

The Safeguarding Americans' Private Records Act

Revokes Authority for the Now-Terminated Call Detail Record Program. The program, which collected hundreds of millions of Americans' phone records a year, was shut down by the Intelligence Community due to serious compliance issues and lack of utility. The bill codifies the Intelligence Community's decision and revokes the authority for the program. (*Section 101*)

Prohibits warrantless collection of geo-location information on Americans. In the case of *Carpenter v. United States*, the U.S. Supreme Court found that the collection of certain geo-location information requires a probable cause warrant under the Fourth Amendment. The Intelligence Community has stated that, since the *Carpenter* decision, the government has not collected cell site location or global positioning system information under Section 215. The bill codifies this position (*Section 102*) and extends it to FISA's Pen Register/Trap and Trace (PRTT) authorities, which also do not require a warrant. (*Section 201*) It further clarifies that provisions of FISA requiring probable cause warrants are the exclusive means for collecting cell site location and global positioning information on Americans for intelligence purposes. (*Section 501(d)*)

Prohibits warrantless collection of browsing history and internet search history. Records of Americans' internet browsing and searches can reveal extremely private information, including about their personal lives, their politics, their First Amendment protected activities, and their health. The bill prohibits warrantless collection of this data under Section 215. (*Section 103*) It further clarifies that provisions of FISA requiring probable cause warrants are the exclusive means for collecting Americans' browsing history and internet search history for intelligence purposes. (*Section 501(d)*)

Includes a clarification that warrantless collection under Section 215 is prohibited if the collection would require a warrant in other contexts. Department of Justice officials have testified that Section 215 cannot be used to obtain any records that would otherwise require a Fourth Amendment warrant. The bill codifies that constitutional principle (*Section 104*) while clarifying that the provisions of FISA requiring probable cause warrants are the exclusive means for collecting information for which a warrant would be required in the criminal context. (*Section 501(e)*)

Requires that Section 215 only be used to collect records that pertain, directly or indirectly, to an agent of a foreign power. Section 215 currently authorizes

the collection of records if they pertain directly or indirectly to an agent of a foreign power or pertain to the activities of a suspected agent of a foreign power. The bill retains this standard while eliminating the vague authority to collect records that are merely “relevant” to certain investigations, language that in the past has been used as a basis for secret bulk collection. (*Section 105*)

Requires the government to justify to the FISA Court the basis for imposing nondisclosure requirements on companies that receive Section 215 orders.

The law imposes nondisclosure requirements on companies that receive Section 215 orders. The bill requires the government to demonstrate to the FISA Court that the companies’ disclosure of the existence or contents of the order would cause harm. (*Section 106*)

Prevents indefinite and unjustified retention of Americans’ records. The bill prohibits the government from retaining Americans’ records beyond three years unless the records include foreign intelligence information or evidence of a crime. (*Section 107*)

Permits the FISA Court to review compliance with minimization standards.

Section 215 requires the government to submit to the FISA Court standards related to the retention and dissemination of the records it collects. The bill allows the Court to review the government’s compliance with those standards. (*Section 108*)

Requires meaningful reporting on the amount of Americans’ information collected under Section 215. Current law only requires public reporting on the number of “unique identifiers used to communicate information” that are collected under Section 215, rather than all “tangible things.” Moreover, the Intelligence Community has stated that it only counts records obtained electronically, but not records obtained through portable media or hard copy. The bill would require public reporting on the total amount of Americans whose records are collected under Section 215, and without regard to how those records are provided to the government. (*Section 109*)

Requires reporting on the number of U.S. person searches. The bill requires public reporting on the number of U.S. person searches the government conducts of data collected under Section 215. As described in a recently declassified FISA Court opinion, the FBI is now required to track the number of searches it conducts in data collected under Section 702. The bill therefore also removes the FBI exception to existing U.S. person search reporting requirements related to Section 702. The bill further requires public reporting on the number of U.S. person

queries of Sections 215 and 702 that return information obtained through those authorities. *(Section 109)*

Requires reporting on the efficacy of Section 215. The bill requires public reporting on the number of FISA and criminal warrants that rely on information obtained pursuant to Section 215. *(Section 109)*

Limits the use of records obtained pursuant to Section 215. By policy, information collected under Section 702 of FISA can only be used in certain criminal cases such as counterterrorism and espionage. The bill applies that policy to Section 215 and codifies it. *(Section 110)*

Requires notification to defendants of the use of Section 215 records. The bill requires that individuals involved in trials, hearings and proceedings be informed when information obtained through Section 215 is entered into evidence. *(Section 111)* The bill also ensures that the government cannot engage in “parallel construction” whereby it disguises that the evidence originated in FISA. *(Section 203)*

Requires Inspector General report on the reliance on First Amendment protected activities in Section 215 orders. Section 215 only prohibits collection of Americans’ records if they are sought as part of an investigation of a U.S. person that is based “solely” on First Amendment-protected activities. The bill requires an Inspector General report on the use of First Amendment-protected activities and expression, as well as race, ethnicity, national origin, and religious affiliation, to support Section 215 applications. *(Section 112)*

Requires reporting on Section 215 emergency powers. Section 215 allows the government to obtain Americans’ records on an emergency basis and subsequently seek an order from the FISA Court. If the court denies an order, the records can still be used if the Attorney General determines that they indicate a threat of death or serious bodily harm. The bill requires public reporting on the number of times the Attorney General makes this determination *(Section 110)* and an annual report to Congress on those instances. *(Section 113)*

Establishes sunset for Section 215. The bill establishes a new four-year sunset for Section 215 authorities. *(Section 131)*

Requires an Inspector General report on the roving wiretap authorities. FISA’s “roving wiretap” authority, which is subject to reauthorization, permits the

government to obtain a single court order to conduct surveillance of multiple phones or email addresses determined to be used by the same target. The bill would require the Inspector General to review this process, including whether the government ascertains whether, in surveilling multiple phones or email addresses, it has, in fact, followed the same target or has surveilled non-targeted individuals. *(Section 121)* The bill requires an annual report to Congress on cases in which the Attorney General determined that records produced under these authorities without an order are used. *(Section 122)* The bill establishes a new four-year sunset for these authorities. *(Section 131)*

Requires public reporting on the use of the “lone wolf” authority. The “lone wolf” authority, which is subject to reauthorization, permits the government to conduct surveillance of a non-U.S. person in the United States, using FISA authorities, without a connection to a terrorist organization. The authority, which has existed for fifteen years, has never been used. The bill establishes a new four-year sunset for this authority while requiring the government to inform the public within six months of its use and to report annually thereafter on the number of times it is used. *(Section 202)*

Requires sunsets for National Security Letter authorities. There are four statutory National Security Letter authorities pursuant to which the government collects data on Americans. These authorities are not currently subject to sunsets. The bill establishes sunsets for these authorities, forcing Congress to consider possible reforms in the context of reauthorization. *(Section 401)*

Establishes FISA as the exclusive means for collecting communications records. In response to the warrantless wiretapping program, which operated outside of FISA, Congress established that FISA and criminal warrants were the exclusive means for the collection of the content of communications. The bill establishes that, when the government wants to collect Americans’ communications records for intelligence purposes, FISA is the exclusive means. *(Section 501(c))* The bill also closes loopholes in the Stored Communication Act and the Electronic Communications Privacy Act that could allow government collection of Americans’ communications records without a court order. *(Sections 501(a) and 501(b))*

Reforms the FISA Court and strengthens the PCLOB. The bill strengthens the role of independent amicus curiae within the otherwise one-sided FISA process by ensuring that the amici have access to all FISA Court documents and can raise any issue of concern with the Court. *(Section 301)* This provision ensures amicus

oversight of Title I of FISA, which was the subject of serious criticism from the Department of Justice Inspector General. The bill also reforms the FISA Court so that there is a greater diversity of judges, (*Sections 302 and 303*), ensures that all significant FISA Court opinions are made public within six months, (*Section 305*), and strengthens the Privacy and Civil Liberties Oversight Board. (*Section 304*)