

read as follows: “At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under this section shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, but in no circumstance shall a person be required to inform the Director or such designee that the person intends to consult an attorney to obtain legal advice or legal assistance.”

Subsec. (f). Pub. L. 109-178, §3, amended subsec. (f) generally. Prior to amendment, subsec. (f) provided for judicial proceedings relating to challenging an order to produce tangible things.

Pub. L. 109-177, §106(f)(2), added subsec. (f).

Subsecs. (g), (h). Pub. L. 109-177, §106(g), added subsecs. (g) and (h).

2001—Subsec. (a)(1). Pub. L. 107-108 inserted “to obtain foreign intelligence information not concerning a United States person or” after “an investigation”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-23, title I, §109(a), June 2, 2015, 129 Stat. 276, provided that: “The amendments made by sections 101 through 103 [amending this section] shall take effect on the date that is 180 days after the date of the enactment of this Act [June 2, 2015].”

##### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 102(b)(1) of Pub. L. 109-177 effective Mar. 15, 2020, except that former provisions to continue in effect with respect to any particular foreign intelligence investigation that began before Mar. 15, 2020, or with respect to any particular offense or potential offense that began or occurred before Mar. 15, 2020, see section 102(b) of Pub. L. 109-177, set out as a note under section 1805 of this title.

##### CONSTRUCTION OF PUB. L. 114-23

Pub. L. 114-23, title I, §109(b), June 2, 2015, 129 Stat. 276, provided that: “Nothing in this Act [see Tables for classification] shall be construed to alter or eliminate the authority of the Government to obtain an order under title V of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861 et seq.) as in effect prior to the effective date described in subsection (a) [see Effective Date of 2015 Amendment note above] during the period ending on such effective date.”

Pub. L. 114-23, title I, §110, June 2, 2015, 129 Stat. 276, provided that: “Nothing in this Act [see Tables for classification] shall be construed to authorize the production of the contents (as such term is defined in section 2510(8) of title 18, United States Code) of any electronic communication from an electronic communication service provider (as such term is defined in section 701(b)(4) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881(b)(4))) under title V of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861 et seq.).”

#### § 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);

(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;

(E)<sup>1</sup> a statement by the applicant that, to the best knowledge of the applicant, the application fairly reflects all information that might reasonably—

(i) call into question the accuracy of the application or the reasonableness of any assessment in the application conducted by the department or agency on whose behalf the application is made; or

(ii) otherwise raise doubts with respect to the findings required under subsection (c); and

(F) non-cumulative information known to the applicant that is potentially exculpatory regarding the requested legal findings or any assessment in the application.

##### (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).

##### (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.

(Pub. L. 95-511, title V, §502, as added Pub. L. 107-56, title II, §215, Oct. 26, 2001, 115 Stat. 288;

<sup>1</sup> So in original. No subpar. (C) or (D) has been enacted.

amended Pub. L. 107–108, title III, §314(a)(7), Dec. 28, 2001, 115 Stat. 1402; Pub. L. 109–177, title I, §§102(b)(1), 106(h), Mar. 9, 2006, 120 Stat. 195, 199; Pub. L. 111–118, div. B, §1004(a), Dec. 19, 2009, 123 Stat. 3470; Pub. L. 111–141, §1(a), Feb. 27, 2010, 124 Stat. 37; Pub. L. 111–259, title VIII, §801(6), Oct. 7, 2010, 124 Stat. 2746; Pub. L. 112–3, §2(a), Feb. 25, 2011, 125 Stat. 5; Pub. L. 112–14, §2(a), May 26, 2011, 125 Stat. 216; Pub. L. 114–23, title VI, §§601, 605(d), title VII, §705(a), (c), June 2, 2015, 129 Stat. 291, 298, 300; Pub. L. 116–69, div. B, title VII, §1703(a), Nov. 21, 2019, 133 Stat. 1143; Pub. L. 118–49, §10(a)(4), (b)(4), Apr. 20, 2024, 138 Stat. 876, 877.)

### Editorial Notes

#### REFERENCES IN TEXT

Executive Order No. 12333, referred to in subsec. (a), is set out as a note under section 3001 of this title.

#### CODIFICATION

Pursuant to Pub. L. 109–177, §102(b)(1), as amended by Pub. L. 112–14, this section was amended, effective June 1, 2015, to read as it read on Oct. 25, 2001. The amendments made by Pub. L. 114–23, which was enacted June 2, 2015, were directed to this section as it read prior to such reversion and were executed as if the reversion had not taken place, to reflect the probable intent of Congress and the extension of the provisions of this section to Dec. 15, 2019, by Pub. L. 114–23, §705(a), (c). See 2015 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.

#### AMENDMENTS

2024—Subsec. (b)(2)(E). Pub. L. 118–49, §10(a)(4), added subpar. (E).

Subsec. (b)(2)(F). Pub. L. 118–49, §10(b)(4), added subpar. (F).

2019—Pub. L. 116–69 amended directory language of Pub. L. 109–177, §102(b)(1). See 2006 Amendment note below.

2015—Pub. L. 114–23, §705(a), (c), amended directory language of Pub. L. 109–177, §102(b)(1). See Codification note above and 2006 Amendment note below.

Subsec. (a). Pub. L. 114–23, §605(d), substituted “Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate” for “Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate”.

Subsec. (b). Pub. L. 114–23, §601(a), added pars. (1) to (5) and redesignated former pars. (1) to (3) as (6) to (8), respectively.

Subsec. (c)(1)(C) to (E). Pub. L. 114–23, §601(b), added subpars. (C) to (E).

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, Pub. L. 112–14, Pub. L. 114–23, §705(a), (c), and Pub. L. 116–69, amended section effective Mar. 15, 2020, 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”.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2024 AMENDMENT

Amendment by section 10(a)(4) of Pub. L. 118–49 applicable with respect to applications made on or after the date that is 120 days after Apr. 20, 2024, see section 10(a)(6) of Pub. L. 118–49, set out as a note under section 1804 of this title.

Amendment by section 10(b)(4) of Pub. L. 118–49 applicable with respect to applications made on or after the date that is 120 days after Apr. 20, 2024, see section 10(b)(6) of Pub. L. 118–49, set out as a note under section 1804 of this title.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 102(b)(1) of Pub. L. 109–177 effective Mar. 15, 2020, except that former provisions to continue in effect with respect to any particular foreign intelligence investigation that began before Mar. 15, 2020, or with respect to any particular offense or potential offense that began or occurred before Mar. 15, 2020, see section 102(b) of Pub. L. 109–177, set out as a note under section 1805 of this title.

### § 1863. Congressional oversight

(a) On a semiannual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests for records under this subchapter.

(b) 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—

(1) the total number of applications made for orders approving requests for records under this subchapter; and

(2) the total number of such orders either granted, modified, or denied.

(Pub. L. 95–511, title V, §503, as added Pub. L. 105–272, title VI, §602, Oct. 20, 1998, 112 Stat. 2412; amended Pub. L. 109–177, title I, §102(b)(1), Mar. 9, 2006, 120 Stat. 195; Pub. L. 111–118, div. B,