

# The Washington Times

## **FBI surveillance tactics jeopardized by fight over NSA phone snooping program**

**Patriot Act Section 215 set to expire in June, lawmakers divided over renewal**

By Phillip Swarts

Feb. 17, 2015

Congressional discord may cause the FBI to lose its ability to collect hotel bills, credit card slips and other “tangible things” they use to hunt down terrorists, spies and criminals.

The FBI uses the authority of Section 215 of the Patriot Act to take “books, records, papers, documents, and other items,” with a court order, to covertly gather evidence against those suspected of spying on America on U.S. soil.

Last month, the FBI rounded up a ring of Russian spies in New York by presenting phone conversations and email communications between two Russian diplomats and a businessman. Similarly, U.S. officials say, the Patriot Act helped nab Kremlin spy Anna Chapman and nine other Russians who were sent back to their country in a spy swap.

However, Section 215 of the Patriot Act is set to expire in June, and lawmakers are conflicted about whether to renew it, reform it or let it expire.

Section 215 has become a political lightning rod because it also gives legal justification to the National Security Agency’s bulk collection of phone records on American citizens. Sen. Rand Paul, Kentucky Republican, and civil liberties groups have criticized the program and are determined to end its surveillance practices.

The move has pitted them against hawks such as Senate Majority Leader Mitch McConnell, Kentucky Republican, who say repeal would threaten national security as Islamist terrorism gains ground in the Middle East.

Lawmakers who are seeking a middle-ground, allowing the FBI to keep its surveillance programs but stripping the NSA of its authority, are facing an uphill climb. The two opposing sides could prevent any extension from getting the votes needed before Section 215 simply expires altogether.

Senior lawmakers said if extension efforts are sunk, then some of the FBI's counterterrorism and spy surveillance tools also will be lost.

"Law enforcement officials often use Section 215 to obtain necessary individual business records, such as hotel records, in connection with national security investigations," Sen. Chuck Grassley, Iowa Republican and chairman of the Senate Judiciary Committee, said in a statement to The Washington Times. "It's a useful tool that helps them investigate potential threats to national security."

The FBI is worried about losing its ability to chase down evidence quickly if Section 215 is not renewed.

The FBI doesn't use Section 215 to collect bulk intelligence-gathering like the NSA. It simply allows agents to trace the credit card of a suspected spy ordering at a fast-food restaurant by searching all the purchases made with that card. Without the law, the FBI would have to obtain a subpoena from a grand jury or be issued a national security letter to complete the work — often not as quickly, more laboriously and not as covertly as its current efforts.

A FBI representative declined to comment.

Sen. Ron Wyden, Oregon Democrat and a persistent critic of the NSA program and other warrantless surveillance, said he hopes domestic law enforcement won't get caught in the crossfire.

"There is a huge difference between targeting suspected spies and terrorists, and sweeping up phone records from millions of law-abiding Americans," he said. "This is exactly why surveillance reform is so urgently needed — to preserve the authorities that law enforcement agencies actually need while ending dragnet surveillance that violates Americans' privacy without making our country any safer."

In November, a Senate bill to reform Section 215 failed, with only four Republicans voting for the legislation. The bill, which was supported by the Center for Democracy and Technology, a civil liberties advocacy group, required a "specific selection term" that would require agencies such as the FBI to narrowly explain exactly what surveillance and records they were seeking and why.

Most of the bill's opponents said the reforms went too far and removed valuable assets for counterterrorism operations.

"Now is not the time to be considering legislation that takes away the exact tools we need to combat ISIL," Mr. McConnell said at the time in reference to the Islamic State group.

Although there is substantial appetite in Congress to reform Section 215, the “devil will be in the details,” said Harley Geiger, senior counsel with the Center for Democracy and Technology.

“I would take issue with the entire idea that the expiration of the bulk telephone data collection would in any way hamper in any shape or form the FBI’s ability to get what they want,” said Patrick Eddington, a homeland security and civil liberties policy analyst at the Cato Institute. “What the NSA has been engaged in has literally been totalitarian regime-style dragnet surveillance.”

If the Patriot Act provisions are allowed to expire in June, FBI surveillance and evidence programs will revert to pre-9/11 states, which Mr. Geiger said would be narrower but “not disappear completely.”

Mr. Geiger said lawmakers may be using the renewal as leverage and may not vote on reform until close to the deadline.

The House of Representatives already has passed reform and is waiting for the Senate to take action.

House Judiciary Committee Chairman Bob Goodlatte, Virginia Republican, said it was unfortunate that the Senate has failed to pass a bill.

“I am committed to reforming the bulk collection program under the Foreign Intelligence Surveillance Act this Congress so that we protect Americans’ civil liberties while ensuring that the traditional capabilities of our intelligence-gathering programs are not disturbed,” he said.