

## Fact Sheet: Mass Surveillance Under Section 215 of the USA PATRIOT Act/USA FREEDOM Act

The FBI and NSA use Section 215 to collect vast amounts of information about US persons without a warrant. In 2018, under only one of two Section 215 provisions, the government collected **434,238,543** call records. The vast majority of those records relate to people who are not the targets of any investigations or suspected of wrongdoing.

**Section 215 is scheduled to sunset on December 15, 2019.**

### History of Section 215:

- Congress passed the Foreign Intelligence Surveillance Act of 1978 (FISA) to protect innocent people against invasions of privacy by the executive branch. The USA PATRIOT Act, passed in 2001, created significant holes in those protections, in particular through changes to what is now known as Section 215 (50 USC § 1861).
- The government's extreme interpretation of Section 215 was the first subject of the Snowden revelations that shocked the country, most notably the 'bulk telephone metadata program,' under which the government ordered major telephone providers to hand over records of *all* calls made by *all* customers.
- The USA FREEDOM Act of 2015 prohibited the untargeted collection of all records of all customers (i.e., 'bulk' collection), instituted certain transparency requirements, extended Section 215's sunset to December 15, 2019, and for the first time expressly permitted the programmatic collection of records up to two degrees away from a target.

### What Section 215 does:

- The FBI and NSA still use Section 215 to warrantlessly collect vast quantities of information about people that are held by businesses, such as records of phone calls and financial transactions.
- The government uses Section 215 to collect "foreign intelligence information," an extraordinarily broad term that includes information related to "the conduct of the foreign affairs of the United States."
- The government may target US persons for surveillance under Section 215 to protect against international terrorism or clandestine intelligence activities.
- Section 215 orders do not require a warrant based on a showing of probable cause, but rather a statement of facts to the Foreign Intelligence Surveillance Court. It is similar to an administrative subpoena.

### How Section 215 works:

The government may make an application to the Foreign Intelligence Surveillance Court (FISC) for one of two types of Section 215 orders:

- Call Detail Records (CDR) program orders, or
- 'Traditional' business records orders.

***The Call Detail Records (CDR) Program:***

- In 2018, CDR program orders collected 434,238,543 call detail records relating to over 19,372,544 phone identifiers.
- The government knowingly searched this data for US person information 164,682 times.
- CDR orders collect all of a target's records *as well as* all records of everyone who has communicated with that target, and does so on an ongoing basis. This ongoing, two-degree collection means the majority of records collected under the CDR program are not those of a target or anyone suspected of wrongdoing, or even of people in contact with someone who is.
  - For example, if a target receives a marketing call, records of the hundreds or thousands of other people contacted by that marketer would then be collected by the NSA.
- In 2018, the NSA announced at least one provider had unlawfully given the government records it was not permitted to receive. In response, the NSA destroyed all CDR program data it had collected since the CDR program's inception. After resuming collection, the government again discovered an overproduction.
- The government reportedly shuttered the CDR program in late 2018.

***Traditional Business Records Orders:***

- In 2018, traditional business records orders compelled production of records relating to at least 214,860 “unique identifiers used to communicate information,” like email addresses.
  - These orders apply to an unknown number of *types* of records, but include medical records, firearms sales records, and call detail records.
  - The 214,860 identifiers here are only those “unique identifiers used to communicate information.” Other identifiers are not counted, nor is the volume of records they produce.
  - The government does not report the total volume of records collected under this provision.

**Congress needs more information before legislating and should not reauthorize Section 215 without it.**

**Known problems with FISA must also be addressed, specifically by:**

1. **Removing statutory authority to operate the reportedly defunct CDR program**, as proposed in the Ending Mass Collection of Americans' Phone Records Act of 2019 (H.R. 1942 and S. 936);
2. **Prohibiting “backdoor searches” of communications** collected under Section 702, which occur thousands of times a year when the government knowingly and warrantlessly searches for the contents of US person communications that it “incidentally” collects while targeting non-US persons; and
3. **Fixing major transparency loopholes**, for instance by mandating: the release of significant pre-2015 FISC opinions; the provision of notice to defendants against whom the government intends to use Section 215 information; and the full reporting of how many and what kinds of records the government is collecting under Section 215. Similarly, the FBI should no longer be exempt from reporting requirements.