



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 7, 2014

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Please find enclosed responses to questions arising from the appearance of FBI Deputy Director Sean Joyce before the Committee on July 31, 2013, at a hearing entitled "Strengthening Privacy Rights and National Security: Oversight of FISA Surveillance Programs."

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter J. Kadzik".

Peter J. Kadzik
Acting Assistant Attorney General

Enclosures

cc: The Honorable Charles E. Grassley
Ranking Minority Member

**Responses of the Federal Bureau of Investigation
to Questions for the Record
Arising from the July 31, 2013, Hearing Before the
Senate Committee on the Judiciary
Regarding “Strengthening Privacy Rights and National Security:
Oversight of FISA Surveillance Programs”**

Questions Posed by Senator Grassley

1. Would ending the collection of telephone metadata in bulk under Section 215 – and instead requiring the government to show a link to a foreign power or agent thereof with respect to every record collected – affect the government’s ability to protect national security by “connecting the dots” of terrorist plots? Why or why not?
2. Some have suggested that phone companies could be required to retain the telephone metadata for later searching by the government. Is this a practical alternative to the current program? How, if at all, would the government’s ability to protect national security and the privacy interests of the public be affected by this potential change?
3. Has the one-year ban on challenging non-disclosure orders under Section 215 played a role in protecting national security? If so, how? How, if at all, would the government’s ability to protect national security and the privacy interests of the public be affected if this ban were repealed? Would repealing this ban help strike the correct balance between privacy and national security? Why or why not?
4. Would the government’s annual disclosure to the public of the following information related to Section 215 and 702 authorities be possible as a practical matter, and would it affect the government’s ability to protect national security? Why or why not? Would making such disclosures help strike the correct balance between privacy and national security? Why or why not?
 - a. How many FISA court orders were issued.
 - b. How many individuals’ (foreign and U.S. persons) information was collected.
 - c. How many U.S. persons’ information was collected.

These responses are current as of 9/27/13

d. How many U.S. persons' electronic communication contents and metadata, wire communications contents and metadata, and subscriber records were both collected and queried.

5. Would the government's annual disclosure to the public of the following information related to Section 105, 703, and 704 authorities be possible as a practical matter, and would it affect the government's ability to protect national security? Why or why not? Would making such disclosures help strike the correct balance between privacy and national security? Why or why not?

- a. How many FISA court orders were issued.
- b. How many individuals' (foreign and U.S. persons) information was collected.
- c. How many U.S. persons' information was collected.

6. Would disclosure by companies served with FISA orders under Sections 215 and 702 of the following information to the public affect the government's ability to protect national security? Why or why not? Would permitting such disclosures help strike the correct balance between privacy and national security? Why or why not?

- a. How many FISA court orders the company received.
- b. The percentage of those orders the company complied with.
- c. How many of their users' information they produced.

d. How many of their users' electronic communication contents and metadata, wire communications contents and metadata, and subscriber records were produced.

7. Would disclosure by companies served with FISA orders under Sections 105, 703, and 704 of the following information to the public affect the government's ability to protect national security? Why or why not? Would permitting such disclosures help strike the correct balance between privacy and national security? Why or why not?

- a. How many FISA court orders the company received.
- b. The percentage of those orders the company complied with.
- c. How many of their users' information they produced.

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Response to Questions 1 through 7:

These questions were additionally posed to the Deputy Attorney General. The FBI refers the Committee to those responses.

8. Please provide to the Committee all unclassified information available that, in your view, demonstrates the usefulness of the Section 215 and 702 authorities in protecting the national security.

Response:

The Office of the Director of National Intelligence (ODNI) has obtained from multiple agencies information regarding the cases in which Section 215 and 702 authorities have contributed to the protection of national security. Consequently, the ODNI is better able to respond to this inquiry.

Boston Marathon Bombing

9. On May 10, 2013, the FBI provided to staff members of the Senate, a comprehensive TS/SCI briefing on the Boston Marathon bombing. During the course of the briefing, several unclassified questions were asked. One series of unclassified questions was asked by a member of my staff and you provided no substantive answer, saying you would need to gather more information and provide a complete answer at a later date. My staff received no further information. I would like to follow up now.

a. At what time and date were the images of Dzhokhar Tsarnaev and/or Tamerlan Tsarnaev discovered on video or photograph for the first time as being at least one or both of the individuals reasonably believed to be involved in the bombing?

b. Who made that determination and for what agency did that individual work?

c. Following this initial determination, what investigative steps did the FBI take or attempt to take prior to releasing the photos to the public?

d. Did the FBI have the suspects under physical surveillance at any time prior to releasing the photos to the public?

Response to subparts a through d:

The FBI did not identify Tamerlan or Dzhokhar Tsarnaev by name as suspects in the Boston Marathon bombing until Tamerlan was killed in the aftermath of the shootout

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with law enforcement on April 19, 2013. The FBI did not have the Tsarnaevs under surveillance at any time after the assessment of Tamerlan was closed in 2011.

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