



# Ex-CIA Leader Endorses Freedom Act and Mass Collection of Email Metadata

Experts say it may be difficult to recreate email record program if the legislation passes.

Steven Nelson

May 18, 2015

A former leader of the CIA offered his support Monday for legislation written to restrict dragnet data-collection on U.S. communications while saying such collection should be increased.

Michael Morell, twice acting director of the CIA and a member of President Barack Obama's five-member surveillance review panel, said he supports the latest version of the USA Freedom Act, which backers say would end the dragnet collection of domestic call records.

Many civil libertarians view the White House-supported legislation as weak and vulnerable to creative reinterpretation by authorities. It [passed](#) the House of Representatives last week and likely will see a Senate vote before Patriot Act provisions expire June 1.

"I am a supporter of the telephone metadata program," Morell said at an event promoting his [new book](#). "I think it should remain. In fact, I think in some ways it should be strengthened because it doesn't include all phone calls made in the United States and it doesn't include metadata from emails."

Morell's position on the Freedom Act appears premised on its permission for authorities to take hunks of information on targets' calls – and those of their contacts – as needed from companies, which they would then need a court order to search.

The review panel on which Morell served recommended those changes. "That's essentially the bill that was passed by the House, and I'm a supporter of that bill," he said. The panel also [found](#) the post-9/11 program "was not essential to preventing attacks."

Morell's stamp of approval is unlikely to comfort privacy advocates such as advocacy group Fight for the Future, which [dubbed](#) the Freedom Act "fake reform," and Rep. Justin Amash, R-Mich., who voted against the bill [and said](#) it "authorizes unconstitutional bulk data collection on law-abiding Americans."

The longtime intelligence official has consistently staked out a hawkish position on surveillance issues and [previously](#) recommended resuming collection of email metadata. Last year, he [marveled](#) during Senate committee testimony that "there is quite a bit of content in metadata."

Authorities secretly used Section 215 of the Patriot Act to justify the phone-record collection for years before whistleblower Edward Snowden exposed the program in June 2013. The section's looming expiration set up the current legislative debate.

The NSA previously harvested information on U.S. emails, but discontinued the collection in 2011, the Guardian [reported](#), citing leaked documents. Another part of the Patriot Act, Section 214, was used for the now-discontinued email collection.

Section 214, more commonly known as the pen register and trap and trace authority, originally contained a sunset date but was made permanent in 2006.

Harley Geiger of the Center for Democracy and Technology, which supports the Freedom Act, says the bill's ban on bulk collection under Section 214 would strip the NSA of the ability to precisely recreate the email record program. If Congress passed a clean reauthorization or allowed Section 215 to expire, it could resume.

The legislation, however, does not prohibit collection and analysis of similar records collected under Section 702 of the Foreign Intelligence Surveillance Act – which sunsets in 2017 – and Executive Order 12333, which governs surveillance overseas. The bill as-written does not ban “backdoor” searches for U.S. Internet records collected under those authorities.

Julian Sanchez of the Cato Institute points out Section 214 was only the last in a series of legal justifications for historical email metadata monitoring, with the Foreign Intelligence Surveillance Court accepting in 2004 a broad interpretation of the word "facility" to include Internet switches.

"Even with the FISC's contortionist ability to squeeze things through the gaps in the statutory language it would be extremely difficult" to resume mass email metadata collection under Section 214 if the Freedom Act passes, Sanchez says.

It's possible the NSA discontinued its email metadata program in 2011 to lean instead on Executive Order 12333, he adds, if authorities decided they could collect much of the same information from overseas intercepts "without being subject to all the messy rules" attached to collection within the U.S.

Morell conceded at the Monday event he's not able to prove his gut feeling the call record program would have prevented 9/11 – a claim civil libertarians dispute pointing to a lack of information-sharing and the potential to track terrorists without seizing all U.S. records.

But the now-retired official, who also said he wouldn't be surprised if terrorists blew up a U.S. airliner with difficult-to-detect explosives, extended that security justification to taking email records.

“If there is an al-Qaida cell in the United States communicating with each other via email, we wouldn’t see it,” he said, “and believe me, if there was another 9/11 and they were communicating via email, the American people would say ‘why the heck were you not monitoring?’”

A federal appeals court panel [ruled](#) earlier this month the call record program is not authorized by Section 215 of the Patriot Act in a case brought by the American Civil Liberties Union. A federal judge ruled in a different case the collection likely violates the Fourth Amendment. Those cases [may be mooted](#) by the Freedom Act.