

The Safeguarding Americans' Private Records Act

- *Reforms Section 215 of the PATRIOT Act*
- *Reforms the FISA process and addresses the problems identified by the Inspector General*
- *Expands oversight and transparency*
- *Closes “secret law” loopholes*

Reforms Section 215 of the PATRIOT Act. The bill ends the authority for the NSA’s massive phone record program that was terminated last year. It prohibits the warrantless collection of cell site location and GPS information as well as browsing history and internet search history, and ensures that the government cannot conduct collection for intelligence purposes that would violate the Fourth Amendment in the criminal context. The bill eliminates the vague “relevance” standard that was secretly used to justify bulk collection. It establishes a three-year limitation on retention of information that is not foreign intelligence or evidence of a crime and permits the FISA Court to review compliance with minimization procedures. The bill further limits the types of criminal cases in which Section 215 information can be used to contexts such as counterterrorism and espionage. Finally, the bill requires the government to justify to the FISA Court gag orders on companies that receive Section 215 orders.

Reforms the FISA process and addresses the problems identified by the Inspector General. The bill expands the role of the independent amici curiae, granting them access to every opinion, transcript, pleading or other document of the FISA Court and the FISA Court of Review, and permitting them to raise any issues of concern with the Court. The bill thus gives the amici an independent oversight and potentially adversarial role, not only with regard to warrantless authorities like Sections 215 and 702, but with regard to FISA Title I warrants, which were the source of concerns identified by the Inspector General. The bill protects individuals charged based on FISA collection by expanding notice requirements to include Section 215 and ensuring that the government cannot engage in “parallel construction” whereby it disguises that the evidence originated in FISA. Finally, the bill reforms the FISA Court so that there is a greater diversity of judges, ensures that all significant FISA Court opinions are made public within six months, and strengthens the Privacy and Civil Liberties Oversight Board.

Expands oversight and accountability. The bill creates new public reporting requirements regarding the number of Americans whose information has been

collected under Section 215, the use of emergency powers to collect information under 215 without an order, the efficacy of Section 215, the number of U.S. person searches of information obtained under Sections 215 and 702, the number of those searches that returned information, and the use of “lone wolf” authorities. The bill requires the Inspector General to conduct an investigation into the use of First Amendment-protected activities as well as race, ethnicity, national origin and religious affiliation to support Section 215 applications. It further requires an Inspector General investigation into whether “roving wiretap” authorities have been used to conduct surveillance of non-targeted individuals. Finally, the bill creates new sunsets for National Security Letter authorities, requiring serious congressional oversight for the first time.

Closes “secret law” loopholes. The bill ensures that the government cannot secretly conduct surveillance entirely outside the publicly understood FISA process, as has occurred in the past. It establishes FISA as the exclusive means for collecting communications records for intelligence purposes. It further ensures that probable cause FISA warrants are the exclusive means for intelligence collection of Americans’ cell site location and GPS information as well as well as browsing history and internet search history. Finally, the bill 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.