



No easy path for Obama on NSA

By Julian Hattem

January 18, 2014

President Obama's proposals for reforming the nation's surveillance programs are easier said than done.

The ideas he put forward Friday for changing the National Security Agency (NSA) depend in large part on cooperation from Congress and other branches of the administration, including the intelligence community.

Success is far from assured. Lawmakers are divided on what intelligence reforms are needed, and privacy advocates expect turf-conscious spy agencies to resist change.

"In a lot of ways the president's speech was a conversation starter. It was short on specifics and long on future actions that require either congressional approval or implementation by intelligence officials," said Greg Nojeim, head of the Center for Democracy and Technology's freedom, security and technology project.

"We're at the beginning of the process; we're not near the end."

Obama will need legislative approval for many of his proposals, including the appointment of a civil liberties advocate to the Foreign Intelligence Surveillance Court, which reviews the government's requests for information. He'll also need their backing to change the way information about phone calls is collected and stored.

Lawmakers on Friday made clear that they intend to take charge of the process.

House Judiciary Committee Chairman Bob Goodlatte (R-Va.) said that his committee would hold a hearing "in the coming weeks" to review both the president's recommendations and those from the Privacy and Civil Liberties Oversight Board, which are set to come out next week.

"We must ensure our nation's intelligence collection programs include real protections for Americans' civil liberties, robust oversight, and additional transparency," Goodlatte said in a

statement.

There is a deadline for congressional action, but it's more than a year away.

Provisions of the Patriot Act that allow the NSA to survey bulk phone records data, known as Section 215, expire on June 1, 2015.

“What happens at that point is either there's an agreement on legislation to rein it in ... or there will be a battle over renewal of Section 215. We probably won't renew it, in which case none of this will be possible,” Rep. Jerrold Nadler (D-N.Y.), a member of the Judiciary Committee, told The Hill. “I therefore presume that we will make a reasonable agreement.”

More than 100 lawmakers, including Nadler, have rallied behind the USA Freedom Act, which would significantly rein in the NSA's surveillance.

The bill is just one of many making its way through Congress, which could be a sign of growing support for reform.

“There are 27 bills right now before Congress,” said Laura Donohue, the director of Georgetown University's Center on National Security and the Law. “I think political momentum is gaining ground for something to be done in the legislative realm.”

Even if it takes months, Nadler said that it's necessary to put a legislative check on the administrative branch's surveillance, “because even if everyone is in good faith ... you can't guarantee the next administration and the one after that. You have to have legal restraints.”

In his speech on Friday, Obama unveiled a policy directive that orders Attorney General Eric Holder and top intelligence officials to review how to protect sensitive personal information and how to make their work more transparent.

Nojeim, with the nonprofit Center for Democracy and Technology, was skeptical that the intelligence agencies would come up with meaningful changes.

“The intelligence agencies have largely said they think the current system is just fine,” he said. “It's hard to have any confidence that they will come up with significant changes in response to a presidential directive that they consider making the changes.”

Obama also directed the attorney general, the NSA and other intelligence agencies to review possibilities for ending the bulk collection of records on U.S. phone calls.

The controversial program is used to track the networks of suspected terrorists, but it has come under fire since documents leaked by former NSA contractor Edward Snowden showed that it captures records of nearly everyone in the country.

Privacy advocates and telecommunications companies have rejected one proposed reform, to transition the program to private phone service providers or a new third-party institution.

“Relying solely on the records of multiple providers, for example, could require companies to alter their procedures in ways that raise new privacy concerns,” Obama said on Friday. “On the other hand, any third party maintaining a single, consolidated database would be carrying out what is essentially a government function but with more expense, more legal ambiguity, potentially less accountability — all of which would have a doubtful impact on increasing public confidence that their privacy is being protected.”

Obama ordered his administration to complete a report with different approaches to maintaining the records by March 28, when the Foreign Intelligence Surveillance Court is required to reauthorize the program.

A senior administration official said that the ultimate goal is for the government to “not hold this metadata,” as the information about peoples’ calls is known, but “that, practically speaking, cannot be implemented at the flip of a switch ...”

The official added that “current, other existing intelligence community capabilities” could allow for administration officials to achieve the same goals as the phone records collection through another means.

Julian Sanchez, a research fellow at the libertarian Cato Institute, said that those other options are “nebulous.”

“It’s clear there’s a lot of different ways NSA gets different kinds of data,” he said. “Some of it they find it easier to get or have to get from U.S. companies, some of it they have other ways of getting. It may turn out they are able to get enough of this through other mechanisms.”