

Floor Speech of Sen. Chuck Grassley  
FDA Whistleblower Spying  
Tuesday, July 17, 2012

I rise today to speak about a federal agency that has forgotten that it works for the American public.

This is an agency that has gotten too big for its britches.

Some of its officials have forgotten who pays their salaries.

The Food and Drug Administration (FDA) is supposed to work to protect the American people.

Except lately, the only thing the FDA bureaucrats seem to have any interest in protecting is themselves.

According to whistleblowers and published reports in the Washington Post and New York Times, the agency in charge of safeguarding American public safety has trampled on the privacy of its employees.

The FDA mounted an aggressive campaign against employees who dared to question its actions and created what the New York Times termed an “enemies list” of people it considered dangerous.

The FDA has been spying on this “enemies list.”

The FDA has been spying on the personal emails of these employees and everyone they contacted.

That includes their protected communications with Congress.

We would not have known the extent of the spying if internal FDA documents about it had not been released on the Internet, apparently by accident.

We would not have known how the FDA intentionally targeted and capture confidential, personal emails between the whistleblowers, their lawyers, and Congress.

In these internal documents that FDA never wanted the public to see, it refers to the whistleblowers as “collaborators.”

FDA refers to congressional staff as “ancillary actors.”

FDA refers to the newspaper reporters as “media outlet actors.”

These memos make the FDA sound more like the East German Stasi than a consumer protection agency in a free country.

At the beginning of Commissioner Hamburg’s term she said whistleblowers exposed critical issues within FDA.

She vowed to create a culture that values whistleblowers.

In fact, in 2009, she said, and I quote, “I think whistleblowers serve an important role.”

I wanted to believe Commissioner Hamburg when she testified before the Senate during her confirmation.

I wanted to believe her when she said she would protect whistleblowers at the FDA.

However, the facts now appear very different.

In this case the FDA invaded the privacy of multiple whistleblowers.

It hacked into their private e-mail accounts and used sophisticated keystroke logging software to monitor their every move online.

When an FDA supervisor was placed under oath in the course of an equal employment opportunity complaint, he testified that the FDA was conducting “routine security monitoring.”

That is false.

This monitoring was anything but routine.

It was targeted specifically at five whistleblowers.

It intentionally captured their private emails to attorneys, Congress, and the Office of Special Counsel.

The internal documents show that this was a unique, highly sophisticated, and highly specialized operation.

According to the Office of Inspector General, the FDA had no evidence of any criminal wrongdoing by the whistleblowers.

This massive campaign of spying was not just an invasion of privacy; it was specifically designed to intercept communications that are protected by law.

The Office of Special Counsel is an agency created by Congress to receive whistleblower complaints and protect whistleblowers from retaliation.

The law protects communications with the Special Counsel as a way to encourage whistleblowers to report waste, fraud, abuse, mismanagement, or threats to public safety without fear of retaliation.

The FDA knew that contacts between whistleblowers and the Office of Special Counsel are privileged and confidential.

But, the James Bond wanna-be's at the FDA just didn't care.

In the end, the self-appointed spies turned out to be more like the bumbling Maxwell Smart.

Along with their own internal memos about the spying, the fruits of their labor were also accidentally posted on the Internet.

It's tens of thousands of pages of emails and pictures of the whistleblowers' computer screens, containing some of the very same information that the FDA bureaucrats were so keen to keep secret.

When I started asking questions about this, FDA officials seemed to suffer from a sudden bout of collective amnesia.

It took them more than six months to answer my letter from last January.

When I pushed for a reply during those six months, FDA told my staff that that the response would take time to make sure it was accurate and complete.

When I finally got the response on Friday, it doesn't even answer the simplest of questions, such as who authorized this targeted spy ring.

Worse than that, it is misleading in its denials about intentionally intercepting communications with Congress.

When I asked them why they couldn't just answer some simple questions, they told my staff that the response was under review by the "appropriate officials in the Administration."

The non-answers and double-speak would have fit right into a George Orwell novel.

Of course, when my staff dug deeper and asked if the response was being reviewed by the Office of Management and Budget, FDA responded, no.

FDA refused to identify who within the Administration was holding up the FDA's response to my letter.

FDA refused to say how long it had been sitting on that person's desk or why it had to be approved by political officials outside the FDA.

Who is this shadowy figure conducting some secret review of FDA's response to my questions?

Why was there all of the sudden interest in exerting political control over the correspondence of this supposedly independent Federal agency?

We need answers and we need them now.

I have been demanding answers for six months.

For the past six months FDA has been telling me to be patient.

FDA has been telling me that they have “a good story to tell.”

Apparently, though, there’s someone in the Obama Administration who didn’t want them to say anything for as long as possible.

I finally got Commissioner Hamburg on the phone in June.

Commissioner Hamburg personally assured me that the FDA was going to fully cooperate with my investigation.

Yet – the FDA has provided me with nothing but misleading and incomplete responses.

The FDA has failed to measure up to Commissioner Hamburg’s pledge of cooperation.

The FDA buried its head in the sand in hopes that I will lose interest and go away.

That’s not going to happen.

I don’t care who is in charge of the executive branch, Republican or Democrat, I will not stop demanding answers.

When government bureaucrats obstruct and intercept my communications with protected whistleblowers, I will not stop.

When government bureaucrats stonewall for months on end, I will not stop.

When government bureaucrats try and muddy the waters and mislead, I will not stop.

I will get to the bottom of it.

I will continue to press the FDA until we know who authorized spying on whistleblowers.

Someone within the FDA specifically authorized spying on private communications with my office and with several other Members of Congress.

Someone at FDA specifically authorized spying on private communications with Congressman Van Hollen’s office.

Someone at FDA specifically authorized spying on private communications with staff at the Senate Special Committee on Aging.

Someone at FDA specifically authorized spying on private communications with the Office of Special Counsel.

These whistleblowers thought the FDA was approving drugs and treatments that it shouldn't.

These whistleblowers thought the FDA was caving to pressure from the companies that were applying for FDA approval.

They have a right to express those concerns without fear of retaliation.

But after doing so, two of them were fired.

Two more were forced to leave FDA.

And five of them were subjected to an intense spying campaign.

Senior FDA officials may have broken the law.

They authorized the capturing of personal email passwords through keystroke logging software.

That potentially allowed them to log in to the whistleblowers' personal email accounts and access emails that were never even accessed from a work computer.

Without a subpoena or warrant, that would be a criminal violation.

After six months, FDA finally denied that occurred.

However, that denial was based on the word of one unnamed information technology employee involved in the monitoring.

We need a more thorough investigation than that.

I have asked the FDA to make that person and several other witnesses available for interviews with my staff.

We will see how cooperative FDA plans to be now.

I will continue to press the FDA to open every window and every door.

Eventually enough sunlight on this agency will cleanse it.

FDA gets paid to protect the public, not keep us in the dark.

Secret monitoring programs, spying on Congress, and retaliating against whistleblowers—this is a sad commentary on the state of affairs at the FDA.

I know there are hard-working and principled rank and file employees at FDA who care very much about their mission to protect the American public from harm.

Unfortunately, all too often those rank and file employees are unfairly tarnished by others such as those involved in this spy ring.

This is a sad commentary on President Obama's promise to the American people that this would be the most transparent Administration in history.

The American people can't lose faith in the FDA.

Unfortunately, after this debacle, I think that I have.

FDA has a lot of work to do to restore the public's trust.