

The Surveillance Transparency Act of 2013

Sen. Al Franken

When Americans learned about the NSA's domestic surveillance programs, they lacked the most basic information on the scope of the programs, the kinds of communications involved, and the number of *Americans* – as opposed to foreign nationals – whose privacy they affect. For years, these programs have been closely guarded secrets, and the telephone and Internet companies who have been compelled to disclose their customers' information to the government remain under strict gag orders.

Today, the American public knows more about (1) the bulk collection of telephone metadata under section 215 of the PATRIOT Act; (2) the (now-curtailed) bulk collection of Internet metadata under section 214 of the Act; and (3) the collection of Internet content through the "PRISM" program under section 702 of the Foreign Intelligence Surveillance Act. The government has also begun to declassify certain information on an *ad hoc* basis. Nevertheless, nothing in federal law requires the government to provide the American public enough information so that they can reach their own opinions about these programs – and hold the government to account.

Bipartisan pressure is building to institute strong and permanent transparency provisions. On July 18, a coalition of 63 companies and advocacy groups – from Google to the ACLU to Americans for Tax Reform – [wrote](#) the President and congressional leaders to demand (1) more detailed disclosures from the government, and (2) allowing companies to voluntarily disclose aggregate statistics about the information they are being compelled to produce to the government.

The Surveillance Transparency Act of 2013 would codify these recommendations: it will improve government reporting and facilitate voluntary company disclosures. The bill would require the government to annually report on (a) the number of Foreign Intelligence Surveillance Court orders issued under sections 214 and 215 of the PATRIOT Act and section 702 of the FISA; (b) the general categories of information collected; (c) the number of *U.S. persons* whose information was collected under the categories – and (d) the number of *U.S. persons* whose information was actually reviewed by federal agents. For each of those key authorities, the bill would allow companies to voluntarily disclose (a) the number of orders they received and complied with; (b) the general categories of information they produced; and (c) the number of users whose information was produced in the categories.

The bill includes less detailed reporting requirements and disclosure provisions for three "individualized" FISA authorities that do not involve the bulk collection of Americans' records (sections 105, 703 and 704 of FISA). To protect national security, all provisions prohibit the government and companies from disclosing the precise number of individuals affected under a particular authority if that number is less than 500.

This bill will allow the American public to engage in an informed debate about the merits of domestic surveillance – while protecting national security. It is supported by the American Library Association, the ACLU, the Center for Democracy & Technology, the Competitive Enterprise Institute, the Constitution Project, and Consumer Action and OpenTheGovernment.org. For more information, or to co-sponsor the Surveillance Transparency Act of 2013, contact Alvaro Bedoya at Alvaro_Bedoya@judiciary-dem.senate.gov or 4-1024.

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Section-by-section summary

Section 1. This bill is titled “the Surveillance Transparency Act of 2013.”

Section 2. Enhanced Mandatory Reporting by the Federal Government.

For each of the three “large-scale” collection authorities...

- § 214 of PATRIOT Act* (pen registers; previously used for Internet metadata);
- § 215 of PATRIOT Act* (business records; currently used for phone metadata); and
- § 702 of FISA (targeting non-U.S. persons abroad; PRISM program);

...the bill would make the government annually disclose:

- (1) how many FISA court orders were issued;
- (2) good faith estimates of how many individuals’ (i.e. foreign and U.S. persons) information was collected;
- (3) good faith estimates of how many U.S. persons’ (i.e. citizens and green card holders) information was collected;
- (4) good faith estimates of how many U.S. persons’
 - (a) electronic communications (i.e. email and Internet) contents;
 - (b) electronic communications metadata;
 - (c) wire communications (i.e. telephone conversation) contents;
 - (d) wire communications metadata; and
 - (e) subscriber records

were collected, if applicable under the authority, and...

- (e) say for each of those categories how many U.S. persons’ information was actually reviewed (i.e. seen) by federal agents.

If any estimate called for in (3) or (4) is lower than 500, the government must say “fewer than 500.”

(*) For § 214 and § 215, the bill would *also* require the government to disclose the number of queries run against records collected under those authorities, and the number of those queries whose search terms were derived from the information of U.S. persons.

For each of these three “individualized” authorities...

- § 105 of FISA (“traditional” FISA orders for surveillance inside U.S.)
- § 703 of FISA (electronic surveillance of a U.S. person outside the U.S.)
- § 704 of FISA (non-electronic surveillance of a U.S. person outside the U.S.)

...the bill would make the government annually disclose (1) - (3) above, but not (4).

If any estimate called for in (3) is lower than 500, the government must say “fewer than 500.”

Section 3. Enhanced Voluntary Disclosures by Companies.

For each of the “large-scale” authorities (§214, §215, §702), the bill lets companies voluntarily disclose, every six months:

- (1) how many FISA court orders they received;
- (2) the percentage of those orders the company complied with;
- (3) how many of their users’ information they produced, by individual, user, or account;
- (4) how many of their users’...
 - (a) electronic communications (i.e. email and Internet) contents;
 - (b) electronic communications metadata;
 - (c) wire communications (i.e. telephone conversation) contents;
 - (d) wire communications metadata; and
 - (e) subscriber records

...they produced, if applicable, by individual, user, or account.

If the any of these is lower than 500, the company must say “fewer than 500.”

If a company makes a disclosure in accordance with this provision, they will be immune from lawsuits for the disclosure.

For each of the “individualized” authorities (§105, §703, §704), the bill lets companies voluntarily disclose, every six months, items (1) - (3) above but not (4).

The entire bill is written solely to maximize transparency; the bill does not change the legal standards for the collection or querying of data, and in fact includes express rules of construction to prevent these reporting and disclosure provisions from affecting those legal standards.