



## Proposed NSA reforms close one loophole while leaving others open

By Jason Pye  
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President Barack Obama [rolled out a proposal](#) earlier this week that would end the National Security Agency's controversial bulk phone metadata collection program. The House Intelligence Committee has a proposal of its own purports to achieve the same end.

The proposal pushed by the White House has been received with cautious optimism from civil libertarians, including Sen. Rand Paul (R-KY). They like what they've heard, but have explained that the devil is in the details.

Others, like the [American Civil Liberties Union](#) (ACLU) and the [Electronic Frontier Foundation](#) (EFF), have pointed out that there's already a proposal in Congress, the USA FREEDOM Act, that would end bulk data collection. Privacy advocates, however, have panned the House Intelligence Committee's proposal, which is [backed by Speaker John Boehner \(R-OH\)](#).

In Wednesday's [Cato Daily Podcast](#), Julian Sanchez, a research fellow at the Cato Institute, discussed and dissected both President Obama and the House Intelligence Committee's proposal, finding them to be welcome news. But he also pointed out that both measures still leave open the possibility of access to Americans' personal information.

“So we've known since January that President Barack Obama [has] pledged to end the NSA's controversial bulk telephone record program as it currently exists,” Sanchez told Caleb Brown, host of the *Cato Daily Podcast*. “What wasn't clear was what was going to replace it.”

Sanchez explained that President Obama had floated the idea of a third-party taking control of the metadata or putting in place a requirement that phone companies keep the records for a five-year period. In both cases, however, the NSA would still have access to the information.

“[T]he good news is proposals from both the White House and the House Intelligence Committee leadership essentially reject both of those possibilities,” said Sanchez. “So bulk collection really is going to end.”

Sanchez, who has written extensively about privacy and government surveillance, explained that both proposals would create new authorities for intelligence agencies to monitor a phone user's historical and real-time calls, provided the Foreign Intelligence Surveillance Court (FISC) gives authority in specific instances.

This would require phone companies to adjust to the new program, Sanchez noted, likely meaning federal funding to ensure that they're all on the same level and intelligence agencies can access information when authorized.

But there are differences between the two proposals, drawbacks that make both of them unattractive to privacy advocates in one way or another.

“One of the big differences between the two proposals, though, is that while in both cases the FISA court is going to approve specific phone numbers rather than just allowing bulk collection and letting the NSA decide which numbers are suspicious,” Sanchez noted. “The Intelligence Committee version allows the court to approve kind of general procedures, general criteria for dubbing a number suspicious, and then NSA gets the record and the court validates it after the fact.”

“They get the explanation of why these numbers were targeted and they sign off on it ex-post instead of the usual procedure, which, if it's not an emergency, first the court says OK, then you get the records,” he continued. “The White House says, no, they want upfront authorization from the FISA court before records are demanded.”

Sanchez points out that the White House proposal is limited only to phone records. The House Intelligence Committee measure is much broader. “The House proposal says telephone records,” he explained, “but also electronic communication records, and some other sensitive records — like medical and education and gun records — can't be obtained without a specific selector, meaning no more bulk collection of those types of records.”

The biggest problem with both proposals, according to Sanchez, is that neither the White House nor the House Intelligence Committee proposals addresses the main concern at the center of the debate over domestic surveillance. Intelligence and federal law enforcement agencies can still access information they want through other means, like National Security Letters, for example.

[S]o what they're doing is essentially closing a loophole that allowed this bulk program we found out about because of Edward Snowden,” said Sanchez. “But then leaves intact the underlying authority, with now Edward Snowden left to tell us how they use it in the future to get, let's say, credit card records or other forms of sensitive data that we may not even imagine they're looking at at present.”

Like other civil libertarians, Sanchez prefers the USA FREEDOM Act, a measure sponsored by Rep. James Sensenbrenner (R-WI), author and primary sponsor of the USA PATRIOT Act. This proposal, which [would end the NSA's bulk data collection](#) as well as close potential loopholes, has strong bipartisan support, [gaining 142 cosponsors](#) since it was introduced in late October.