



January 28, 2020

Support the Safeguarding Americans' Private Records Act, H.R. 5675 and S. 3242

On behalf of our activist community, I urge you to contact your representative and senators and ask them to support and cosponsor the Safeguarding Americans' Private Records Act, H.R. 5675 and S. 3242. Introduced in the Senate by Senators Ron Wyden (D-Ore.) and Steve Daines (R-Mont.) and in the House by Reps. Zoe Lofgren (D-Calif.) and Warren Davidson (R-Ohio), this legislation would reform Section 215 of the USA PATRIOT Act and other aspects of surveillance under the Foreign Intelligence and Surveillance Act (FISA) in order to protect Americans' civil liberties and rights to due process and to increase transparency and oversight.

Section 215 of the USA PATRIOT Act authorized the intelligence collection of a vast variety of records, or "tangible things," as part of any investigation into foreign intelligence or terrorist activities. Its potential threat to Americans' privacy was sufficient that a sunset provision was included to force its periodic review by Congress, and its next expiration date is March 15, 2020. Given the [long history](#) of recent government surveillance abuses, Section 215 should under no circumstances be reauthorized without major reforms.

Section 215, and other portions of the USA PATRIOT Act, created major due process and privacy concerns in part because it allowed intelligence agencies to demand groups of records on Americans at a legal standard far below the Fourth Amendment protections against unauthorized search and seizures, which ought to require that a probable cause warrant be secured first.

The Safeguarding Americans' Private Records Act addresses this problem in several ways. It specifies that any foreign intelligence surveillance operation inside the United States would be subject to a FISA warrant requirement if it would require a warrant in a normal criminal context. It further specifically codifies that a probable cause warrant standard must apply to the collection of any American's GPS or cell-site location information, browsing history, or internet search history.

It also shuts down the legal loophole under which email messages over six months old are not protected from government collection. Additionally, the bill establishes a sunset period on the authority for the use of "National Security Letters" (NSLs), which are another means by which

the government has not only compelled the production of records of Americans without a warrant, but also gagged the ability of companies to reveal that they had been forced to comply with such an order.

In practice, these authorities have also been held to allow the collection and retention of large quantities of records of Americans with no direct tie to any investigation of foreign operations at all. The business records collection portion of Section 215 explicitly contemplates the potential collection of sensitive materials such as medical records, gun purchases, or tax returns. We only have a vague idea of what this portion of the statute has been used to collect, and the Safeguarding Americans' Private Records Act requires further reporting on how often this provision has been used and how many records have been collected.

Section 215 was also the authority used to justify the mass collection of Americans' cell phone metadata, as revealed by Edward Snowden in 2013. That dragnet metadata surveillance was reconstituted in a somewhat restricted form as the Call Detail Records (CDR) program by the USA FREEDOM Act of 2015.

The CDR program itself was found to have still unconstitutionally acquired the communications records of millions of Americans' call records, and was eventually voluntarily shut down by the NSA, both for being impossible to operate legally and also not particularly useful. This bill repeals the authority entirely, so that any future attempt at this sort of mass metadata surveillance ought to require explicit Congressional authorization.

The Safeguarding Americans' Private Records Act also strengthens the role of the amicus curiae who are supposed to be appointed to represent the constitutional rights of the American public against any new major interpretations of surveillance law by the FISA Courts and forces the timely disclosure of their proceedings.

This bill is not a comprehensive fix for all of the problems that have been revealed about the government's use of surveillance authorities against Americans, but it is a major improvement and our 4th Amendment would be in much better shape for it.

For these reasons, I urge you to contact your representative and senators and ask them to support and cosponsor the Safeguarding Americans' Private Records Act, H.R. 5675 and S. 3242.

Sincerely,

A handwritten signature in black ink, appearing to read 'Adam Brandon', with a stylized flourish at the end.

Adam Brandon
President, FreedomWorks