

113TH CONGRESS  
1ST SESSION

# S. 1621

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

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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

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## A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Surveillance Trans-  
5 parency Act of 2013”.

6 **SEC. 2. ENHANCED PUBLIC REPORTING FOR ORDERS**  
7 **UNDER THE FOREIGN INTELLIGENCE SUR-**  
8 **VEILLANCE ACT OF 1978.**

9 (a) ENHANCED REPORTING FOR ELECTRONIC SUR-  
10 VEILLANCE ORDERS.—Section 107 of the Foreign Intel-

1 liganee Surveillance Act of 1978 (50 U.S.C. 1807) is  
2 amended to read as follows:

3 **“SEC. 107. REPORT OF ELECTRONIC SURVEILLANCE.**

4 “(a) IN GENERAL.—In April of each year, the Attor-  
5 ney General shall transmit to the Administrative Office  
6 of the United States Court and to Congress a report set-  
7 ting forth with respect to the preceding calendar year—

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

11 “(2) the total number of such orders and exten-  
12 sions either granted, modified, or denied;

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

20 “(4) the total number of citizens of the United  
21 States and aliens lawfully admitted for permanent  
22 residence (as defined in section 101(a)(20) of the  
23 Immigration and Nationality Act (8 U.S.C.  
24 1101(a)(20))) who were subject to electronic surveil-  
25 lance conducted under an order entered under this

1 title, provided that if this number is fewer than 500,  
2 it shall exclusively be expressed as a numerical range  
3 of ‘fewer than 500’ and shall not be expressed as an  
4 individual number.

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

9 (b) ENHANCED REPORTING FOR PEN REGISTERS  
10 AND TRAP AND TRACE DEVICES.—Section 406 of the  
11 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.  
12 1846) is amended by adding at the end the following:

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

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

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

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

24 “(C) a good faith estimate of the total  
25 number of individual persons whose electronic

1 or wire communications information was ob-  
2 tained through the use of pen register or trap  
3 and trace devices authorized under an order en-  
4 tered under this title;

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

7 “(i) whose electronic or wire commu-  
8 nications information was obtained  
9 through the use of pen register or trap and  
10 trace devices authorized under an order en-  
11 tered under this title;

12 “(ii) whose electronic communications  
13 information was obtained through the use  
14 of pen register or trap and trace devices  
15 authorized under an order entered under  
16 this title, and the number of such persons  
17 whose information was subsequently re-  
18 viewed or accessed by a Federal officer,  
19 employee, or agent; and

20 “(iii) whose wire communications in-  
21 formation was obtained through the use of  
22 pen register or trap and trace devices au-  
23 thorized under an order entered under this  
24 title, and the number of such persons  
25 whose information was subsequently re-

1 viewed or accessed by a Federal officer,  
2 employee, or agent; and

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

13 “(2) STATEMENT OF NUMERICAL RANGE.—If  
14 an estimate specified in subparagraphs (C) or (D) of  
15 paragraph (1) is fewer than 500, it shall exclusively  
16 be expressed as a numerical range of ‘fewer than  
17 500’ and shall not be expressed as an individual  
18 number.

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

23 “(4) CONSTRUCTION.—Nothing in this sub-  
24 section shall be construed to authorize or in any  
25 other way affect the lawfulness or unlawfulness of

1 installing or using a pen register or trap and trace  
2 device.

3 “(5) DEFINITIONS.—In this subsection:

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

9 “(B) INDIVIDUAL PERSON.—The term ‘in-  
10 dividual person’ means any individual and ex-  
11 cludes any group, entity, association, corpora-  
12 tion, or governmental entity.

13 “(C) UNITED STATES PERSON.—The term  
14 ‘United States person’ means a citizen of the  
15 United States or an alien lawfully admitted for  
16 permanent residence (as defined in section  
17 101(a)(20) of the Immigration and Nationality  
18 Act (8 U.S.C. 1101(a)(20))).”.

19 (c) ENHANCED REPORTING FOR BUSINESS RECORDS  
20 REQUESTS.—Section 502 of the Foreign Intelligence Sur-  
21 veillance Act of 1978 (50 U.S.C. 1862) is amended—

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

24 “(F) Records concerning electronic communica-  
25 tions.

1 “(G) Records concerning wire communications.

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

5 (2) by amending subsection (c) to read as fol-  
6 lows:

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

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

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

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

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

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

23 “(i) whose tangible things were pro-  
24 duced under an order entered under sec-  
25 tion 501;

1           “(ii) who were a party to an electronic  
2           communication of which a record was pro-  
3           duced under an order entered under sec-  
4           tion 501, and the number of such persons  
5           whose records were subsequently reviewed  
6           or accessed by a Federal officer, employee,  
7           or agent;

8           “(iii) who were a party to a wire com-  
9           munication of which a record was produced  
10          under an order entered under section 501,  
11          and the number of such persons whose  
12          records were subsequently reviewed or  
13          accessed by a Federal officer, employee, or  
14          agent; and

15          “(iv) who were subscribers or cus-  
16          tomers of an electronic communication  
17          service or remote computing service and  
18          whose records, as described in subpara-  
19          graph (A), (B), (D), (E), or (F) of section  
20          2703(c)(2) of title 18, United States Code,  
21          were produced under an order entered  
22          under section 501, and the number of such  
23          persons whose records were subsequently  
24          reviewed by a Federal officer, employee, or  
25          agent;



1           “(E) the total number of computer-assisted  
2           search queries initiated by a Federal officer,  
3           employee or agent in any database of tangible  
4           things produced under an order entered under  
5           section 501, and the number of such queries  
6           whose search terms included information from  
7           the electronic or wire communications contents  
8           or records of a United States person; and

9           “(F) a certification confirming that in the  
10          course of the preceding year no orders entered  
11          under section 501 were used to obtain the con-  
12          tents of an electronic or wire communication.

13          “(2) STATEMENT OF NUMERICAL RANGE.—If  
14          an estimate described in subparagraph (C) or (D) of  
15          paragraph (1) is fewer than 500, it shall exclusively  
16          be expressed as a numerical range of ‘fewer than  
17          500’ and shall not be expressed as an individual  
18          number.

19          “(3) FORM OF REPORT.—Each report under  
20          this subsection shall be submitted in unclassified  
21          form and shall be made available to the public 7  
22          days after the date such report is submitted to Con-  
23          gress.

24          “(4) CONSTRUCTION.—Nothing in this sub-  
25          section shall be construed to authorize or in any

1 other way affect the lawfulness or unlawfulness of  
2 using an order for the production of tangible things  
3 under section 501 to obtain any of the items de-  
4 scribed in subparagraphs (A) through (H) of sub-  
5 section (b)(3).

6 “(5) DEFINITIONS.—In this subsection:

7 “(A) IN GENERAL.—The terms ‘contents’,  
8 ‘electronic communication’, ‘electronic commu-  
9 nication service’, and ‘wire communication’ shall  
10 have the meanings given those terms in section  
11 2510 of title 18, United States Code.

12 “(B) INDIVIDUAL PERSON.—The term ‘in-  
13 dividual person’ means any individual and ex-  
14 cludes any group, entity, association, corpora-  
15 tion, or governmental entity.

16 “(C) REMOTE COMPUTING SERVICE.—The  
17 term ‘remote computing service’ has the mean-  
18 ing given that term in section 2711 of title 18,  
19 United States Code.

20 “(D) UNITED STATES PERSON.—The term  
21 ‘United States person’ means a citizen of the  
22 United States or an alien lawfully admitted for  
23 permanent residence (as defined in section  
24 101(a)(20) of the Immigration and Nationality  
25 Act (8 U.S.C. 1101(a)(20))).”.

1 (d) ENHANCED REPORTING FOR ADDITIONAL PRO-  
2 CEDURES REGARDING CERTAIN PERSONS OUTSIDE THE  
3 UNITED STATES.—Section 707 of the Foreign Intelligence  
4 Surveillance Act of 1978 (50 U.S.C. 1881f) is amended  
5 by adding at the end the following:

6 “(c) ANNUAL REPORT.—

7 “(1) REQUIREMENT FOR REPORT.—In April of  
8 each year, the Attorney General shall submit to Con-  
9 gress a report setting forth with respect to the pre-  
10 ceding year—

11 “(A) the total number of—

12 “(i) directives issued under section  
13 702;

14 “(ii) orders granted under section  
15 703; and

16 “(iii) orders granted under section  
17 704;

18 “(B) good faith estimates of the total num-  
19 bers of individual persons whose electronic or  
20 wire communications or communications  
21 records were collected pursuant to—

22 “(i) a directive issued under section  
23 702;

24 “(ii) an order granted under section  
25 703; and

1           “(iii) an order granted under section  
2           704; and

3           “(C) good faith estimates of the total num-  
4           bers of United States persons—

5           “(i) whose electronic or wire commu-  
6           nications contents or records were collected  
7           pursuant to—

8           “(I) a directive issued under sec-  
9           tion 702;

10           “(II) an order granted under sec-  
11           tion 703; and

12           “(III) an order granted under  
13           section 704;

14           “(ii) who were a party to an electronic  
15           communication whose contents were col-  
16           lected pursuant to a directive issued under  
17           section 702, and the number of such per-  
18           sons whose communication contents were  
19           subsequently reviewed or accessed by a  
20           Federal officer, employee, or agent;

21           “(iii) who were a party to an elec-  
22           tronic communication whose records (other  
23           than content) were collected pursuant to a  
24           directive issued under section 702, and the  
25           number of such persons whose communica-

1           tion records were subsequently reviewed or  
2           accessed by a Federal officer, employee, or  
3           agent;

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

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

19          “(vi) who were subscribers or cus-  
20          tomers of an electronic communication  
21          service or remote computing service whose  
22          records, as described in subparagraphs  
23          (A), (B), (D), (E), and (F) of section  
24          2703(c)(2) of title 18, United States Code,  
25          were produced pursuant to a directive

1           issued under section 702, and the number  
2           of such persons whose records were subse-  
3           quently reviewed or accessed by a Federal  
4           officer, employee, or agent.

5           “(2) STATEMENT OF NUMERICAL RANGE.—If  
6           an estimate specified in subparagraphs (B) or (C) of  
7           paragraph (1) is fewer than 500, it shall exclusively  
8           be expressed as a numerical range of ‘fewer than  
9           500’ and shall not be expressed as an individual  
10          number.

11          “(3) PUBLIC AVAILABILITY.—Each report  
12          under this subsection shall be submitted in unclassi-  
13          fied form and shall be made available to the public  
14          7 days after the date such report is submitted to  
15          Congress.

16          “(4) DEFINITIONS.—In this subsection:

17                  “(A) IN GENERAL.—The terms ‘contents’,  
18                  ‘electronic communication’, ‘electronic commu-  
19                  nication service’, and ‘wire communication’ have  
20                  the same meanings given those terms in section  
21                  2510 of title 18, United States Code.

22                  “(B) INDIVIDUAL PERSON.—The term ‘in-  
23                  dividual person’ means any individual and ex-  
24                  cludes any group, entity, association, corpora-  
25                  tion, or governmental entity.

1           “(C) REMOTE COMPUTING SERVICE.—The  
2           term ‘remote computing service’ shall have the  
3           same meaning given that term in section 2711  
4           of title 18, United States Code.

5           “(D) UNITED STATES PERSON.—The term  
6           ‘United States person’ means a citizen of the  
7           United States or an alien lawfully admitted for  
8           permanent residence (as defined in section  
9           101(a)(20) of the Immigration and Nationality  
10          Act (8 U.S.C. 1101(a)(20))).

11          “(5) CONSTRUCTION.—Nothing in this sub-  
12          section shall be construed to authorize or in any  
13          other way affect the lawfulness or unlawfulness of  
14          using an order or directive under section 702, 703,  
15          or 704 to collect any of the information described in  
16          subparagraph (B) or (C) of paragraph (1).”.

17          (e) RULES OF CONSTRUCTION.—Nothing in this sec-  
18          tion or the amendments made by this section shall be con-  
19          strued—

20                 (1) to authorize the collection of any additional  
21                 information, other than public demographic data, for  
22                 the purpose of complying with the reporting require-  
23                 ments of this section; or

24                 (2) to authorize an amount of additional appro-  
25                 priations to carry out this section that is more than

1 the amount authorized for that purpose for fiscal  
2 year 2013.

3 **SEC. 3. PUBLIC DISCLOSURES OF AGGREGATE INFORMA-**  
4 **TION RELATED TO ORDERS UNDER THE FOR-**  
5 **EIGN INTELLIGENCE SURVEILLANCE ACT OF**  
6 **1978.**

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

10 **“TITLE IX—PUBLIC DISCLO-**  
11 **SURES OF AGGREGATE IN-**  
12 **FORMATION**

13 **“SEC. 901. PUBLIC DISCLOSURES OF AGGREGATE INFOR-**  
14 **MATION.**

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

22 “(1) The total number of orders or directives  
23 received under the authority.



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

4           “(3) The total number of individual persons,  
5 users, or accounts whose information of any kind  
6 was produced to the Government, or was obtained or  
7 collected by the Government, under an order or di-  
8 rective received under the authority.

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

18           “(1) The contents of electronic communications.

19           “(2) The contents of wire communications.

20           “(3) Records concerning electronic communica-  
21 tions.

22           “(4) Records concerning wire communications.

23           “(5) Information described in subparagraph  
24 (A), (B), (D), (E), or (F) of section 2703(c)(2) of  
25 title 18.

1       “(c) STATEMENT OF NUMERICAL RANGE.—If the  
2 total number of individual persons, users, or accounts  
3 specified in paragraph (3) of subsection (a) or in para-  
4 graphs (1), (2), (3), (4), or (5) of subsection (b) is fewer  
5 than 500, it shall exclusively be expressed as a numerical  
6 range of ‘fewer than 500’ and shall not be expressed as  
7 an individual number.

8       “(d) PERMITTED DISCLOSURE.—No cause of action  
9 shall lie in any court against any person for making a dis-  
10 closure in accordance with this section.

11       “(e) CONSTRUCTION.—Nothing in this section shall  
12 be construed—

13               “(1) to authorize or in any other way affect the  
14 lawfulness or unlawfulness of using an order or di-  
15 rective described in subsection (a) to obtain, collect,  
16 or secure the production of information described in  
17 paragraphs (1), (2), (3), (4), or (5) of subsection  
18 (b); or

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

22       “(f) DEFINITIONS.—In this section:

23               “(1) IN GENERAL.—The terms ‘contents’, ‘elec-  
24 tronic communication’, and ‘wire communication’

1 have the meanings given those terms in section 2510  
2 of title 18, United States Code.

3 “(2) INDIVIDUAL PERSON.—The term ‘indi-  
4 vidual person’ means any individual and excludes  
5 any group, entity, association, corporation, or gov-  
6 ernmental entity.

7 “(3) PERSON.—The term ‘person’ has the  
8 meaning given that term in section 101.”.

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

11 (1) in section 402(d)(2)(B)(ii)(I) (50 U.S.C.  
12 1842(d)(2)(B)(ii)(I)), by inserting “except as per-  
13 mitted by section 901,” before “shall not disclose”;  
14 and

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

16 (A) in paragraph (1)—

17 (i) in subparagraph (B), by striking  
18 “or” at the end;

19 (ii) in subparagraph (C), by striking  
20 the period at the end and inserting a semi-  
21 colon and “or”; and

22 (iii) by adding at the end the fol-  
23 lowing:

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

25 and

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

4           (c) TABLE OF CONTENTS AMENDMENT.—The table  
5 of contents in the first section of the Foreign Intelligence  
6 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is  
7 amended by adding at the end the following:

“TITLE IX—PUBLIC DISCLOSURES OF AGGREGATE INFORMATION  
“Sec. 901. Public disclosures of aggregate information.”.

○