

Joint Testimony Of The Department Of Justice,  
The Office Of The Director Of National Intelligence, The National Security Agency, And The  
Federal Bureau Of Investigation

U.S. Senate Select Committee on Intelligence

June 5, 2014

Chairman Feinstein, Vice Chairman Chambliss, and distinguished members of the Committee, I am very pleased to appear before you to express the Administration's support for the USA Freedom Act, H.R. 3361, as recently passed by the House of Representatives. I appreciate this committee's leadership and the considerable effort that it has dedicated over the past year working with us to explore how we can increase the confidence of our fellow Americans that their privacy is being protected, while providing our intelligence agencies with the authorities they need to acquire the foreign intelligence that is so important to our national security.

The bill passed by the House last month would make some significant changes to provisions of the Foreign Intelligence Surveillance Act (FISA) that we believe will help us meet these objectives. Among other provisions, the bill would prohibit bulk collection of information under Section 215, the National Security Letter statutes and the pen register/trap and trace provision of FISA. It replaces the bulk telephony metadata collection program with a new framework that preserves the capabilities we need without the government holding this bulk metadata. To be clear, the President called for this transition not because the program was illegal or was being abused, but rather to give the public greater confidence that their privacy is appropriately protected, while maintaining the tools our intelligence and law enforcement agencies need to keep us safe.

The bill would also provide greater transparency to the public concerning some of our intelligence collection activities

and authorize the Foreign Intelligence Surveillance Court (FISC) to appoint an independent amicus curiae, in appropriate cases, so that alternative views may be heard.

Today I'd like to spend just a few minutes describing some of the key provisions of the House bill, and then I'd be happy to take your questions.

As I have mentioned, H.R. 3361 establishes a new mechanism under Section 215 that permits the government to access telephony metadata without having to collect it in bulk. It includes all of the key attributes that were identified by the President in March for a new program, including, in particular, a requirement that, absent an emergency situation, the government would obtain the records only pursuant to individual orders from the FISC approving the use of specific selection terms for such

queries, and only if a judge agrees that the government has established reasonable articulable suspicion that the term is associated with a foreign terrorist group.

As I said before, and it's worth repeating, the bill's prohibition of bulk collection extends to *all* bulk collection of records pursuant to Section 215 going forward, as well as under the National Security Letter statutes and the pen register/trap-and-trace provision of FISA. Under each of these authorities, the government would be required to use a "specific selection term" as the basis for production of the records or information the government seeks.

The bill defines a "specific selection term" as "a discrete term, such as a term specifically identifying a person, entity,

account, address, or device, used by the government to limit the scope of the information or tangible things sought pursuant to the statute authorizing the provision of such information or tangible things to the government.” This definition clearly prevents bulk collection under these authorities, including collection of the sort that has been conducted with respect to telephony and internet metadata under Section 215 and the pen/trap provision of FISA. While I have heard people say it would allow the government to seek all of the phone records for a particular zip code, that is not the case. That would be the type of indiscriminate bulk collection that this bill is designed to end.

At the same time, the bill does preserve the Government’s ability to collect information in ways necessary to identify and disrupt the threats we face. For example, if the FBI learns that

an unknown suspect intends to build an improvised explosive device using ball bearings and fertilizer, this bill would enable the FBI to obtain sales records for these items from particular stores in the relevant area that sell them. Or if the FBI becomes aware that an unidentified terrorist suspect spent several nights at a particular hotel, this bill would allow the FBI to request the hotel's guest records for those particular nights. As the House Permanent Select Committee on Intelligence noted in its report on H.R. 3361, "'bulk' collection means indiscriminate acquisition. It does not mean the acquisition of a large number of communications records or other tangible things." The bill's definition of "specific selection term" recognizes that distinction.

In addition, other provisions of H.R. 3361 would create unprecedented transparency and further enhance oversight of

our intelligence collection activities. I'd like to highlight just a few of them:

First, the bill builds on what the Government has already committed to make public regarding the use of national security authorities. In addition to codifying the Director of National Intelligence's commitment to release annual figures, the bill essentially codifies the Department of Justice's January framework for reporting by providers, but adds an additional option for reporting broken down by authority.

Second, the bill would require a declassification review of any FISC opinions, orders, or decisions that include a significant construction or interpretation of FISA, and it would direct the government to make such opinions and orders publicly available to the greatest extent practicable. This requirement would, for

example, include an opinion that construes or interprets the term “specific selection term.” If a particular opinion cannot be made public for national security reasons, an unclassified summary would be required.

Third, the legislation would create a significant new mechanism to ensure that the FISA Court and the FISA Court of Review receive independent, third-party input in the consideration of novel or significant matters. Beyond the existing statutory authority for providers to challenge orders that they receive pursuant to FISA, the legislation would provide a mechanism for these courts to appoint an *amicus curiae* to assist the court in the consideration of any application for an order or review that presents a novel or significant interpretation of the law, unless they issue a written finding that such appointment is not appropriate. It also would permit these courts to appoint an

*amicus* in any other case as they deem appropriate. The courts would be required to designate no fewer than five individuals who possess the expertise to serve in this capacity, provided they are deemed eligible for the necessary security clearances. This would ensure that the courts hear more than just the Government's view on significant issues related to intelligence collection, technology, civil liberties and privacy.

In sum, we support the USA Freedom Act as an effective means of addressing some of the concerns that have been raised about the impact of our intelligence collection activities on privacy while preserving the authorities we need for national security. We urge the Committee to give the House bill serious consideration, as soon as possible, consistent with this Committee's important role.

Thank you for the opportunity to present our views, and I'd be happy to take your questions.