

§1862. *Access to certain business records for foreign intelligence and international terrorism investigations*

(a) *Application for authorization*

The Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an application for an order authorizing a common carrier, public accommodation facility, physical storage facility, or vehicle rental facility to release records in its possession for an investigation to gather foreign intelligence information or an investigation concerning international terrorism which investigation is being conducted by the Federal Bureau of Investigation under such guidelines as the Attorney General approves pursuant to Executive Order No. 12333, or a successor order.

(b) *Recipient and contents of application*

Each application under this section—

(1) shall be made to—

(A) a judge of the court established by section 1803(a) of this title; or

(B) a United States Magistrate Judge under chapter 43 of title 28 who is publicly designated by the Chief Justice of the United States to have the power to hear applications and grant orders for the release of records under this section on behalf of a judge of that court; and

(2) shall specify that—

(A) the records concerned are sought for an investigation described in subsection (a); and

(B) there are specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power.

(c) *Ex parte judicial order of approval*

(1) Upon application made pursuant to this section, the judge shall enter an ex parte order as requested, or as modified, approving the release of records if the judge finds that the application satisfies the requirements of this section.

(2) An order under this subsection shall not disclose that it is issued for purposes of an investigation described in subsection (a) of this section.

(d) *Compliance; nondisclosure*

(1) Any common carrier, public accommodation facility, physical storage facility, or vehicle rental facility shall comply with an order under subsection (c).

(2) No common carrier, public accommodation facility, physical storage facility, or vehicle rental facility, or officer, employee, or agent thereof, shall disclose to any person (other than those officers, agents, or employees of such common carrier, public accommodation facility, physical storage facility, or vehicle rental facility necessary to fulfill the requirement to disclose information to the Federal Bureau of Investigation under this section) that the Federal Bureau of Investigation has sought or obtained records pursuant to an order under this section.

See 2006, 2009, 2010, and 2011 Amendment notes below.

PRIOR PROVISIONS

A prior section 1862, Pub. L. 95-511, title V, §502, as added Pub. L. 105-272, title VI, §602, Oct. 20, 1998, 112 Stat. 2411, which related to access to certain business

records for foreign intelligence and international terrorism investigations, was repealed by Pub. L. 107-56, title II, §215, Oct. 26, 2001, 115 Stat. 287. See section 1861 of this title and see Amendment of Section note above.

AMENDMENTS

2011—Pub. L. 112-14 amended directory language of Pub. L. 109-177, §102(b)(1). See 2006 Amendment note below.

Pub. L. 112-3 amended directory language of Pub. L. 109-177, §102(b)(1). See 2006 Amendment note below.

2010—Pub. L. 111-141 amended directory language of Pub. L. 109-177, §102(b)(1). See 2006 Amendment note below.

Subsec. (a). Pub. L. 111-259 substituted “an annual” for “a annual”.

2009—Pub. L. 111-118 amended directory language of Pub. L. 109-177, §102(b)(1). See 2006 Amendment note below.

2006—Pub. L. 109-177, §102(b)(1), as amended by Pub. L. 111-118, Pub. L. 111-141, Pub. L. 112-3, and Pub. L. 112-14, amended section effective June 1, 2015, so as to read as it read on Oct. 25, 2001. Prior to amendment, section related to reports to Congressional committees concerning requests for the production of tangible things under section 1861 of this title.

Subsec. (a). Pub. L. 109-177, §106(h)(1), substituted “annual basis” for “semiannual basis” and inserted “and the Committee on the Judiciary” after “and the Select Committee on Intelligence”.

Subsec. (b). Pub. L. 109-177, §106(h)(2)(A), in introductory provisions, substituted “In April of each year, the Attorney General shall submit to the House and Senate Committees on the Judiciary and the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence a report setting forth with respect to the preceding calendar year” for “On a semiannual basis, the Attorney General shall provide to the Committees on the Judiciary of the House of Representatives and the Senate a report setting forth with respect to the preceding 6-month period”.

Subsec. (b)(3). Pub. L. 109-177, §106(h)(2)(B)–(D), added par. (3).

Subsec. (c). Pub. L. 109-177, §106(h)(3), added subsec. (c).

2001—Subsecs. (a), (b)(1). Pub. L. 107-108 substituted “section 1861 of this title” for “section 1842 of this title”.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 102(b)(1) of Pub. L. 109-177 effective June 1, 2015, except that former provisions to continue in effect with respect to any particular foreign intelligence investigation that began before June 1, 2015, or with respect to any particular offense or potential offense that began or occurred before June 1, 2015, see section 102(b) of Pub. L. 109-177, set out as a note under section 1805 of this title.

§ 1863. Repealed. Pub. L. 107-56, title II, § 215, Oct. 26, 2001, 115 Stat. 287

Section, Pub. L. 95-511, title V, §503, as added Pub. L. 105-272, title VI, §602, Oct. 20, 1998, 112 Stat. 2412, related to congressional oversight. See section 1862 of this title.

SUBCHAPTER V—REPORTING REQUIREMENT

§ 1871. Semiannual report of the Attorney General

(a) **Report**

On a semiannual basis, the Attorney General shall submit to the Permanent Select Committee on Intelligence of the House of Representatives, the Select Committee on Intelligence of the Senate, and the Committees on the Judici-

ary of the House of Representatives and the Senate, in a manner consistent with the protection of the national security, a report setting forth with respect to the preceding 6-month period—

(1) the aggregate number of persons targeted for orders issued under this chapter, including a breakdown of those targeted for—

(A) electronic surveillance under section 1805 of this title;

(B) physical searches under section 1824 of this title;

(C) pen registers under section 1842 of this title;

(D) access to records under section 1861 of this title;

(E) acquisitions under section 1881b of this title; and

(F) acquisitions under section 1881c of this title;

(2) the number of individuals covered by an order issued pursuant to section 1801(b)(1)(C) of this title;

(3) the number of times that the Attorney General has authorized that information obtained under this chapter may be used in a criminal proceeding or any information derived therefrom may be used in a criminal proceeding;

(4) a summary of significant legal interpretations of this chapter involving matters before the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review, including interpretations presented in applications or pleadings filed with the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review by the Department of Justice; and

(5) copies of all decisions, orders, or opinions of the Foreign Intelligence Surveillance Court or Foreign Intelligence Surveillance Court of Review that include significant construction or interpretation of the provisions of this chapter.

(b) Frequency

The first report under this section shall be submitted not later than 6 months after December 17, 2004. Subsequent reports under this section shall be submitted semi-annually thereafter.

(c) Submissions to Congress

The Attorney General shall submit to the committees of Congress referred to in subsection (a)—

(1) a copy of any decision, order, or opinion issued by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review that includes significant construction or interpretation of any provision of this chapter, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion, not later than 45 days after such decision, order, or opinion is issued; and

(2) a copy of each such decision, order, or opinion, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion, that was issued during the 5-year period ending on July 10, 2008, and

not previously submitted in a report under subsection (a).

(d) Protection of national security

The Attorney General, in consultation with the Director of National Intelligence, may authorize redactions of materials described in subsection (c) that are provided to the committees of Congress referred to in subsection (a), if such redactions are necessary to protect the national security of the United States and are limited to sensitive sources and methods information or the identities of targets.

(e) Definitions

In this section:

(1) Foreign Intelligence Surveillance Court

The term “Foreign Intelligence Surveillance Court” means the court established under section 1803(a) of this title.

(2) Foreign Intelligence Surveillance Court of Review

The term “Foreign Intelligence Surveillance Court of Review” means the court established under section 1803(b) of this title.

(Pub. L. 95-511, title VI, § 601, as added Pub. L. 108-458, title VI, § 6002(a)(2), Dec. 17, 2004, 118 Stat. 3743; amended Pub. L. 110-261, title I, §§ 101(c)(2), 103, title IV, § 403(b)(2)(B), July 10, 2008, 122 Stat. 2459, 2460, 2474.)

AMENDMENT OF SUBSECTION (a)(1)

Pub. L. 110-261, title IV, § 403(b)(2), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112-238, § 2(a)(2), Dec. 30, 2012, 126 Stat. 1631, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a note under section 1801 of this title, effective Dec. 31, 2017, subsection (a)(1) of this section is amended to read as it read on the day before July 10, 2008.

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (c)(1), was in the original “this Act”, meaning Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

PRIOR PROVISIONS

A prior section 601 of Pub. L. 95-511 was renumbered section 701 and was set out as a note under section 1801 of this title, prior to repeal by Pub. L. 110-261.

AMENDMENTS

2008—Subsec. (a)(1)(E), (F). Pub. L. 110-261, § 101(c)(2), added subpars. (E) and (F).

Subsec. (a)(5). Pub. L. 110-261, § 103(a), substituted “, orders,” for “(not including orders)”.

Subsecs. (c), (d). Pub. L. 110-261, § 103(b), added subsecs. (c) and (d).

Subsec. (e). Pub. L. 110-261, § 103(c), added subsec. (e).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-261, title IV, § 403(b)(2), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112-238, § 2(a)(2), Dec. 30, 2012, 126 Stat. 1631, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, the amendments made by section 403(b)(2) are effective Dec. 31, 2017.

SUBCHAPTER VI—ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES

§ 1881. Definitions

(a) In general

The terms “agent of a foreign power”, “Attorney General”, “contents”, “electronic surveillance”, “foreign intelligence information”, “foreign power”, “person”, “United States”, and “United States person” have the meanings given such terms in section 1801 of this title, except as specifically provided in this subchapter.

(b) Additional definitions

(1) Congressional intelligence committees

The term “congressional intelligence committees” means—

(A) the Select Committee on Intelligence of the Senate; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

(2) Foreign Intelligence Surveillance Court; Court

The terms “Foreign Intelligence Surveillance Court” and “Court” mean the court established under section 1803(a) of this title.

(3) Foreign Intelligence Surveillance Court of Review; Court of Review

The terms “Foreign Intelligence Surveillance Court of Review” and “Court of Review” mean the court established under section 1803(b) of this title.

(4) Electronic communication service provider

The term “electronic communication service provider” means—

(A) a telecommunications carrier, as that term is defined in section 153 of title 47;

(B) a provider of electronic communication service, as that term is defined in section 2510 of title 18;

(C) a provider of a remote computing service, as that term is defined in section 2711 of title 18;

(D) any other communication service provider who has access to wire or electronic communications either as such communications are transmitted or as such communications are stored; or

(E) an officer, employee, or agent of an entity described in subparagraph (A), (B), (C), or (D).

(5) Intelligence community

The term “intelligence community” has the meaning given the term in section 3003(4) of this title.

(Pub. L. 95-511, title VII, § 701, as added Pub. L. 110-261, title I, § 101(a)(2), July 10, 2008, 122 Stat. 2437.)

REPEAL OF SECTION

Pub. L. 110-261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112-238, § 2(a)(1), Dec. 30, 2012, 126 Stat. 1631, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a note under section 1801 of this title, effective Dec. 31, 2017, this section is repealed.

PRIOR PROVISIONS

A prior section 701 of Pub. L. 95-511 was set out as a note under section 1801 of this title, prior to repeal by Pub. L. 110-261.

EFFECTIVE DATE OF REPEAL

Pub. L. 110-261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112-238, § 2(a)(1), Dec. 30, 2012, 126 Stat. 1631, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, the repeals made by section 403(b)(1) are effective Dec. 31, 2017.

§ 1881a. Procedures for targeting certain persons outside the United States other than United States persons

(a) Authorization

Notwithstanding any other provision of law, upon the issuance of an order in accordance with subsection (i)(3) or a determination under subsection (c)(2), the Attorney General and the Director of National Intelligence may authorize jointly, for a period of up to 1 year from the effective date of the authorization, the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information.

(b) Limitations

An acquisition authorized under subsection (a)—

(1) may not intentionally target any person known at the time of acquisition to be located in the United States;

(2) may not intentionally target a person reasonably believed to be located outside the United States if the purpose of such acquisition is to target a particular, known person reasonably believed to be in the United States;

(3) may not intentionally target a United States person reasonably believed to be located outside the United States;

(4) may not intentionally acquire any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States; and

(5) shall be conducted in a manner consistent with the fourth amendment to the Constitution of the United States.

(c) Conduct of acquisition

(1) In general

An acquisition authorized under subsection (a) shall be conducted only in accordance with—

(A) the targeting and minimization procedures adopted in accordance with subsections (d) and (e); and

(B) upon submission of a certification in accordance with subsection (g), such certification.

(2) Determination

A determination under this paragraph and for purposes of subsection (a) is a determination by the Attorney General and the Director of National Intelligence that exigent circumstances exist because, without immediate implementation of an authorization under subsection (a), intelligence important to the na-