



Section 215 of the Patriot Act

Section 215 of the USA PATRIOT Act allows the government to obtain a secret order from the Foreign Intelligence Surveillance Court (FISC) requiring third parties like telephone companies to hand over any records or other “tangible thing” if deemed “relevant” to an international terrorism, counterespionage, or foreign intelligence investigation. In 2013, the Snowden revelations demonstrated that the government had relied on Section 215 for years to conduct mass surveillance of billions of Americans’ domestic telephone call detail records (showing who called whom and when). After a federal appeals court ruled that the government’s interpretation of Section 215 was “unprecedented and unwarranted,” the 2015 USA FREEDOM Act amended Section 215 to limit government access to these records.

Section 215 sunsets on December 15, 2019 (in addition to two other PATRIOT Act provisions). Allowing a sunset would mean a return to the status quo before the passage of the PATRIOT Act in 2001.

Transparency First

Before lawmakers can decide whether to allow this provision to sunset entirely, to reauthorize the programs without changes, or to include reforms along with reauthorization, Congress and the public need more information. USA FREEDOM includes several transparency and reporting requirements. The public reports have provided some data about how Section 215 is used, but critical disclosures are still missing.

For example, the government has reported the number of FISC orders issued pursuant to Section 215 in FY2016 and FY2017 and the number of call detail records (CDRs) collected pursuant to these orders. According to [ODNI's 2017 Transparency Report](#), the government collected 534 million CDRs in 2017, up from 151 million in 2016. However, the government has [NOT released](#) the number of “unique identifiers” (telephone numbers) related to these CDRs, even though it is *required* to do so under existing law. So it remains unclear how many innocent people have been subjected to this invasive form of NSA surveillance. It is also unclear why these CDR numbers increased so drastically. Troublingly, despite previous testimony to the contrary, the government now [claims](#) it “lacks the technical capability” to release this information.

Additionally, the NSA announced in 2018 that it [received](#) large numbers of CDRs it should not have, and that these “[technical irregularities](#)” began in 2015. In response, the NSA deleted **every single** record it had collected since 2015. The agency claims it solved the problem going forward, but has failed to provide evidence of any change.

Questions for the NSA

Senators Wyden and Paul recently sent a [letter](#) demanding an explanation of the NSA’s technical irregularities. Before drafting any legislation on Section 215 reauthorization, Congress must obtain a complete response to their questions as well as require the NSA to provide:

- The number of unique identifiers in the CDR data set.
- The methodology used to count CDRs, and why there was such a massive jump between 2016 and 2017.
- The number of queries conducted by the FBI of 215 data using US Person identifiers.
- A report on the types of records collected under the business records authority of Section 215 and whether or not content is included in those records.
- Confirmation on whether CDRs include text messages, VOIP calls, etc.
- Any remaining unreleased FISC opinions interpreting Section 215 after USA FREEDOM reforms passed, in declassified form.

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