of Somerville has already affirmed its opposition to the unconstitutional portions of the USAPATRIOT Act and similar Federal provisions. In this document, we explore options for monitoring actions of dubious constitutionality within Somerville. We propose a compromise plan of action by which the city can track unconstitutional activity on behalf of its residents, make that information easily available to residents, while at the same time not interfering with legitimate law enforcement activity or placing itself in conflict with Federal law.

Goals:

- Actions of dubious constitutionality should leave a paper trail
- Somerville residents should be able to find out about actions of dubious constitutionality
- Legitimate law enforcement activity should not be hindered
- Somerville and its employees must not be placed in direct violation of Federal law
- Reporting should help maintain trust between the City and its residents

What Needs Monitoring?

The city has resolved its opposition to a broad class of unconstitutional actions enabled by Federal legislation including the USAPATRIOT Act. Some of those are federal actions which the city will not normally be made aware of, while city officials may be directly faced with others.

Since monitoring is a passive process, an action need not be provably unconstitutional to be included in the monitoring, but merely a member of a class which the city finds suspicious. In particular, note that ***monitoring is gathering information, not opposition.***

Partial List of Actions to Monitor:

- Accessing library and bookstore records
- Accessing medical, mental health, financial or educational records without a court order
- Search without a warrant or “Sneak and peek” search
- Disappearance of a person
- Detention without charge
- Designation of a person or group as terrorist without evidence

A more precise list is in progress.

Proposal: Three-Tiered Logging

We propose a layered system of reporting, such that open and straightforward cases can be dealt with simply, but secretive and questionable cases still leave a trace. This proposal represents a compromise amongst a wide range of options itemized in the next section.

The primary reporting mechanism would be the police log, which has the advantages of being simple, a well-established source of information for residents, and well-suited to the task. Actions of dubious constitutionality would be reported in one of three ways, depending on the degree of secrecy:

- **Open or confidential:** Placed in the police log normally, but flagged with the added

note: *[questionable constitutionality]*

- **Information is Secret:** Secret dubious actions will be logged similarly to Open/Confidential actions, but upon request from Federal/State authorities, reporting will be delayed for one month. This delay may be renewed provided sufficient reason, and the reason for extension added to the log of the action. A renewal is only good for one additional month: further requests for renewal must be made each month. Once the seal on a log expires, it would be placed in the police log, along with a summary of the reasons for each renewal of the seal. Finally, once per month, the police log must contain a note stating “During the preceding month, [number] secret actions of dubious constitutionality were kept under seal.”
- **Existence is Secret:** Once a month, the police log should contain a note stating, “During the preceding month, Somerville has not been ordered to not publish a piece of information in this police log.” Absence of this note may signal either a mistake or a secret Federal/State action.

Range of Options:

There are many different aspects which determine the strictness and effectiveness of a monitoring system, including what actions will be monitored, who will monitor them, and how the monitoring data will be accessed. We have identified a wide range of options which can be used in constructing a monitoring system, ranging from blatantly lax to unreasonably stringent, and present them here to give a sense of the design space in which our proposal is situated.

Actors subject to monitoring:

- City officials acting on behalf of Somerville
- City officials acting on behalf of federal/state officials
- City officials acting in concert with federal/state officials
- Federal/state officials acting with city's knowledge
- Federal/state officials acting without city's knowledge

Locations in which Somerville can assert jurisdiction:

- Somerville city property
- Private property within Somerville
- Federal/State property within Somerville
- Residents of Somerville in other regions

Secrecy of the dubious actions to be monitored:

- Open
- Confidential (e.g. involved parties only)
- Secret, existence may be known
- Secret, existence detectable via dead-man mechanism
- Secret, existence may not be known

Timeframe for reporting dubious actions:

- Preceding action
- Immediate
- Police log
- Monthly
- Renewable monthly seal with time limit
- Renewable monthly seal without time limit
- Yearly
- Renewable yearly seal with time limit
- Renewable yearly seal without time limit

Repository of reported information:

- Human Rights Commission
- Police Log
- Special Commission, representative of Somerville population

Mechanism for public access:

- Available on request
- Regular Publication