

113TH CONGRESS
2D SESSION

S. 2093

To amend the Foreign Intelligence Surveillance Act of 1978 to modify the purposes of authorized collection of business records and to prohibit the bulk collection of metadata, to require judicial review of national security letters, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 6, 2014

Mr. WALSH introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Foreign Intelligence Surveillance Act of 1978 to modify the purposes of authorized collection of business records and to prohibit the bulk collection of metadata, to require judicial review of national security letters, 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 “Civil Liberties Protec-
5 tion Act”.

1 **SEC. 2. AUTHORIZED PURPOSES FOR COLLECTION OF**
2 **BUSINESS RECORDS FOR CERTAIN INVES-**
3 **TIGATIONS.**

4 (a) IN GENERAL.—Subsection (a)(1) of section 501
5 of the Foreign Intelligence Surveillance Act of 1978 (50
6 U.S.C. 1861) is amended by striking “to obtain” and all
7 that follows through “clandestine intelligence activities”
8 and inserting “to protect against international terrorism,
9 clandestine intelligence activities, or the proliferation of
10 weapons of mass destruction, or activities in preparation
11 therefor,”.

12 (b) APPLICATIONS.—Subsection (b)(2)(A) of such
13 section is amended by striking “to obtain” and all that
14 follows through “clandestine intelligence activities” and
15 inserting “to protect against international terrorism, clan-
16 destine intelligence activities, or the proliferation of weap-
17 ons of mass destruction, or activities in preparation there-
18 for,”.

19 (c) CONFORMING AMENDMENT.—The heading of
20 such section is amended by striking “**FOREIGN INTEL-**
21 **LIGENCE AND INTERNATIONAL TERRORISM INVES-**
22 **TIGATIONS**” and inserting “**INTERNATIONAL TER-**
23 **RORISM AND CERTAIN OTHER INVESTIGATIONS**”.

1 **SEC. 3. PROHIBITION ON BULK COLLECTION OF**
2 **METADATA.**

3 (a) IN GENERAL.—Subsection (b)(2)(A) of section
4 501 of the Foreign Intelligence Surveillance Act of 1978
5 (50 U.S.C. 1861), as amended by section 2(b) of this Act,
6 is further amended—

7 (1) by inserting “specific and articulable” be-
8 fore “facts showing”; and

9 (2) by inserting “of a specific individual” before
10 “(other than a threat assessment)”.

11 (b) FINDINGS AUTHORIZING ORDERS.—Subsection
12 (c)(1) of such section 501 is amended by striking “and
13 (b),” and inserting “and (b), and is reasonable in focus,
14 scope, and breadth in the requested production of mate-
15 rials pertaining to the specific individual,”.

16 (c) REPORT ON TELEPHONY METADATA DATA-
17 BASE.—

18 (1) IN GENERAL.—Not later than 180 days
19 after the date of the enactment of this Act, the Di-
20 rector of the National Security Agency shall submit
21 to Congress a report on the plans of the Agency for
22 the telephony metadata database of the Agency.

23 (2) ELEMENTS.—The report shall include the
24 following:

25 (A) The plans of the Agency for complying
26 with the requirements of section 501 of the

Foreign Intelligence Surveillance Act of 1978,
 as amended by subsection (a), with respect to
 the telephony metadata database of the Agency,
 including plans for transitioning to a database
 containing information that, except as described
 in subparagraph (B), contains only information
 which complies with such requirements, as so
 amended, and is purged of information that
 does not so comply.

(B) The plans of the Agency for retaining
 information in the database relating to on-going
 lawsuits with respect to the database.

**SEC. 4. MODIFICATION OF REQUIREMENTS AND AUTHORI-
 TIES RELATING TO NONDISCLOSURE RE-
 QUIREMENTS IN REQUESTS FOR ACCESS TO
 BUSINESS RECORDS FOR INTERNATIONAL
 TERRORISM AND CERTAIN OTHER INVES-
 TIGATIONS.**

(a) JUDICIAL APPROVAL REQUIRED FOR ORIGINAL
 IMPOSITION OF NONDISCLOSURE REQUIREMENTS.—Sub-
 section (d) of section 501 of the Foreign Intelligence Sur-
 veillance Act of 1978 (50 U.S.C. 1861) is amended—

(1) in paragraph (1), by striking “No person”
 and inserting “Subject to paragraph (2), no person”;

1 (2) by redesignating paragraph (2) as para-
2 graph (3); and

3 (3) by inserting after paragraph (1) the fol-
4 lowing new paragraph (2):

5 “(2) Nondisclosure requirements may be included in
6 an order under this section only if the judge entering the
7 order finds that there are reasonable grounds to believe
8 that a violation of such nondisclosure requirements
9 would—

10 “(A) significantly threaten national security;

11 “(B) interfere with an ongoing investigation;

12 “(C) endanger the life or physical safety of any
13 person; or

14 “(D) impair diplomatic relations.”.

15 (b) EFFECTIVE PERIOD OF NONDISCLOSURE RE-
16 QUIREMENTS.—Such subsection is further amended by
17 adding at the end the following new paragraph:

18 “(4) Nondisclosure requirements under this sub-
19 section—

20 “(A) may not be effective for a period of more
21 than 180 days; and

22 “(B) may be renewed for additional 180-day pe-
23 riods if a judge serving in the pool established by
24 section 103(a) cannot make a finding described in
25 subsection (f)(2)(C)(i) with respect to such non-

1 disclosure requirements at the time of such re-
 2 newal.”.

3 (c) JUDICIAL REVIEW OF NONDISCLOSURE RE-
 4 QUIREMENTS AFTER ISSUANCE.—Subsection (f)(2)(C) of
 5 such section is amended—

6 (1) in clause (i), by striking “may endanger”
 7 and all that follows and inserting “may significantly
 8 threaten national security, interfere with an ongoing
 9 investigation, endanger the life or physical safety of
 10 any person, or impair diplomatic relations.”;

11 (2) by striking clause (ii);

12 (3) by redesignating clause (iii) as clause (ii);

13 and

14 (4) in clause (ii), as redesignated by paragraph
 15 (3), by striking “1 year” and inserting “180 days”.

16 **SEC. 5. PROHIBITION ON TRANSFER OR STORAGE OF TAN-**
 17 **GIBLE THINGS DERIVED FROM ACCESS TO**
 18 **BUSINESS RECORDS FOR INTERNATIONAL**
 19 **TERRORISM AND CERTAIN OTHER INVES-**
 20 **TIGATIONS TO PRIVATE ENTITIES.**

21 Section 501 of the Foreign Intelligence Surveillance
 22 Act of 1978 (50 U.S.C. 1861), as amended by this Act,
 23 is further amended by adding at the end the following new
 24 subsection:

1 “(i) PROHIBITION ON TRANSFER OR STORAGE OF
 2 TANGIBLE THINGS TO OR WITH PRIVATE ENTITIES.—No
 3 tangible thing received by the Federal Bureau of Inves-
 4 tigation in response to an order under this section, or any
 5 database of such tangible things, may be stored by a pri-
 6 vate entity or transferred to a private entity for storage.”.

7 **SEC. 6. LIMITATIONS ON NATIONAL SECURITY LETTERS.**

8 (a) DEFINITIONS.—

9 (1) FISA COURT.—The term “FISA Court”
 10 means the court established under section 103(a) of
 11 the Foreign Intelligence Surveillance Act of 1978
 12 (50 U.S.C. 1803(a)).

13 (2) MINIMIZATION PROCEDURES.—The term
 14 “minimization procedures” has the meaning given
 15 that term in section 501(g)(2) of the Foreign Intel-
 16 ligence Surveillance Act of 1978 (50 U.S.C.
 17 1861(g)(2)).

18 (3) NATIONAL SECURITY LETTER.—The term
 19 “national security letter” means a request for infor-
 20 mation under—

21 (A) section 2709 of title 18, United States
 22 Code (to access certain communication service
 23 provider records);

1 (B) section 1114 of the Right to Financial
2 Privacy Act of 1978 (12 U.S.C. 3414) (to ob-
3 tain financial institution customer records);

4 (C) section 802 of the National Security
5 Act of 1947 (50 U.S.C. 3162) (to obtain finan-
6 cial information, records, and consumer re-
7 ports);

8 (D) section 626 of the Fair Credit Report-
9 ing Act (15 U.S.C. 1681u) (to obtain certain fi-
10 nancial information and consumer reports); or

11 (E) section 627 of the Fair Credit Report-
12 ing Act (15 U.S.C. 1681v) (to obtain certain
13 consumer reports).

14 (4) UNITED STATES PERSON.—The term
15 “United States person” has the meaning given that
16 term in section 101(i) of the Foreign Intelligence
17 Surveillance Act of 1978 (50 U.S.C. 1801(i)).

18 (b) JUDICIAL REVIEW.—

19 (1) IN GENERAL.—Except as provided in sub-
20 section (c), no officer or employee of the United
21 States may issue a national security letter unless the
22 FISA Court, a United States district court, or a
23 United States Magistrate judge issues an order ap-
24 proving an application for the national security let-
25 ter.

1 (2) REVIEW OF APPLICATION.—The FISA
2 Court, a United States district court, or a United
3 States Magistrate judge may not issue an order ap-
4 proving an application for a national security letter
5 unless such court or judge finds that—

6 (A) there are specific and articulable facts
7 giving reason to believe that the information
8 sought by the national security letter is relevant
9 and material to an authorized investigation to
10 protect against international terrorism or clan-
11 destine intelligence activities;

12 (B) the national security letter is reason-
13 able in scope, focus, and breadth; and

14 (C) such an investigation of a United
15 States person is not conducted solely upon the
16 basis of activities protected by the first amend-
17 ment to the Constitution of the United States.

18 (3) MINIMIZATION PROCEDURES.—An order ap-
19 proving an application for a national security letter
20 issued under this subsection shall set out the mini-
21 mization procedures that apply to the national secu-
22 rity letter.

23 (4) JUDICIAL APPROVAL REQUIRED FOR ORIGI-
24 NAL IMPOSITION OF NONDISCLOSURE REQUIRE-
25 MENTS.—A national security letter may contain non-

1 disclosure requirements only if the FISA Court, a
2 United States district court, or a United States
3 Magistrate judge finds that there are reasonable
4 grounds, relevant to the authorized investigation
5 concerned, to believe that a violation of the non-
6 disclosure requirements would—

7 (A) significantly threaten national security;

8 (B) interfere with an ongoing investigation;

9 (C) endanger the life or physical safety of

10 any person; or

11 (D) impair diplomatic relations.

12 (c) EXCEPTION FOR EMERGENCY SITUATIONS.—

13 (1) IN GENERAL.—Except as provided in para-
14 graph (2), the requirement for an order approving
15 an application for a national security letter under
16 subsection (b) shall not apply if the Attorney Gen-
17 eral—

18 (A) reasonably determines that the factual
19 basis for the issuance of the national security
20 letter exists;

21 (B) reasonably determines that an emer-
22 gency situation exists with respect to the
23 issuance of a national security letter before an
24 order approving an application for the national

1 security letter can with due diligence be ob-
2 tained;

3 (C) informs, either personally or through a
4 designee, the FISA Court, a United States dis-
5 trict court, or a United States Magistrate judge
6 of the decision to issue the national security let-
7 ter at the time the decision is made; and

8 (D) makes an application for approval of
9 the issuance of the national security letter to
10 the FISA Court, a United States district court,
11 or a United States Magistrate judge in accord-
12 ance with subsection (b) as soon as practicable,
13 but not later than 7 days after the Attorney
14 General decides to issue the national security
15 letter.

16 (2) MINIMIZATION PROCEDURES.—Any national
17 security letter issued pursuant to this subsection
18 shall comply with and include applicable minimiza-
19 tion procedures.

20 (3) TERMINATION.—A national security letter
21 issued pursuant to this subsection, and any non-
22 disclosure requirements included in the national se-
23 curity letter, shall terminate upon the earlier of the
24 following:

1 (A) When information sought by the na-
2 tional security letter is obtained.

3 (B) In the event an application for ap-
4 proval of the issuance of the national security
5 letter described in paragraph (1)(D) is made,
6 when the application is denied.

7 (C) The date that is seven days after the
8 date of the decision of the Attorney General to
9 issue the national security letter.

10 (4) ANNUAL REPORTS ON ISSUANCE.—The Di-
11 rector of the Federal Bureau of Investigation shall
12 submit to the Committee on the Judiciary of the
13 Senate and the Committee on the Judiciary of the
14 House of Representatives each year a report on the
15 national security letters issued pursuant to this sub-
16 section during the preceding year, including a state-
17 ment of the number of national security letters so
18 issued during such year.

19 (d) NONDISCLOSURE REQUIREMENTS.—

20 (1) DISCLOSURE FOR COMPLIANCE OR LEGAL
21 ASSISTANCE.—

22 (A) DISCLOSURE AUTHORIZED.—A recipi-
23 ent of a national security letter containing non-
24 disclosure requirements may disclose receipt of
25 the national security letter to persons necessary

1 to comply with the national security letter or an
2 attorney to obtain legal advice or legal assist-
3 ance with respect to the national security letter.

4 (B) NOTICE DURING DISCLOSURE OF AP-
5 PLICABILITY OF NONDISCLOSURE REQUIRE-
6 MENTS.—A recipient disclosing receipt of a na-
7 tional security letter to persons or an attorney
8 pursuant to subparagraph (A) shall inform such
9 persons or attorney of the nondisclosure re-
10 quirements contained in the national security
11 letter.

12 (C) COMPLIANCE WITH NONDISCLOSURE
13 REQUIREMENTS.—Any person or attorney who
14 receives a disclosure under subparagraph (A)
15 shall be subject to the nondisclosure require-
16 ments contained in the national security letter
17 concerned.

18 (2) LIMITATION ON EFFECTIVE PERIOD.—

19 (A) INITIAL EFFECTIVE PERIOD.—Except
20 as provided in section 3511(b) of title 18,
21 United States Code (as amended by subpara-
22 graph (B)), nondisclosure requirements con-
23 tained in a national security letter following ju-
24 dicial approval in accordance with subsection
25 (b)(4) shall be effective for not more than 60

1 days from the date of the issuance of the na-
2 tional security letter. In the case of a national
3 security letter issued in accordance with sub-
4 section (b) after application described in sub-
5 section (c)(1)(D), the date of the issuance of
6 the national security letter in accordance with
7 subsection (b) shall be treated as the date of
8 the issuance of the national security letter for
9 purposes of this subparagraph.

10 (B) EXTENSIONS.—Subsection (b) of sec-
11 tion 3511 of title 18, United States Code, is
12 amended to read as follows:

13 “(b)(1) Upon the expiration pursuant to section
14 6(d)(2)(A) of the Civil Liberties Protection Act of the ini-
15 tial period of effectiveness of nondisclosure requirements
16 imposed in connection with a request for records, a report,
17 or other information under section 2709(b) of this title,
18 section 626(a) or 627(a) of the Fair Credit Reporting Act,
19 section 1154(a)(5)(A) of the Right to Financial Privacy
20 Act or section 802(a) of the National Security Act of
21 1947, the Attorney General may petition the United
22 States district court for the district in which the recipient
23 of the request does business or resides for an extension
24 of the period of effectiveness of the nondisclosure require-
25 ments for not more than 180 days.

1 “(2) Upon petition by the Attorney General pursuant
2 to paragraph (1), the court may grant an extension of the
3 period of effectiveness of nondisclosure requirements de-
4 scribed in that paragraph for not more than 180 days if
5 the court finds that there are reasonable grounds, relevant
6 to the authorized investigation to protect against inter-
7 national terrorism or clandestine intelligence activities
8 concerned, to believe that a violation of the nondisclosure
9 requirements would—

10 “(A) significantly threaten national security;

11 “(B) interfere with an ongoing investigation;

12 “(C) endanger the life or physical safety of any
13 person; or

14 “(D) impair diplomatic relations.

15 “(3) Any extension of the period of effectiveness of
16 nondisclosure requirements under paragraph (2) may be
17 extended for additional periods of not more than 180 days
18 each in accordance with the provisions of this subsection.

19 “(4) The Attorney General shall notify the recipient
20 of a request described in paragraph (1) that contains non-
21 disclosure requirements of each petition for the extension
22 of the period of effectiveness of such nondisclosure re-
23 quirements that is filed by the Attorney General under
24 this subsection.”.

25 (e) USE OF INFORMATION.—

1 (1) INFORMATION CONCERNING A UNITED
2 STATES PERSON.—No information acquired pursu-
3 ant to a national security letter concerning a United
4 States person may be used in violation of the mini-
5 mization procedures adopted pursuant to subsection
6 (b)(3) or required pursuant to subsection (c)(2), as
7 applicable.

8 (2) CERTAIN INFORMATION OBTAINED DURING
9 EMERGENCIES.—

10 (A) IN GENERAL.—In the case of a na-
11 tional security letter issued pursuant to sub-
12 section (c), if the application for approval of
13 issuance described in paragraph (1)(D) of that
14 subsection is denied or if the production of in-
15 formation is terminated without the issuance of
16 an order of approval, no information obtained
17 or evidence derived from the national security
18 letter shall be received in evidence or otherwise
19 disclosed in any trial, hearing, or other pro-
20 ceeding in or before any court, grand jury, de-
21 partment, office, agency, regulatory body, legis-
22 lative committee, or any authority of the United
23 States, a State, or political subdivision thereof,
24 and no information concerning any United
25 States person acquired from such production

1 shall subsequently be used or disclosed in any
2 other manner by any officer or employee of the
3 United States without the consent of such per-
4 son, except with the approval of the Attorney
5 General if the information indicates a threat of
6 death or serious bodily harm to any person.

7 (B) ASSESSMENT OF COMPLIANCE.—The
8 Attorney General shall assess and ensure com-
9 pliance with the limitations in subparagraph
10 (A).

11 (3) PRIVILEGED.—No otherwise privileged in-
12 formation acquired pursuant to a national security
13 letter shall lose its privileged character.

14 (4) LAWFUL PURPOSES.—No information ac-
15 quired pursuant to a national security letter may be
16 used or disclosed by officers or employees of the
17 United States except for lawful purposes.

18 **SEC. 7. EFFECTIVE DATE.**

19 This Act and the amendments made by this Act shall
20 take effect 180 days after the date of the enactment of
21 this Act.

○