

# Section 2709 Before the Patriot Act

## **18 U.S.C. § 2709 Counterintelligence access to telephone toll and transactional records**

(a) Duty to provide.--A wire or electronic communication service provider shall comply with a request for subscriber information and toll billing records information, or electronic communication transactional records in its custody or possession made by the Director of the Federal Bureau of Investigation under subsection (b) of this section.

(b) Required certification.--The Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director, may--

(1) request the name, address, length of service, and local and long distance toll billing records of a person or entity if the Director (or his designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that--

(A) the name, address, length of service, and toll billing records sought are relevant to an authorized foreign counterintelligence investigation; and

(B) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801); and

(2) request the name, address, and length of service of a person or entity if the Director (or his designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that--

(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and

(B) there are specific and articulable facts giving reason to believe that communication facilities registered in the name of the person or entity have been used, through the services

of such provider, in communication with--

(i) an individual who is engaging or has engaged in international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States; or  
(ii) a foreign power or an agent of a foreign power under circumstances giving reason to believe that the communication concerned international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States. (footnote omitted)

(c) Prohibition of certain disclosure.--No wire or electronic communication service provider, or officer, employee, or agent thereof, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to information or records under this section.

(d) Dissemination by bureau.--The Federal Bureau of Investigation may disseminate information and records obtained under this section only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

(e) Requirement that certain congressional bodies be informed.--On a semiannual basis the Director of the Federal Bureau of Investigation shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, concerning all requests made under subsection (b) of this section.

# Section 2709 As Amended By the Patriot Act

## 18 U.S.C. § 2709 -- Counterintelligence access to telephone toll and transactional records

(a) Duty to provide.--A wire or electronic communication service provider shall comply with a request for subscriber information and toll billing records information, or electronic communication transactional records in its custody or possession made by the Director of the Federal Bureau of Investigation under subsection (b) of this section.

(b) Required certification.--The Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director **at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director,** may--

(1) request the name, address, length of service, and local and long distance toll billing records of a person or entity if the Director (or his designee ~~in a position not lower than Deputy Assistant Director~~) certifies in writing to the wire or electronic communication service provider to which the request is made that--

{A} the name, address, length of service, and toll billing records sought are relevant to an authorized foreign counterintelligence investigation **to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment to the Constitution of the United States;** and  
{B} there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801)

(2) request the name, address, and length of service of a person or entity if the Director (or his designee ~~in a position not lower than Deputy Assistant Director~~) certifies in writing to the wire or electronic communication service provider to which the request is made that--

{A} the information sought is relevant to an authorized foreign counterintelligence investigation **to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by**

**the first amendment to the Constitution of the United States;**

{B} there are specific and articulable facts giving reason to believe that communication facilities registered in the name of the person or entity have been used, through the services of such provider, in communication with--

(i) an individual who is engaging or has engaged in international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States; or  
(ii) a foreign power or an agent of a foreign power under circumstances giving reason to believe that the communication concerned international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States.

(c) Prohibition of certain disclosure.--No wire or electronic communication service provider, or officer, employee, or agent thereof, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to information or records under this section.

(d) Dissemination by bureau.--The Federal Bureau of Investigation may disseminate information and records obtained under this section only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

(e) Requirement that certain congressional bodies be informed.--On a semiannual basis the Director of the Federal Bureau of Investigation shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, concerning all requests made under subsection (b) of this section.

# Section 2709 After Doe v. Ashcroft

## Section 2709 -- Counterintelligence access to all and transactional records

(a) A request for wire or electronic communication service provider information, a request for subscriber information and toll billing records, or a request for electronic communication transactional records in its custody, control, or possession made by the Director of the Federal Bureau of Investigation or a person in (b) of this section.

(b) Required certification by the Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director at Bureau headquarters or Special Agent in Charge in a Bureau field office designated by the Director, that:

(1) request the name, address, length of service, local and long distance toll billing records of a person or entity (or his designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that:

(A) the name, address, length of service, and toll billing records sought are relevant to an authorized foreign counterintelligence investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment to the Constitution of the United States;

(B) there are specific and articulable facts that the investigation sought pertains to a foreign power, foreign agent, or foreign power as defined in section 102 of the Foreign Intelligence Surveillance Act of 1978.

(2) request the name, address, length of service of a person or entity if the Director certifies in writing to the wire or electronic communication service provider to which the request is made that:

(A) the name, address, length of service sought is relevant to an authorized foreign counterintelligence investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by

the first amendment to the Constitution of the United States;

(B) there are specific and articulable facts giving rise to believe that communication facilities records or information of the person or entity have been used in connection with the services of such provider in connection with:

- (i) an individual who is engaged in international terrorism as defined in section 102 of the Foreign Intelligence Surveillance Act of 1978 or clandestine intelligence activities that may involve a violation of the criminal statutes of the United States; or
- (ii) a foreign power, foreign agent, or foreign power under investigation on the basis of reason to believe that the person or entity is engaged in international terrorism as defined in section 102 of the Foreign Intelligence Surveillance Act of 1978 or clandestine intelligence activities that may involve a violation of the criminal statutes of the United States.

(c) No wire or electronic communication service provider, or officer, employee, or agent thereof, shall disclose to any person that the Federal Bureau of Investigation or any other Federal law enforcement agency has obtained access to information or records under this section.

(d) The Federal Bureau of Investigation may disseminate information and records obtained under this section only as provided and approved by the Attorney General for foreign intelligence and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination by any other agency of the United States, only if such information is clearly within the authorized responsibilities of such agency.

(e) Requirement that certain congressional committees be informed.--On a semiannual basis the Director of the Federal Bureau of Investigation shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate concerning all requests made under subsection (b) of this section.