

May 14, 2014

Speaker John Boehner
Minority Leader Nancy Pelosi
United States House of Representatives

Majority Leader Harry Reid
Minority Leader Mitch McConnell
United States Senate

Chairman Pete Sessions
Ranking Member Louise Slaughter
Committee on Rules
United States House of Representatives

Chairman Patrick Leahy
Ranking Member Charles Grassley
Committee on the Judiciary
United States Senate

Chairman Bob Goodlatte
Ranking Member John Conyers, Jr.
Committee on the Judiciary
United States House of Representatives

The Honorable James Sensenbrenner
Member
United States House of Representatives

We, the undersigned organizations, applaud the House Judiciary Committee's unanimous support for ending the collection of virtually all Americans' call records under section 215 of the PATRIOT Act. But we strongly encourage you to restore the original USA FREEDOM Act's transparency requirements, which were omitted from the manager's amendment that the full House of Representatives will consider.

The original USA FREEDOM Act required public, annual reports from the government that included the total or a good faith estimate, rounded to the nearest 100, of the number of individuals and U.S. persons:

- Who were subjected to electronic surveillance conducted under a Foreign Intelligence Surveillance Court (FISC) order;
- Who were targeted by the use of a pen register or trap and trace device;
- Whose communications were produced under the "business records" provision of section 215 of the PATRIOT Act;
- Whose communications were collected under section 702, 703 or 704 of the Foreign Intelligence Surveillance Act; and
- Whose communications were reviewed or accessed by a federal agent or officer after being collected under the above authorities.¹

The deletion of these requirements, and similar government reporting requirements for National Security letters,² leaves the American public in the dark about the likelihood that the NSA has access to their phone and e-mail records. This is particularly problematic in light of the revised USA FREEDOM Act's authorization for collection of the call records of numbers at least "two hops" away from a selector. The Privacy and Civil Liberties Oversight Board has estimated that

¹ USA FREEDOM Act as introduced, sec. 602.

² *Id.*, sec. 603.

“two hop” collection could lead to millions of Americans’ telephone records being stored in the NSA’s databases.³

Moreover, the text of whatever surveillance law Congress passes may be very different from the Executive Branch’s and the Foreign Intelligence Surveillance Court’s interpretation of that law—just as was the case with section 215 of the original PATRIOT Act. The revised USA FREEDOM Act provides for some increased disclosure of FISC opinions, but unlike the original bill it does not create an Office of the Special Advocate with the right to participate in the court’s deliberations, appeal the court’s decisions, or determine which opinions are significant enough to warrant public disclosure.

We recognize that some compromises were necessary to move any surveillance bill to the floor. But they increase the importance of restoring the transparency provisions of the original USA FREEDOM Act, to verify that the NSA actually ends bulk collection instead of finding new loopholes to exploit.

Thank you for your consideration.

Sincerely,

American Association of Law Libraries
American Library Association
Association of Research Libraries
Center for Democracy and Technology
Center for Effective Government
Citizens for Responsibility and Ethics in Washington—CREW
The Constitution Project
Defending Dissent Foundation
Freedom of the Press Foundation
Fund for Constitutional Government
Government Accountability Project—GAP
OpenTheGovernment.org
Project On Government Oversight—POGO
Sunlight Foundation

³ Privacy and Civil Liberties Oversight Board, *Report on the Telephone Records Program Conducted Under Section 215 of the USA PATRIOT Act and on the Operations of the Foreign Intelligence Surveillance Court*, Jan. 23, 2014, at 29-31, 161-64.