



## Urgent Reforms to Section 215 of the USA PATRIOT Act

Section 215 of the PATRIOT Act allows the government to obtain a secret court order requiring third parties, such as telephone providers, Internet providers, and financial institutions, to hand over business records or any other “tangible thing” deemed “relevant” to an international terrorism, counterespionage, or foreign intelligence investigation.

The 2013 Snowden revelations demonstrated that the executive branch 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).

In addition to two other provisions, the authority for Section 215 sunsets on December 15, 2019.

### End Ongoing Suspicionless Collection of Call Detail Records

In 2015, a federal appeals court held that NSA’s interpretation of Section 215 to conduct its dragnet surveillance was “[unprecedented and unwarranted](#).” Despite the passage of the 2015 USA Freedom Act, which modified the government’s authority to conduct the CDR program, NSA continued to collect hundreds of millions of records — 534 million records in 2017 alone. And in 2018, the NSA was [compelled to delete millions of records](#) after learning that data had been collected from phone service providers without legal authority.

While the NSA announced it would purge all these records and halt the program, [documents](#) obtained by the ACLU in June 2019 have revealed that last year the NSA had yet another “compliance incident” resulting in the collection of yet more unauthorized records of Americans’ phone calls.

Prior to passage of USA FREEDOM in 2105, both the [Privacy and Civil Liberties Board](#) and the [President’s Review Group on Intelligence and Communications Technologies](#) concluded that the NSA’s mass telephone records program was neither essential nor effective in the government’s counterterrorism investigations.

### Release All Significant FISC Opinions

The USA Freedom Act directed the government to make all “significant” or “novel” Foreign Intelligence Surveillance Court opinions publicly available to the greatest extent practicable. It is clear from the written text and from statements from members during floor debate that this included opinions written before the passage of USA Freedom.

Nonetheless, only a handful of opinions from the court – written after 2015 – have been published. The executive branch should clarify how it determines which opinions are significant or novel enough to be published, and it should disclose how many opinions remain completely secret. In addition, the Department of Justice should disclose Office of Legal Counsel opinions relevant to its interpretation of Section 215 or the USA Freedom Act provisions.

### Demand Real Transparency

In 2018, the Department of Justice obtained 56 Section 215 orders for “traditional” business records, resulting in the collection of records containing nearly 215,000 “unique identifiers,” up from only 87,000 in 2017. The government has not disclosed what it considers a unique identifier or described what sorts of personal information the records contain.

In light of the NSA’s continued failures to operate within the bounds of the law, and that the call detail records program is neither essential nor effective, Congress should take this opportunity to end the practice of ongoing, suspicionless collection of Americans’ phone records entirely. It should also demand real transparency about other uses of Section 215 and clarify its direction to release FISC opinions.

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