

Originally published 04:45 a.m., September 16, 2009, updated 06:09 a.m.,
September 16, 2009

EXCLUSIVE: W.H. collects Web users' data without notice

EXCLUSIVE:

The White House is collecting and storing comments and videos placed on its social-networking sites such as Facebook, Twitter and YouTube without notifying or asking the consent of the site users, a failure that appears to run counter to President Obama's promise of a transparent government and his pledge to protect privacy on the Internet.

Marc Rotenberg, president of the Electronic Privacy Information Center, said the White House signaled that it would insist on open dealings with Internet users and, in fact, should feel obliged to disclose that it is collecting such information.

"The White House has not been adequately transparent, particularly on how it makes use of new social media techniques, such as this example," he said.

Defenders of the White House actions said the Presidential Records Act requires that the administration gather the information and that it was justified in taking the additional step of asking a private contractor to "crawl and archive" all such material. Nicholas Shapiro, a White House spokesman, declined to say when the practice began or how much the new contract would cost.

Susan Cooper, a spokeswoman for National Archives and Records Administration, said the presidential records law applies to "social media" and to public comments "received by the president or immediate staff."

Mr. Obama signed a memo in January stating that his efforts to maintain an open government would be "unprecedented" and "ensure the public trust and establish a system of transparency, public participation and collaboration."

An Obama campaign document on technology pledged that, as president, Mr. Obama "will strengthen privacy protections for the digital age and will harness the power of

technology to hold government and business accountable for violations of personal privacy."

In a June 5, 2008, article in PC Magazine, Mr. Obama said, "The open information platforms of the 21st century can also tempt institutions to violate the privacy of citizens. We need sensible safeguards that protect privacy in this dynamic new world."

The National Legal and Policy Center, a government ethics watchdog, said archiving the sites would have a "chilling effect" on Web site users who might wish to leave comments critical of the administration.

Ken Boehm, a lawyer and chairman of the center, also disputed that the presidential records law applies, because the comments are pasted onto a third-party Web page and not official correspondence with the president.

"If the White House has nothing to hide, why is this cloaked in secrecy? Why won't they make the dollar amount this is going to cost public?" Mr. Boehm asked. "I don't think there is an expectation that this is being captured by the government and saved."

But Patrice McDermott, director of OpenTheGovernment.org, called the proposal "a positive development because it demonstrates a commitment from the Obama administration to meet its obligations under the Presidential Records Act."

"Additionally, I am encouraged to see the administration recognizing that it must find a way to handle the ever-expanding amount of data generated electronically. I hope the rest of the executive branch will learn from the president's leadership on this issue," Ms. McDermott said.

Shahid Buttar, executive director of the Bill of Rights Defense Committee, called for congressional oversight of the practice of collecting data.

"Given the administration's disappointing secrecy in other contexts, the Bill of Rights Defense Committee encourages Congress to conduct oversight to ensure compliance with the law, maximize transparency and protect individual privacy," Mr. Buttar said.

According to the law, the term "presidential records" means documentary materials "created or received by the president, his immediate staff or a unit or individual of the Executive Office of the President whose function is to advise and assist the president, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President."

"It includes any documentary materials relating to the political activities of the president or members of his staff, but only if such activities relate to or have a direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President," the law says.

David Almacy, who served as President George W. Bush's Internet director, said the Bush administration did not use the then-fledgling social-networking sites in the same manner as the Obama White House, except to upload presidential speeches onto iTunes. The White House, however, did archive comments posted to its official Web site.

The proposal issued Aug. 21 calls for a contractor to "crawl and archive" social-networking Web sites where the White House maintains an official presence on seven networks: Facebook, Twitter, MySpace, Flickr, YouTube, Vimeo and Slideshare.

The collection will include the comments, tags, graphics, audio and video posted by users who don't work for the White House.

The White House has more than 333,000 fans on Facebook, and posts updates several times a day that draw hundreds of thousands of comments, both positive and negative. The White House has more than 1 million followers on Twitter and more than 87,000 subscribers on YouTube, where more than 400 videos of the president and White House briefings are posted.