To enhance transparency for certain surveillance programs authorized by the Foreign Intelligence Surveillance Act of 1978 and for other purposes.

IN THE SENATE OF THE UNITED STATES
OCTOBER 30, 2013
Mr. FRANKEN (for himself and Mr. HELLER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL
To enhance transparency for certain surveillance programs authorized by the Foreign Intelligence Surveillance Act of 1978 and for other purposes.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.
This Act may be cited as the “Surveillance Trans-
parency Act of 2013”.

SEC. 2. ENHANCED PUBLIC REPORTING FOR ORDERS
UNDER THE FOREIGN INTELLIGENCE SUR-
VEILLANCE ACT OF 1978.
(a) ENHANCED REPORTING FOR ELECTRONIC SUR-
VEILLANCE ORDERS.—Section 107 of the Foreign Intel-
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... Intelligence Surveillance Act of 1978 (50 U.S.C. 1807) is amended to read as follows:

SEC. 107. REPORT OF ELECTRONIC SURVEILLANCE.

(a) In General.—In April of each year, the Attorney General shall transmit to the Administrative Office of the United States Court and to Congress a report setting forth with respect to the preceding calendar year—

(1) the total number of applications made for orders and extensions of orders approving electronic surveillance under this title;

(2) the total number of such orders and extensions either granted, modified, or denied;

(3) the total number of individuals who were subject to electronic surveillance conducted under an order entered under this title, provided that if this number is fewer than 500, it shall exclusively be expressed as a numerical range of ‘fewer than 500’ and shall not be expressed as an individual number; and

(4) the total number of citizens of the United States and aliens lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20))) who were subject to electronic surveillance conducted under an order entered under this
title, provided that if this number is fewer than 500,
it shall exclusively be expressed as a numerical range
of ‘fewer than 500’ and shall not be expressed as an
individual number.

“(b) FORM OF REPORT.—Each report required by
this section shall be submitted in unclassified form and
shall be made available to the public 7 days after the date
such report is submitted to Congress.”.

(b) ENHANCED REPORTING FOR PEN REGISTERS
AND TRAP AND TRACE DEVICES.—Section 406 of the
Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
1846) is amended by adding at the end the following:

“(c) ANNUAL REPORT ON USE OF PEN REGISTER
AND TRAP AND TRACE DEVICES.—

“(1) REQUIREMENT FOR REPORT.—Except as
provided in paragraph (2), in April of each year, the
Attorney General shall submit to Congress a report
setting forth with respect to the preceding year—

“(A) the total number of applications made
for orders approving the use of a pen register
and trap and trace devices under this title;

“(B) the total number of such orders ei-
ther granted, modified, or denied;

“(C) a good faith estimate of the total
number of individual persons whose electronic
or wire communications information was obtained through the use of pen register or trap and trace devices authorized under an order entered under this title;

“(D) good faith estimates of the total numbers of United States persons—

“(i) whose electronic or wire communications information was obtained through the use of pen register or trap and trace devices authorized under an order entered under this title;

“(ii) whose electronic communications information was obtained through the use of pen register or trap and trace devices authorized under an order entered under this title, and the number of such persons whose information was subsequently reviewed or accessed by a Federal officer, employee, or agent; and

“(iii) whose wire communications information was obtained through the use of pen register or trap and trace devices authorized under an order entered under this title, and the number of such persons whose information was subsequently re-
viewed or accessed by a Federal officer, employee, or agent; and

“(E) the total number of computer-assisted search queries initiated by a Federal officer, employee, or agent in any database of electronic or wire communications information obtained through the use of a pen register or trap and trace device authorized under an order entered under this title, and the number of such queries whose search terms included information from the electronic or wire communications information of a United States person.

“(2) STATEMENT OF NUMERICAL RANGE.—If an estimate specified in subparagraphs (C) or (D) of paragraph (1) is fewer than 500, it shall exclusively be expressed as a numerical range of ‘fewer than 500’ and shall not be expressed as an individual number.

“(3) FORM OF REPORT.—Each report under this section shall be submitted in unclassified form and shall be made available to the public 7 days after the date such report is submitted to Congress.

“(4) CONSTRUCTION.—Nothing in this subsection shall be construed to authorize or in any other way affect the lawfulness or unlawfulness of
installing or using a pen register or trap and trace device.

“(5) DEFINITIONS.—In this subsection:

“(A) ELECTRONIC COMMUNICATION AND WIRE COMMUNICATION.—The terms ‘electronic communication’ and ‘wire communication’ have the meanings given those terms in section 2510 of title 18, United States Code.

“(B) INDIVIDUAL PERSON.—The term ‘individual person’ means any individual and excludes any group, entity, association, corporation, or governmental entity.

“(C) UNITED STATES PERSON.—The term ‘United States person’ means a citizen of the United States or an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20))).”.

(c) ENHANCED REPORTING FOR BUSINESS RECORDS REQUESTS.—Section 502 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1862) is amended—

(1) in subsection (b)(3), by adding at the end the following:

“(F) Records concerning electronic communications.
“(G) Records concerning wire communications.

“(H) Information described in subparagraph (A), (B), (D), (E), or (F) of section 2703(c)(2) of title 18, United States Code.”; and

(2) by amending subsection (c) to read as follows:

“(c) ANNUAL REPORT ON SECTION 501 ORDERS.—

“(1) REQUIREMENT FOR REPORT.—Except as provided in paragraph (2), in April of each year, the Attorney General shall submit to Congress a report setting forth with respect to the preceding year—

“(A) the total number of applications made for orders approving requests for the production of tangible things under section 501;

“(B) the total number of such orders either granted, modified, or denied;

“(C) a good faith estimate of the total number of individual persons whose tangible things were produced under an order entered under section 501;

“(D) good faith estimates of the total numbers of United States persons—

“(i) whose tangible things were produced under an order entered under section 501;
“(ii) who were a party to an electronic communication of which a record was produced under an order entered under section 501, and the number of such persons whose records were subsequently reviewed or accessed by a Federal officer, employee, or agent;

“(iii) who were a party to a wire communication of which a record was produced under an order entered under section 501, and the number of such persons whose records were subsequently reviewed or accessed by a Federal officer, employee, or agent; and

“(iv) who were subscribers or customers of an electronic communication service or remote computing service and whose records, as described in subparagraph (A), (B), (D), (E), or (F) of section 2703(c)(2) of title 18, United States Code, were produced under an order entered under section 501, and the number of such persons whose records were subsequently reviewed by a Federal officer, employee, or agent;
“(E) the total number of computer-assisted search queries initiated by a Federal officer, employee or agent in any database of tangible things produced under an order entered under section 501, and the number of such queries whose search terms included information from the electronic or wire communications contents or records of a United States person; and

“(F) a certification confirming that in the course of the preceding year no orders entered under section 501 were used to obtain the contents of an electronic or wire communication.

“(2) Statement of numerical range.—If an estimate described in subparagraph (C) or (D) of paragraph (1) is fewer than 500, it shall exclusively be expressed as a numerical range of ‘fewer than 500’ and shall not be expressed as an individual number.

“(3) Form of report.—Each report under this subsection shall be submitted in unclassified form and shall be made available to the public 7 days after the date such report is submitted to Congress.

“(4) Construction.—Nothing in this subsection shall be construed to authorize or in any
other way affect the lawfulness or unlawfulness of using an order for the production of tangible things under section 501 to obtain any of the items described in subparagraphs (A) through (H) of subsection (b)(3).

“(5) DEFINITIONS.—In this subsection:

“(A) IN GENERAL.—The terms 'contents', 'electronic communication', 'electronic communication service', and 'wire communication' shall have the meanings given those terms in section 2510 of title 18, United States Code.

“(B) INDIVIDUAL PERSON.—The term 'individual person' means any individual and excludes any group, entity, association, corporation, or governmental entity.

“(C) REMOTE COMPUTING SERVICE.—The term 'remote computing service' has the meaning given that term in section 2711 of title 18, United States Code.

“(D) UNITED STATES PERSON.—The term 'United States person' means a citizen of the United States or an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20))).”.
(d) Enhanced Reporting for Additional Procedures Regarding Certain Persons Outside the United States.—Section 707 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881f) is amended by adding at the end the following:

“(c) Annual Report.—

“(1) Requirement for report.—In April of each year, the Attorney General shall submit to Congress a report setting forth with respect to the preceding year—

“(A) the total number of—

“(i) directives issued under section 702;

“(ii) orders granted under section 703; and

“(iii) orders granted under section 704;

“(B) good faith estimates of the total numbers of individual persons whose electronic or wire communications or communications records were collected pursuant to—

“(i) a directive issued under section 702;

“(ii) an order granted under section 703; and

“(iii) an order granted under section 704;
“(iii) an order granted under section 704; and

“(C) good faith estimates of the total numbers of United States persons—

“(i) whose electronic or wire communications contents or records were collected pursuant to—

“(I) a directive issued under section 702;

“(II) an order granted under section 703; and

“(III) an order granted under section 704;

“(ii) who were a party to an electronic communication whose contents were collected pursuant to a directive issued under section 702, and the number of such persons whose communication contents were subsequently reviewed or accessed by a Federal officer, employee, or agent;

“(iii) who were a party to an electronic communication whose records (other than content) were collected pursuant to a directive issued under section 702, and the number of such persons whose communica-
tion records were subsequently reviewed or
accessed by a Federal officer, employee, or
agent;

“(iv) who were a party to a wire com-
munication whose contents were collected
pursuant to a directive issued under sec-
tion 702, and the number of such persons
whose communication contents were subse-
quently reviewed or accessed by a Federal
officer, employee, or agent;

“(v) who were a party to a electronic
communication whose records (other than
content) were collected pursuant to a direc-
tive issued under section 702, and the
number of such persons whose communica-
tion records were subsequently reviewed or
accessed by a Federal officer, employee, or
agent; and

“(vi) who were subscribers or cus-
tomers of an electronic communication
service or remote computing service whose
records, as described in subparagraphs
(A), (B), (D), (E), and (F) of section
2703(e)(2) of title 18, United States Code,
were produced pursuant to a directive
issued under section 702, and the number
of such persons whose records were subse-
quently reviewed or accessed by a Federal
officer, employee, or agent.

“(2) Statement of numerical range.—If
an estimate specified in subparagraphs (B) or (C) of
paragraph (1) is fewer than 500, it shall exclusively
be expressed as a numerical range of ‘fewer than
500’ and shall not be expressed as an individual
number.

“(3) Public availability.—Each report
under this subsection shall be submitted in unclassi-
fied form and shall be made available to the public
7 days after the date such report is submitted to
Congress.

“(4) Definitions.—In this subsection:

“(A) In general.—The terms ‘contents’,
‘electronic communication’, ‘electronic commu-
nication service’, and ‘wire communication’ have
the same meanings given those terms in section
2510 of title 18, United States Code.

“(B) Individual person.—The term ‘in-
dividual person’ means any individual and ex-
cludes any group, entity, association, corpora-
tion, or governmental entity.
“(C) Remote computing service.—The term ‘remote computing service’ shall have the same meaning given that term in section 2711 of title 18, United States Code.

“(D) United States person.—The term ‘United States person’ means a citizen of the United States or an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20))).

“(5) Construction.—Nothing in this subsection shall be construed to authorize or in any other way affect the lawfulness or unlawfulness of using an order or directive under section 702, 703, or 704 to collect any of the information described in subparagraph (B) or (C) of paragraph (1).”.

(e) Rules of Construction.—Nothing in this section or the amendments made by this section shall be construed—

(1) to authorize the collection of any additional information, other than public demographic data, for the purpose of complying with the reporting requirements of this section; or

(2) to authorize an amount of additional appropriations to carry out this section that is more than
the amount authorized for that purpose for fiscal
year 2013.

SEC. 3. PUBLIC DISCLOSURES OF AGGREGATE INFORMA-
TION RELATED TO ORDERS UNDER THE FOR-
EIGN INTELLIGENCE SURVEILLANCE ACT OF
1978.

(a) DISCLOSURES.—The Foreign Intelligence Surveil-
ance Act of 1978 (50 U.S.C. 1801 et seq.) is amended
by adding at the end the following:

“TITLE IX—PUBLIC DISCLOS-
URES OF AGGREGATE IN-
FORMATION

“SEC. 901. PUBLIC DISCLOSURES OF AGGREGATE INFOR-
MATION.

“(a) IN GENERAL.—Except as provided under sub-
section (c), a person that has received an order under sec-
tion 105, 402, or 501, or an order or a directive under
section 702, 703, or 704 may, every six months with re-
spect to the preceding six month period, disclose to the
public information with respect to each statutory authority
as follows:

“(1) The total number of orders or directives
received under the authority.
“(2) The percentage or total number of such orders or directives complied with, in whole or in part.

“(3) The total number of individual persons, users, or accounts whose information of any kind was produced to the Government, or was obtained or collected by the Government, under an order or directive received under the authority.

“(b) NATURE OF PRODUCTION.—Except as provided under subsection (c), a person that has received an order under section 402 or 501, or an order or a directive under section 702 may, every six months with respect to the preceding six month period, disclose to the public the total number of individual persons, users, or accounts for whom the following information was produced to the Government, or was obtained or collected by the Government, with respect to each such authority, if applicable:

“(1) The contents of electronic communications.

“(2) The contents of wire communications.

“(3) Records concerning electronic communications.

“(4) Records concerning wire communications.

“(5) Information described in subparagraph (A), (B), (D), (E), or (F) of section 2703(c)(2) of title 18.
“(c) Statement of Numerical Range.—If the total number of individual persons, users, or accounts specified in paragraph (3) of subsection (a) or in paragraphs (1), (2), (3), (4), or (5) of subsection (b) is fewer than 500, it shall exclusively be expressed as a numerical range of ‘fewer than 500’ and shall not be expressed as an individual number.

“(d) Permitted Disclosure.—No cause of action shall lie in any court against any person for making a disclosure in accordance with this section.

“(e) Construction.—Nothing in this section shall be construed—

“(1) to authorize or in any other way affect the lawfulness or unlawfulness of using an order or directive described in subsection (a) to obtain, collect, or secure the production of information described in paragraphs (1), (2), (3), (4), or (5) of subsection (b); or

“(2) to prohibit, implicitly preclude, or in any other way affect the lawfulness or unlawfulness of a disclosure not authorized by this section.

“(f) Definitions.—In this section:

“(1) in general.—The terms ‘contents’, ‘electronic communication’, and ‘wire communication’
have the meanings given those terms in section 2510
of title 18, United States Code.

“(2) INDIVIDUAL PERSON.—The term ‘indi-

vidual person’ means any individual and excludes
any group, entity, association, corporation, or gov-
ernmental entity.

“(3) PERSON.—The term ‘person’ has the

meaning given that term in section 101.”.

(b) CONFORMING AMENDMENTS.—The Foreign In-
telligence Surveillance Act of 1978 is amended—

1842(d)(2)(B)(ii)(I)), by inserting “except as per-
mitted by section 901,” before “shall not disclose”;

and

(2) in section 501(d) (50 U.S.C. 1861(d))—

(A) in paragraph (1)—

(i) in subparagraph (B), by striking

“or” at the end;

(ii) in subparagraph (C), by striking

the period at the end and inserting a semi-
colon and “or”; and

(iii) by adding at the end the fol-

lowing:

“(D) the public as permitted by section 901.”;

and
(B) in paragraph (2)(A) by inserting “sub-
paragraph (A), (B), or (C) of” after “pursuant
to”.

(e) Table of Contents Amendment.—The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by adding at the end the following:

“TITLE IX—PUBLIC DISCLOSURES OF AGGREGATE INFORMATION

“Sec. 901. Public disclosures of aggregate information.”.