



Summary of Bills Responsive to NSA Surveillance Program Disclosures

SUBSTANTIVE BILLS		
Lead (total 8.2.13)	Bill Number and Title	Summary of Reforms
Conyers-Amash (51)	H.R.2399 : LIBERT-E Act	215 Orders: -Increases standard to “relevant and material” -strikes presumption of relevance -requires statement of specific and articulable facts giving reasonable ground to believe -requires that tangible things must “pertain only to an individual that is the subject of such investigation” Gag Orders: -Strikes 1 year waiting period to challenge -Strikes requirement that AG assertion is conclusive unless made in bad faith Reporting: -Reports must be available to all members of Congress in manner consistent w/nat’l sec. -W/in 180 days, AG must make unclassified summaries of all decisions, orders, or opinions publicly available -W/in 45 days of enactment, AG makes available to all members of Congress every report, decision, order, opinion, pleading, application, or memoranda of law; and unclassified summary w/in 180 days -W/in 1 year, DoJ IG report on Secs. 215 and 702; redacted versions available to public w/in 180 days
Leahy (11)	S.1215 : FISA Accountability and Privacy Protection Act of 2013	215 Orders: - Info. sought must pertain to AFP, be relevant to activities of AFP subject to investigation, or pertain to individual in contact with, or known to, AFP - Specific minimization procedures to be listed in application; FISC can review compliance Pen Register and Trap and Trace Devices: Application requires statement of facts and circumstances and min. procedures FAA Order: must provide description “with particularity” if identity of target unknown Delayed Notice Search Warrants: notice after 7 days Judicial Review of Production and Gag Orders: -Strikes 1 year waiting period to challenge -Strikes requirement that AG assertion is conclusive unless made in bad faith



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		Reporting: -DoJ IG audit of 215 orders 2010-2013 -Reports must include whether minimization procedures are adequate -Assessments of importance of information from intelligence activities and effectiveness of minimization procedures -Reports to Congress every 6 months on NSLs, w/number of requests, and breakdowns for those relating to USP and non-USP -Annual unclassified report to Judiciary and Intel. Comms. on authorities' use, effectiveness, and privacy impact Sunsets: -Rolls back sunset of FISA Amendments Act to 6/1/15 - NSL authorities under ECPA (18 USC 2709), RFPA (12 USC 3414(a)(5)), FCRA (15 USC 1681u(a), (b)), and NSA of 1947 (50 USC 3162) revert back to pre-Patriot Act standard on 6/1/15; and FCRA Section 627 (15 USC 1681v) is repealed
Udall-Wyden (9)	S.1182 : A bill to modify the Foreign Intelligence Surveillance Act of 1978 to require specific evidence for access to business records and other tangible things, and provide appropriate transition procedures, and for other purposes.	215 Orders: -Strikes presumption of relevance -Requires that orders pertain to AFP, be relevant to activities of AFP subject to investigation, or pertain to individual in contact with, or known to, AFP
Sanders (1)	S.1168 : Restore Our Privacy Act	215 Orders: -Requires application to include specific and articulable facts giving reason to believe that each of the tangible things is relevant -Requires that order must concern an int'l terrorism investigation conducted by FBI; pertain to AFP <i>and</i> activities of AFP who is subject of investigation Reporting: Semiannual AG reports to Congress (and consistent w/nat'l sec. make available to public) detailing: -Number of applications -Number of applications granted, modified, denied -Description of each application -Analysis of effectiveness of each application



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Paul (1)	S.1121 : Fourth Amendment Restoration Act of 2013	4 th Amendment shall be interpreted to require gov't to obtain a probable cause warrant to search Americans' phone records
Ross (1)	H.R.2603 : Relevancy Act	215 Orders: Requires that records sought in application are "related to a specific person that is the subject of an investigation: and that any investigation must "be conducted of a specific person or specific group of persons"
Holt (1)	H.R.2818 : To repeal the USA PATRIOT Act and the FISA Amendments Act of 2008, and for other purposes.	Repeals the Patriot Act and the FISA Amendments Act FISC Reform: -Increases term to 10 years but no reappointment -Appointment of Special Masters to advise court (persons w/technological expertise) Warrant Requirement: Requires probable cause warrant to obtain info. on USP under FISA CALEA: Gov't cannot require companies to build in access Whistleblower Complaints: Gov't employee or contractor can file complaint on FISA violation/mismanagement to Comptroller or Intel. Committees; retaliation prohibited Reports: GAO conducts annual FISA compliance reviews
Lynch (3)	H.R.2684 : Telephone Surveillance Accountability Act of 2013	Searches of Telephony Metadata: Requires judge to issue order to FBI Dir. finding "reasonable, articulable suspicion that the basis of the search is material and specifically relevant to an authorized investigation and enters an order authorizing such search" before searches through collected metadata may be conducted



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DISCLOSURE – COURT OPINIONS, GOV'T STATISTICS		
Lead (total 8.2.13)	Bill Number and Title	Summary of Reforms
Schiff-Rokita (29)	H.R.2475 : Ending Secret Law Act	215 Order and FAA Opinion Disclosure: Declassify and make publicly available: -All opinions submitted to Congress before enactment w/in 180 days - All opinions submitted to Congress after enactment w/in 45 days - If declassification impossible, then unclassified summary of decisions; or if summary impossible, then AG must issue unclassified report on “status of the internal deliberations and process regarding the declassification” w/estimates of number of decisions that will and won’t be declassified
Merkley-Lee (15)	S.1130 : Ending Secret Law Act	215 Order and FAA Opinion Disclosure: Declassify and make publicly available: -All opinions submitted to Congress before enactment w/in 180 days - All opinions submitted to Congress after enactment w/in 45 days - If declassification impossible, then unclassified summary of decisions; or if summary impossible, then AG must issue unclassified report on “status of the internal deliberations and process regarding the declassification” w/estimates of number of decisions that will and won’t be declassified
Jackson-Lee (13)	H.R.2440 : FISA Court in the Sunshine Act of 2013	215 Order and FAA Opinion Disclosure: Declassify and make publicly available: -All opinions submitted to Congress before enactment w/in 180 days - All opinions submitted to Congress after enactment w/in 45 days - If declassification impossible, then unclassified summary of decisions; or if summary impossible, then AG must issue unclassified report on “status of the internal deliberations and process regarding the declassification” w/estimates of number of decisions that will and won’t be declassified



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DISCLOSURE – CORPORATE SIDE		
Lead (total 8.2.13)	Bill Number and Title	Summary of Reforms
Larsen-Amash (4)	H.R.2736 : Government Surveillance Transparency Act of 2013	FISA order recipient may report every 90 days on: - Aggregate number of orders or directives - General description of types of assistance, info., or tangible things - Aggregate number of each type of assistance, info., or tangible thing - Aggregate number of user accounts affected
Lofgren (10)	H.R. 3035 : Surveillance Order Reporting Act of 2013	Public Reporting of Orders Under FISA (50 USC 1801 et seq.), NSLs (18 USC 2709), RFPAs (12 USC 3414(a)(5)(A)), FCRA (15 USC 1681u(a),(b), and v(a)), and Nat’l Sec. Act (50 USC 436(a)): Allows electronic service providers to, on a quarterly basis, publicly report estimates, rounded to the nearest 100, of: - Number of Gov’t demands for info. under surveillance law - Number of demands with which provider complied during reporting period, regardless of when demands were made - Number of users and/or accounts for which info. was demanded
Franken (11)	S.1452 : Surveillance Transparency Act of 2013	Reporting on FAA: Annual reports to AOUSC and Congress must include - Total number of individuals subject to electronic surveillance, unless number is less than 500 and reported as “fewer than 500” - Total number of citizens and LPRs surveilled, unless “fewer than 500” Reporting on 215 Orders: Annual unclassified reports to Intel. and Judiciary Committees and available to public w/in 7 days, include: - Number of orders granted, modified, or denied for electronic and wire communications, and info. sought under 18 USC 2703(c)(2) (ex. name, address, call logs, etc.) - Report on number of 215 applications; number of orders granted, modified, or denied; - Good faith estimates of number of USPs: - whose tangible thing produced, - who were party to electronic or wire communication produced - whose communications were reviewed or accessed - who were subscribers of service that was issued order - Productions pursuant to 18 USC 2703(c)(2) - Number of computer-assisted search queries on 215 intel., and number of queries relating to USP electronic or wire communications - Certification that no order were used to obtain content - If any number is fewer than 500, that number must be reported as “fewer than 500”



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		Reporting on FAA: Annual unclassified report to Congress available to public w/in 7 days on total number of FAA orders issued, and good faith estimates of number of: - individuals whose electronic or wire communications or communications records were collected under FAA -USPs whose electronic or wire communications contents or communications records were collected under FAA -USPs who were a party to an electronic or wire communication whose contents or records were collected under 702, and number whose communications were reviewed or accessed (separate report for each subset) -USPs who were subscribers of electronic communication service whose records were produced pursuant to 18 USC 2703(c)(2) -If any number is fewer than 500, that number must be reported as “fewer than 500” Pen Registers and Trap and Trace Device Reporting: Annual unclassified reports to Congress and available to public w/in 7 days on: -Number of applications -Number of orders granted, modified, or denied, “good faith estimates” of number of individuals whose electronic or wire communications obtained; “good faith estimates” of number of USP and of number whose info. accessed -Number of computer assisted search queries - If any number is fewer than 500, that number must be reported as “fewer than 500”-“Individual” excludes group, entity, association, corporation, or governmental entity Aggregate Reporting by Companies: Every 6 months, a person receiving order under FISA Sections 105,402, 501, 702-704, may publicly disclose about the preceding 6 months: -total number of orders/directives received -Percentage complied with -Total number of individual persons, users, or accounts whose info. disclosed -May disclose number of individual persons, users, or accounts whose electronic or wire communications contents or records, or information described in 18 USC 2703(c)(2) were produced, except for orders made under Secs. 402, 501, or 702 - If any number is fewer than 500, that number must be reported as “fewer than 500”
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FISC REFORM		
Lead (total 8.2.13)	Bill Number and Title	Summary of Reforms
Blumenthal (9)	S.1460 : FISA Judge Selection Reform Act of 2013	Reforms Appointment Process and Make-Up of FISC: - Increases FISC to 13 judges - Requires 1 judge be appointed from each federal district (incl. DC) - Appointment by Chief Justice, but nominated by chief judge in district, and if first nominee rejected, then 2 more made and Chief Justice must choose amongst them - Limits appointment to one 7 year term (note: typo in bill) - Unless sitting en banc, no FISC judge may hear application that has already been denied by another FISC judge Appointment to FISA Court of Review: Chief Justice appoints judges from district or circuit courts, but must have approval of at least 5 associate justices Report on Diversity and Representation of FISC: Committee on Intercircuit Assignment of the Judicial Conference of the US will carry out study and issue report w/in 1 year of enactment
Blumenthal (16)	S.1467 : FISA Court Reform Act of 2013	Office of the Special Advocate in executive branch: - Special Advocate appointed for renewable 5 year term(s) by presiding judge of FISA Court of Review from list of 5+ candidates provided by PCLOB – if vacant, Acting Special Advocate appointed from Office or PCLOB’s list - Duties of Special Advocate: - Review all FISC applications and orders and documents/materials relevant to decision - Participate in FISC proceedings IF appointed by FISC, or if request to participate made of and granted by FISC - May move for FISC to reconsider decision or appeal - Protects individuals’ rights by supporting legal interpretations that minimize scope of surveillance and extent of data collection and retention - May get help of competent outside counsel, and move to permit participation of amicus curiae (incl. in oral argument – rules for participation w/in 180 days of enactment) - May petition for disclosure - Standard of Review by FISA Court of Review: de novo re: issues of law; clearly erroneous re: determination of facts Disclosures of Opinions: AG must disclose all FISC decisions w/significant construction or interpretation of law issued



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		after July 10, 2003, and all FISC decisions appealed by Special Advocate, including FISCR decisions. Disclosures can include (un)redacted order, summary of order, or (un)redacted application/brief/other materials, and must include public document sufficient to: - Identify each legal question addressed - Generally describe context of the issues - Describe construction/interpretation of statute, constitutional provision, or other legal authority - Indicate whether decision departs from prior decision Special Advocate Report to Congress: Annual report on implementation of Act, detailing activities of Office, assessment of Act's effectiveness, and proposals of new legislation on FISC
Schiff (10)	H.R.2761 : Presidential Appointment of FISA Court Judges Act	Designation of FISC Judges: Appointment of FISC judges by the "President, by and with the advice and consent of the Senate"
Cohen (12)	H.R.2586 : FISA Court Accountability Act	Designation of FISC Judges: 11 judges -3 appointed by Chief Justice; 2 by each of the party leaders chambers of Congress Limitations on FISC -No judge may hear application already denied by another FISC judge -En banc authorities only exercised when agreed to by 60%+ of judges sitting en banc -Decisions in favor of Gov't must be unanimous Disclosures to Congress: Requires AG to submit all FISC opinions to Congress; and an unclassified summary of each decision, order, or opinion
Lynch (2)	H.R.2849 : Privacy Advocate General Act of 2013	Creates Office of the Privacy Advocate General (PAG): -Independent office in Exec. Branch -PAG appointed jointly by Chief Justice and senior Assoc. Justice appointed by President of diff. party from that of Pres. who appointed Chief Justice -7 year term -Duties: - Serves as opposing counsel to Fed. Gov't for all applications before FISC, incl. for appeals and cert. petitions to USC - May request public disclosure of order, opinion, decision



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		Surveillance Authority Pending Gov't Appeal of Denial of FISC Application: FISC Judge may authorize emergency electronic or physical surveillance, or installation of a pen register or trap and trace device, pending gov't appeal of denial of application if there is: - Reasonable argument that surveillance is permissible; and - Exceptional circumstances and compelling evidence of necessity of surveillance - If appeal denied, information gathered must be destroyed, and cannot be used in any judicial, agency, regulatory, or legislative proceeding, or used or disclosed by federal employees w/out individual's consent
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