

Leahy, Feinstein Split on Phone Surveillance Following Its Reauthorization

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U.S. phone surveillance received another green light, as key lawmakers remain divided on the best ways to move forward with the program. Multiple Democrats and Republicans in both houses of Congress have expressed intentions to end the bulk collection of phone metadata, a push expected to gain momentum once the government shutdown ends. The Foreign Intelligence Surveillance Court also gave the leadership of the Senate Judiciary Committee more information about how the court handles government requests for surveillance authority, saying the FISC often significantly tweaks them.

The FISC reauthorized the government's bulk phone metadata collection program under Patriot Act Section 215, said Director of National Intelligence James Clapper in a news release Friday (<http://1.usa.gov/19FsPFk>). The court approved the surveillance program again in a Sept. 17 order, which is now going through the declassification process. The choice to declassify is "consistent with his prior declassification decision and in light of the significant and continuing public interest in the telephony metadata collection program," a spokesman for the director said in the release.

The FISC has begun collecting statistics to show the process by which the court modifies government surveillance requests, Presiding Judge Reggie Walton said in letters submitted Friday (<http://1.usa.gov/19FoYrl>) to Senate Judiciary Chairman Patrick Leahy, D-Vt., and ranking member Chuck Grassley, R-Iowa. "During the three month period from July 1, 2013, through September 30, 2013, we have observed that 24.4% of matters submitted ultimately involved substantive changes to the information provided by the government or to the authorities granted as a result of Court inquiry or action," Walton said, saying it doesn't include "mere typographical corrections." The FISC has "every reason to believe" this rate is "typical," but will keep collecting the statistics, he said. Walton described the communication between the FISC and the government as "informal," however, and said the labeling of a change as substantive or not is a "a judgment call."

The court provided these statistics to help explain why it seems to grant about 99 percent of the government requests -- requests the FISC calls "final" approval, following the modifications. Critics have slammed the court as a rubber stamp for the government's requests in the past. "While I appreciate the recent efforts by the Court and the administration to be more transparent,

it is clear that transparency alone is not enough," Leahy said Saturday of the reauthorization of the metadata collection. "There is growing bipartisan consensus that the law itself needs to be changed in order to restrict the ability of the government to collect the phone records of millions of law-abiding Americans." Leahy has called for an end to this bulk collection surveillance program and is working with House Judiciary Crime and Terrorism Subcommittee Chairman Jim Sensenbrenner, R-Wis., on a broad overhaul of these rules.

But Senate Intelligence Committee Chairwoman Dianne Feinstein, D-Calif., said the "NSA's call-records program is an essential component of U.S. counterterrorism efforts," in a Wall Street Journal op-ed posted Sunday (<http://on.wsj.com/leobOCp>). "The NSA call-records program is working and contributing to our safety. It is legal and it is subject to strict oversight and thorough judicial review." Feinstein backs her own proposal to change but not end the bulk call records program. Her op-ed urged increasing its "transparency and its privacy protections" and said Senate Intelligence will take up the proposed legislation soon. It would "require court review when the call records are queried, and mandate a series of limitations on how the records can be obtained, stored and used," she said.

Sensenbrenner trumpeted his planned overhaul legislation with Leahy at a Cato Institute event last week and announced his intentions to work to defeat in potential floor votes any legislation coming from the heads of the Senate and House intelligence committees (CD Oct 10 p5). Sen. Ron Wyden, D-Ore., has also led the charge with legislation similar to the Sensenbrenner overhaul.

"It would be going down the wrong path if we were to somehow reject the importance of both the debate and the kinds of intelligence activities that genuinely keep us safer," Hillary Clinton told Chatham House members in London at the end of last week. Clinton was secretary of state under President Barack Obama -- who expressed desire for surveillance law changes in August after revelations about the surveillance. She called for "more vigorous discussion" of U.S. surveillance activities that balance many priorities. "And I think that has to be the sort of framework because within that framework, there are some things, I know from my own experience as a senator, as a secretary of state, that really are critical ingredients in our homeland security and in helping to protect people in other countries as well."

"We're democracies, thank goodness, both the U.S. and the U.K.," Clinton said. "We need to have a sensible, adult conversation about what is necessary to be done and how to do it in a way that is as transparent as it can be with as much oversight and citizen understanding as can be." People need to be "better informed" of what is largely a new problem, Clinton said. "And I also know, at least speaking for the United States, much more personal information about many more Americans is held by businesses in the United States than by our government. So how do we sort all of this out?"