

113TH CONGRESS
1ST SESSION

H. R. 2849

To amend the Foreign Intelligence Surveillance Act of 1978 to establish
an Office of the Privacy Advocate General.

IN THE HOUSE OF REPRESENTATIVES

JULY 30, 2013

Mr. LYNCH introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Select Committee on Intelligence (Permanent Select), for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Foreign Intelligence Surveillance Act of 1978
to establish an Office of the Privacy Advocate General.

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 “Privacy Advocate Gen-
5 eral Act of 2013”.

6 **SEC. 2. OFFICE OF THE PRIVACY ADVOCATE GENERAL.**

7 (a) ESTABLISHMENT.—The Foreign Intelligence Sur-
8 veillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended
9 by adding at the end the following new title:

1 **“TITLE IX—PRIVACY ADVOCATE**
2 **GENERAL**

3 **“SEC. 901. PRIVACY ADVOCATE GENERAL.**

4 “(a) OFFICE OF THE PRIVACY ADVOCATE GEN-
5 ERAL.—There is established an independent office in the
6 Executive branch to be known as the Office of the Privacy
7 Advocate General.

8 “(b) PRIVACY ADVOCATE GENERAL.—

9 “(1) APPOINTMENT.—There is a Privacy Advo-
10 cate General, who shall be the head of the Office of
11 the Privacy Advocate General, who shall be ap-
12 pointed jointly by the Chief Justice of the United
13 States and the most senior associate justice of the
14 Supreme Court appointed by a President that at the
15 time of appointment was a member of a political
16 party other than the political party of the President
17 that appointed the Chief Justice.

18 “(2) TERM.—The Privacy Advocate General
19 shall serve a term of 7 years and may be re-
20 appointed in accordance with paragraph (1).

21 “(c) DUTIES.—Notwithstanding any other provision
22 of this Act, the Privacy Advocate General—

23 “(1) shall serve as the opposing counsel with re-
24 spect to any application by the Federal Government
25 for an order or directive under this Act and any re-

1 view of a certification or targeting procedures under
2 this Act, including in any proceedings before a court
3 or review of an application, certification, or targeting
4 procedures under this Act that would otherwise be
5 conducted ex parte;

6 “(2) shall, in carrying out paragraph (1), op-
7 pose any Federal Government request for an order
8 or directive under this Act and any certification or
9 targeting procedures under this Act and argue the
10 merits of the opposition before the court concerned,
11 including any arguments relating to the constitu-
12 tionality of a provision of law under which the Fed-
13 eral Government is seeking an order or directive;
14 and

15 “(3) may request the court established under
16 subsection (a) or (b) of section 103 to make publicly
17 available an order, decision, or opinion of such court.

18 “(d) APPEALS.—The Privacy Advocate General
19 may—

20 “(1) appeal a decision of the court established
21 under subsection (a) of section 103 to the court es-
22 tablished under subsection (b) of such section; and

23 “(2) petition the Supreme Court for a writ of
24 certiorari for review of a decision of the court estab-
25 lished under section 103(b).

1 “(e) STAFF.—The Privacy Advocate General shall
 2 appoint such staff of the Office of the Privacy Advocate
 3 General as the Privacy Advocate General considers nec-
 4 essary to carry out the duties of the Privacy Advocate
 5 General.

6 “(f) SECURITY CLEARANCE.—The President shall en-
 7 sure that the Privacy Advocate General and the staff of
 8 the Office of the Privacy Advocate General appointed
 9 under subsection (b) possess appropriate security clear-
 10 ances to carry out the duties of the Privacy Advocate Gen-
 11 eral under this section.”.

12 (b) TABLE OF CONTENTS AMENDMENT.—The table
 13 of contents in the first section of the Foreign Intelligence
 14 Surveillance Act of 1978 (50 U.S.C. 1801 note) is amend-
 15 ed by adding at the end the following new items:

“TITLE IX—PRIVACY ADVOCATE GENERAL

“Sec. 901. Privacy Advocate General.”.

16 (c) CONFORMING AMENDMENT.—Section 103(b) of
 17 the Foreign Intelligence Surveillance Act of 1978 (50
 18 U.S.C. 1803(b)) is amended—

19 (1) by striking “review the denial” and insert-
 20 ing “review the approval or denial”;

21 (2) by striking “properly denied” and inserting
 22 “properly approved or denied, as the case may be”;
 23 and

1 (3) by striking “petition of the United States”
2 and inserting “petition”.

3 **SEC. 3. AUTHORITY DURING APPEALS PROCESS.**

4 (a) ELECTRONIC SURVEILLANCE.—Section 105 of
5 the Foreign Intelligence Surveillance Act of 1978 (50
6 U.S.C. 1805) is amended by adding at the end the fol-
7 lowing new subsection:

8 “(i)(1) In any case where a judge denies an applica-
9 tion under this section and the Government expresses an
10 intent to appeal that denial, the judge may temporarily
11 authorize the emergency employment of electronic surveil-
12 lance pending such appeal if the judge finds—

13 “(A) there is a reasonable argument that the
14 electronic surveillance is permissible; and

15 “(B) there are exceptional circumstances and
16 compelling evidence showing that immediate elec-
17 tronic surveillance is necessary to accomplish the
18 purpose of the electronic surveillance.

19 “(2) In any case where a judge authorizes the emer-
20 gency employment of electronic surveillance pending ap-
21 peal under paragraph (1) and the application by the Gov-
22 ernment is denied on appeal, any information gathered or
23 derived from such electronic surveillance shall be de-
24 stroyed and no such information may be received in evi-
25 dence or otherwise disclosed in any trial, hearing, or other

1 proceeding in or before any court, grand jury, department,
2 office, agency, regulatory body, legislative committee, or
3 other authority of the United States, a State, or political
4 subdivision thereof, and no information concerning any
5 United States person acquired from such surveillance shall
6 subsequently be used or disclosed in any other manner by
7 Federal officers or employees without the consent of such
8 person.”.

9 (b) PHYSICAL SEARCH.—Section 304 of the Foreign
10 Intelligence Surveillance Act of 1978 (50 U.S.C. 1824) is
11 amended by adding at the end the following new sub-
12 section:

13 “(f)(1) In any case where a judge denies an applica-
14 tion under this section and the Government expresses an
15 intent to appeal that denial, the judge may temporarily
16 authorize the emergency employment of physical search
17 pending such appeal if the judge finds—

18 “(A) there is a reasonable argument that the
19 physical search is permissible; and

20 “(B) there are exceptional circumstances and
21 compelling evidence showing that an immediate
22 physical search is necessary to accomplish the pur-
23 pose of the physical search.

24 “(2) In any case where a judge authorizes the emer-
25 gency employment of a physical search pending appeal

1 under paragraph (1) and the application by the Govern-
2 ment is denied on appeal, any information gathered or de-
3 rived from such physical search shall be destroyed and no
4 such information may be received in evidence or otherwise
5 disclosed in any trial, hearing, or other proceeding in or
6 before any court, grand jury, department, office, agency,
7 regulatory body, legislative committee, or other authority
8 of the United States, a State, or political subdivision
9 thereof, and no information concerning any United States
10 person acquired from such physical search shall subse-
11 quently be used or disclosed in any other manner by Fed-
12 eral officers or employees without the consent of such per-
13 son.”.

14 (c) PEN REGISTER AND TRAP AND TRACE.—Section
15 403 of the Foreign Intelligence Surveillance Act of 1978
16 (50 U.S.C. 1843) is amended by adding at the end the
17 following new subsection:

18 “(d)(1) In any case where a judge denies an applica-
19 tion under this section and the Government expresses an
20 intent to appeal that denial, the judge may temporarily
21 authorize installation and use of a pen register or trap
22 and trace device on an emergency basis pending such ap-
23 peal if the judge finds—

1 “(A) there is a reasonable argument that the
2 installation and use of a pen register or trap and
3 trace device is permissible; and

4 “(B) there are exceptional circumstances and
5 compelling evidence showing that immediate installa-
6 tion and use of a pen register or trap and trace de-
7 vice is necessary to accomplish the purpose of the in-
8 stallation and use of such pen register or trap and
9 trace device.

10 “(2) In any case where a judge authorizes the instal-
11 lation and use of a pen register or trap and trace device
12 on an emergency basis pending appeal under paragraph
13 (1) and the application by the Government is denied on
14 appeal, any information gathered or derived from such in-
15 stallation and use of a pen register or trap and trace de-
16 vice shall be destroyed and no such information may be
17 received in evidence or otherwise disclosed in any trial,
18 hearing, or other proceeding in or before any court, grand
19 jury, department, office, agency, regulatory body, legisla-
20 tive committee, or other authority of the United States,
21 a State, or political subdivision thereof, and no informa-
22 tion concerning any United States person acquired from
23 such installation and use of a pen register or trap and
24 trace device shall subsequently be used or disclosed in any

- 1 other manner by Federal officers or employees without the
- 2 consent of such person.”.

