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IN FOCUS

Criminals Use Information Act

By Anthony Marro
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Raymond L.S. Patriarca, an alleged boss of organized crime in New England, has been wiretapped, put under surveillance, investigated, audited and — for some time in the late 1960s and early 1970s — incarcerated by his government. It is therefore generally assumed that he and the Justice Department have seldom, if ever, seen eye to eye.

But now they are working toward a common goal: trying to prevent the local newspapers in Providence, R.I., from using the Freedom of Information Act to obtain written summaries of three years of electronic surveil-

lance the FBI conducted against Patriarca from March 1962 through July 1965.

Both have gone to court to try to block the request by the Providence Journal Co., which claims that the materials might show ties between public officials and organized crime figures in Rhode Island and thus are of legitimate public concern.

"This may be the first time Patriarca and the Justice Department have agreed about anything," one FBI agent said recently. "Both claim

FBI says method of breaking cases is revealed

it would be an invasion of his privacy to give the newspapers the files."

This, however, is only half of the story. Apart from trying to prevent the newspapers from obtaining the summaries (the actual tapes were destroyed years ago), Patriarca is trying to get them for himself.

IN ADDITION to the court action against the Providence Journal, he has initiated a second suit against the government, contending the wiretaps were illegal to begin with, and thus

the material should either be turned over to him or destroyed.

And this is of particular concern to the FBI because, in addition to the precedent it might set, it is seen as part of a growing trend by alleged organized crime figures to use the Freedom of Information Act and the federal courts to get access to the investigative files the government has assembled over the years.

"If the courts decide that we have to destroy or surrender all the material that we picked up on illegal wires, that could be just devastating," said one agent, who did not want to be quoted by name.

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Others argue that a more important concern is that, as more and more convicts or alleged mob figures obtain portions of their files, informers are becoming increasingly reluctant to cooperate with the government for fear the government will not be able to protect them, and criminals are learning more about how the government makes cases against them.

"It's a very serious concern," says Michael Hanigan, an official in the FBI's Freedom of Information unit. "We're getting substantial numbers of requests from prisoners, and from people who have never been convicted but whom we've run investigations on."

THE STATISTICS are imprecise, but Hanigan estimates that between 6 and 7 percent of the 59,000 FOI requests the bureau has processed in the last three years have come from prisoners, and that "at least a hundred" have been from persons considered to be organized crime figures.

In addition, in private interviews and in public testimony, a cross-section of government officials and investigators have said the following:

- Among the alleged organized crime figures who are now trying to obtain voluminous files from the various agencies are Carlos Marcello of New Orleans, Rene Piccaretto of Buffalo, N.Y., and Carmine Persico of Long Island, N.Y. Persico, who is now serving a 14-year sentence on a hijacking charge, has filed FOI claims not only with the FBI but also with the Criminal Section of the Justice Department and the Drug Enforcement Administration.

- In one north central city, according to an FBI source, virtually every known organized crime figure of any import — at least 30 in all — has filed an FOI request in what appears to be a coordinated effort to learn what the bureau knows about their activities.

- A full 40 percent of the persons who have filed FOI requests with the federal drug agency in recent years have been, according to Peter B. Bensinger, the administrator, "convicted felons who wish to know what we have on file concerning them." Among the things they have tried to obtain, he said, have been the radio frequencies used by DEA and the tail numbers of all DEA aircraft.

GARY BOWDACH, a self-described mob figure now serving a long sentence at the federal penitentiary at Atlanta, said in recent testimony before the Senate's Permanent Subcommittee on Investigations that

in recent years he has filed scores of FOI requests on behalf of himself and other prisoners, in order to learn what the government knew about them, and also "to try to identify the informants."

Why did they want to learn the identity of the informant, he was asked by Sen. Sam Nunn, D-Ga., chairman of the subcommittee.

"To eradicate the informant," he replied.

FBI officials are quick to insist that they know of no case where a bureau informant has been murdered after it became known to criminal figures that he was an informant. But Hanigan, the official in the FOI office, insists that "there have been complaints from (agents in the) field that, partly because of FOI, sources of information have been drying up."

Not everyone is willing to accept this as fact, and some, particularly liberals who see the FOI Act as a valuable check on government wrongdoing and an important wedge in prying out information about how government works, view this as just another scare tactic by organizations that don't like the law to begin with.

"MY FIRST REACTION is that the burden is on them to come up with firm statistics to make their case," said Mark Lynch, an American Civil Liberties Union attorney who is considered an expert on FOI matters. "My second reaction is that if there are problems, it is because of their own carelessness and negligence in processing the requests. The language of the law clearly lets them withhold information that would identify an informant."

John Ols, a General Accounting Office official who has done considerable work in this area, said in a recent interview that although many federal agents have claimed that there has been an "erosion" of their

investigative capability that is due in part to the information act, his agency has not been able to document it.

"Personally, I suspect they're right to some degree, but we can't prove it statistically," he said. "It's like trying to prove an unknown; that certain people might have come forward with information if they weren't concerned that the government couldn't protect them and might have to disclose their names."

Later, he said that work done by his agency suggests that "it may be taking them longer to make the investigation," but that data supplied by the FBI had failed to show specific instances where, because of the FOI Act, a case was lost.

IN FACT, THE law itself gives

federal agencies the power to withhold considerable information in its investigative files, under the various exemptions permitted for information that would reveal sources or methods.

But one problem, according to Hanigan, is that the records become more open once a case has been closed, and persons putting in requests often seek — and sometimes receive — information concerning not only the specific charge they had been prosecuted on, but broader information about their general background.

Another problem, a number of sources agree, is that in processing such a large volume of requests (some 400,000 pages per month at the FBI alone) the persons reviewing the files sometimes make mistakes, and give out information that people putting in requests aren't entitled to.

Bowdach, the Senate witness, said under oath that he often had received information that, technically, should have been denied him, and that on one occasion he and a fellow convict were able to piece together enough bits of information from the material released to identify the informant who had given it to the government.

As one Justice Department official put it: "The guys go through with their markers and cross out the names, but they have to leave some of the information in, and they have no way of knowing that only two people knew the information and one of them is dead."

APART FROM identifying informants, federal agents say, criminals sometimes can get enough information from their files to know just what the government knows and does not know about their associates, their meeting places, their method of travel, and their businesses. "If they can find out that a lot of information is coming from one meeting place or from one small group, they'll change their operations in the future, and that can set us back," one agent said.

Hanigan agrees that information that shouldn't be released sometimes slips through, but insists there is no "wholesale giveaway" of investigative files.

"I don't want to leave the impression that we're not making a conscientious effort to protect people who should be protected," he said. "But the problems are there, and they should be recognized."