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BILLS PENDING AS OF 9/11/13 THAT RELATE TO NSA SURVEILLANCE

September 12, 2013

Members of Congress have introduced a series of bills to amend the Foreign Intelligence Surveillance Act in response to disclosure of information in the summer of 2013 about surveillance being conducted by the National Security Agency. This document summarizes those bills. They fall into four categories: (i) bills that reform Section 215 of the PATRIOT Act, the authority that NSA says empowers it to record all telephone calls made to, from and within the U.S.; (ii) bills that permit companies to disclose on a granular basis the extent to which they are disclosing user data in response to FISA demands; (iii) bills that reform the Foreign Intelligence Surveillance Court, including by requiring a Special Advocate to argue for privacy rights; and (iv) bills that encourage or require the government to disclose significant decisions of the FISC, or unclassified summaries of those decisions.

PATRIOT SECTION 215 REFORM BILLS:

- **[S.1215: FISA Accountability and Privacy Protection Act of 2013 \(Leahy, 10 Cosponsors, 9 Democratic, 1 Republican\)](#)**
 - Perhaps the most important of the bills because its lead sponsor has the power to move it through Committee. Very similar to reform bill Leahy pressed in connection with the last reauthorization of the Patriot Act, and covers more than Section 215
 - Seeks to end bulk collection of telephony metadata by requiring that information sought with a Section 215 order must pertain to an agent of a foreign power, be relevant to the activities of an agent of a foreign power, or pertain to individuals in contact with an agent of a foreign power
 - Requires minimization procedures and empowers FISC to review compliance
 - Application for Pen Register and Trap and Trace Device to seek metadata prospectively must include statement of facts and circumstances and minimization procedures
 - Removes the one year waiting period to challenge gag orders
 - Requires an Inspector General audit of 215 Orders from 2010 to 2013, reports to Congress every six months on National Security Letters, and annual reports to the Judiciary and Intelligence Committees on the use, effectiveness, and privacy impact of surveillance authorities
 - Moves Section 702 sunset up to 6/1/15

- **[S.1182: A bill to modify the Foreign Intelligence Surveillance Act of 1978 \(Mark Udall, 8 Cosponsors, 6 Democratic, 2 Republican\)](#)**
 - Seeks to end bulk collection of telephony metadata by requiring that information sought with a Section 215 order must pertain to an agent of a foreign power, be relevant to the activities of an agent of a foreign power, or pertain to individuals in contact with an agent of a foreign power (same standard for Section 215 as is in the Leahy bill, S. 1215)

- **[H.R.2399](#): LIBERT-E Act (Conyers, 50 Cosponsors, Bipartisan)**
 - Seeks to end bulk collection of telephony metadata by (i) requiring that information sought be “relevant and material” to an investigation, (ii) requiring a statement of specific and articulable facts giving reasonable ground to believe item is relevant, and (iii) limiting the tangible things sought to those which “pertain only to an individual that is the subject of such investigation”
 - Removes the one year waiting period to challenge gag orders
 - Requires public release of unclassified summaries of all FISC decisions, orders, and opinions within 180 days
 - Requires an Inspector General report to Congress on Sections 215 and 702

- **[S.1168](#): Restore Our Privacy Act (Sanders, 0 Cosponsors)**
 - Seeks to end bulk collection of telephony metadata by requiring a statement of specific and articulable facts giving reason to believe that each particular item sought is relevant to an FBI investigation (not an NSA investigation) concerning international terrorism
 - Retains presumption of relevance, but only if the things sought pertain to an agent of a foreign power or the activities of a suspected AFP who is the subject of the investigation (deletes presumption of relevance for person in contact with AFP)
 - Requires semi-annual reports from the Attorney General to Congress on all surveillance applications made under Section 215, including a description of the applications and an evaluation of the effectiveness of the surveillance

- **[S.1121](#): Fourth Amendment Restoration Act of 2013 (Paul, 0 Cosponsors)**
 - States that the Fourth Amendment shall be interpreted to require that the government obtain a probable cause warrant to search Americans’ phone records

- **[H.R.2603](#): Relevancy Act (Ross, 0 Cosponsors)**
 - Seeks to end bulk collection of telephony metadata by requiring that records sought in a Section 215 application are “related to a specific person that is the subject of an investigation” and that all investigations for which Section 215 orders can be sought “be conducted of a specific person or specific group of persons”

- **[H.R.2818](#): Surveillance State Repeal Act (Holt, 0 Cosponsors)**
 - Repeals the PATRIOT Act and most of the FISA Amendments Act, including FISA Section 702 (and would therefore end bulk collection of telephony metadata)
 - Increases FISC Judge terms to ten years and bars reappointment
 - Permits the appointment of a Special Masters with technological expertise to advise the FISA Court
 - Bars the government from requiring that software and electronic devices be built with a mechanism that allows the Federal government to bypass encryption or privacy technology built into the device or software.

- **[H.R.2684](#): Telephone Surveillance Accountability Act of 2013 (Lynch, 2 Cosponsors, all Democrats)**
 - Permits continued collection of telephony metadata, but subjects the queries of that data to judicial authorization
 - In particular, requires FISC finding of “reasonable, articulable suspicion that the basis of [a search of telephony metadata] is material and specifically relevant to an authorized investigation” before a search of metadata occurs

- **[H.R.3070: NSA Accountability Act \(Fitzpatrick, 0 Cosponsors\)](#)**
 - Requires Section 215 applications to include a statement of specific and articulable facts (current law requires only a statement of facts) that information sought is relevant and material (current law requires only relevance) to an investigation, and that the information sought pertains only to an individual who is the subject of such investigation.

TRANSPARENCY REPORTING BILLS:

- **[S.1452: Surveillance Transparency Act of 2013 \(Franken, 10 Cosponsors, all Democratic\)](#)**
 - Requires the government to annually and publicly report to Congress on its use of FISA and FISA Amendments Act surveillance authorities, including the number of orders applied for and issued under each authority, as well as good faith estimates of the total numbers of individuals whose information was obtained and the total number of US persons whose information was reviewed or accessed under each particular authority. Certain totals, when less than 500, shall be expressed only as “fewer than 500”
 - Permits the recipient of surveillance orders or directives issued under FISA or FISA Amendments Act authorities to publicly report every six months on the (i) the number of orders or directives received under each authority and the percentage that were complied with in whole or in part, (ii) the total number of individuals whose information was provided to the government under each authority, and, for some specified authorities, (iii) a breakdown of how much of the provided data was communications content vs. non-content records. If the total number of individuals affected under a particular authority is less than 500, that number shall be expressed only as “fewer than 500”
- **[H.R. 3035: Surveillance Order Reporting Act of 2013 \(Lofgren, 9 Cosponsors, 4 Democrat 5 Republican\)](#)**
 - Permits electronic communication service providers to publicly report every three months on the number of government demands for information pursuant to a variety of surveillance authorities including FISA, the FISA Amendments Act, and the various National Security Letter Statutes, including the number of demands received under each authority, the number of demands complied with, and the number of users affected. All numbers must be rounded to the nearest 100
- **[H.R.2736: Government Surveillance Transparency Act of 2013 \(Larsen, 3 Cosponsors, 2 Democrat 1 Republican\)](#)**
 - Permits the recipient of surveillance orders or directives issued under FISA or FISA Amendments Act authorities to publicly report every 90 days on the total number of FISA orders and directives received, including a general description and aggregate numbers reflecting each of the types of information and assistance provided, and the aggregate number user accounts affected.

BILLS REGARDING DISCLOSURE OF FISA COURT RULINGS:

- **S.1130: Ending Secret Law Act (Merkley, 15 Cosponsors, 12 Democratic, 3 Republican)**
 - Encourages retroactive and prospective declassification and disclosure of (i) FISC opinions, orders and decisions that contain significant construction or interpretation of Section 215 and Section 702, or (ii) an unclassified summaries thereof
 - If such opinions, orders and decisions cannot be declassified, requires an unclassified report on the status of deliberations relating to declassification and an estimate of the number of opinions, orders and decisions that will be declassified and the number that will remain classified.

- **H.R.2475: Ending Secret Law Act (Schiff, 28 Cosponsors, Bipartisan)**
 - Same as Merkley Bill, S. 1130

- **H.R.2440: FISA Court in the Sunshine Act of 2013 (Jackson-Lee, 12 Cosponsors, 11 Democratic, 1 Republican)**
 - Same as Merkley Bill, S. 1130, and Schiff, H.R. 2475

FISC REFORM BILLS:

- **S.1467: FISA Court Reform Act of 2013 (Blumenthal, 15 Cosponsors, all Democratic)**
 - Establishes an independent Special Advocate within the executive branch of the government who is empowered to:
 - protect individual rights by advocating before the FISC and the FISA Court of Review (“FISCR”) in support of “legal interpretations that minimize the scope of surveillance and the extent data collection and retention”
 - gain court-ordered access to documents and materials, including classified info
 - appeal adverse decisions of the FISC to the FISCR
 - request participation in proceedings by outside parties,
 - request public disclosure of orders, opinions, and decisions
 - FISCR presiding judge appoints the Special Advocate from a pool of 5+ candidates selected by the PCLOB
 - Creates stronger disclosure provisions than those in the Merkley and related bills:
 - *All* significant interpretations of FISA (not just interpretations of Section 215 and Section 702) must be released with redactions, or an unclassified summary must be released (no option to merely report numbers)
 - Applications to court, briefs and other materials may also be disclosed
 - Unclassified summary must meet a standard – identify with particularity each legal question addressed and how it was resolved, and describe in general terms the context in which the matter arises
 - Special Advocate can challenge the adequacy of the redacted opinion that is released and the adequacy of any unclassified summary
 - Pres. Obama endorsed Special Advocate concept but has not endorsed the bill

- **[H.R.2849](#): Privacy Advocate General Act of 2013 (Lynch, 1 Cosponsor Democrat)**
 - Creates a Privacy Advocate General who will serve as opposing counsel to the government on all applications before the FISC
 - May appeal decisions and request public disclosure of orders, opinions, and decisions
 - Special Advocate is appointed by the Chief Justice of the Supreme Court and the most senior Supreme Court Justice nominated by a President of a different political party than the President who nominated the Chief Justice

- **[S.1460](#): FISA Judge Selection Reform Act of 2013 (Blumenthal, 8 Cosponsors, all Democratic)**
 - Increases the number of FISC judges from 11 to 13
 - Requires that FISC judges be Federal District Court judges who are nominated by the Chief Judge of each of the 13 Circuit Courts, and selected by the Chief Justice of the Supreme Court with the approval of five or more Associate Justices of the Supreme Court
 - Limits FISC judges to a single seven-year term
 - Requires that FISC judges appointed by the Chief Justice of the Supreme Court be approved by at least 5 associate justices of the Supreme Court

- **[H.R.2761](#): Presidential Appointment of FISA Court Judges Act (Schiff, 9 Cosponsors, Bipartisan)**
 - Requires that FISC judges be appointed by the President with the advice and consent of the Senate

- **[H.R.2586](#): FISA Court Accountability Act (Cohen, 11 Cosponsors 10 Democrat 1 Republican)**
 - Requires that FISC be composed of 11 judges, with 3 appointed by the Chief Judge of the Supreme Court and 2 appointed by the party leaders of each chamber of Congress
 - Requires the Attorney General to submit all FISC opinions to Congress