



Written by [Raven Clabough](#) on May 27, 2015

FBI Report Adds Fuel to Fire Over Expiring Patriot Act Snooping Powers

Earlier this month, the U.S. House of Representatives passed the USA Freedom Act, which would renew some of the “less controversial” expiring portions of the Patriot Act, but also would end the government’s bulk collection of phone data. That bill is now facing resistance in the Senate, where Republican leaders assert that a full extension on the Patriot Act provisions should be granted without any changes. However, an FBI [report](#) admitting that no major cases have been cracked with surveillance powers authorized by the Patriot Act provides fodder to fuel the fight *against* extending the Patriot Act’s bulk data collection.



Section 215 of the Patriot Act, slated to expire on June 1, authorizes the government to collect “any tangible things” that the government proves are “relevant to” an investigation into suspected terrorists. It permits government agents to compel businesses to turn over records and documents of Americans who have no official ties to terrorist organizations.

The NSA’s unconstitutional, warrantless phone snooping program operates under Section 215. Supporters of the program claim it is critical in the fight against terror.

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In a surprising bipartisan vote of 338-88, members of the House approved the USA Freedom Act, which would extend most of the powers except for the bulk collection of data. Under the USA Freedom Act, the government would have to ask phone companies to store the data, and agents would have to apply for a particular number if they believed it was associated with terrorism.

But Senate Majority Leader Mitch McConnell blocked the USA Freedom Act, believing that if he did not provide his colleagues any other choice, they would have to extend all of Section 215, including bulk collection.

McConnell has defended the NSA’s collection of Americans’ phone data as “an important tool to prevent the next terrorist attack,” despite the unconstitutionality and the lack of evidence that the program has helped to foil terrorism.

McConnell proposed extending the Patriot Act another two months, in order to avoid the provisions lapsing on June 1, but the proposed extension got support from only 45 senators, with 54 voting against it, falling well short of the 60-vote threshold needed to limit debate and bring the extension itself to a vote.

McConnell then proposed shorter renewal periods, ranging from one day to one week, in order to prevent the law from expiring, but Senator Rand Paul (R-Ky.), a staunch opponent of the NSA program,



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blocked those attempts.

McConnell dismissed the Senate for a Memorial Day vacation, but he intends to bring members back on May 31, hoping to have struck a deal by then.

“This is a high-threat period. We know what is going on overseas. We know what has been tried here at home. Do we really want this law to expire?” McConnell asked. “We better be ready next Sunday afternoon to prevent the country from being in danger by the total expiration of the program we are all familiar with.”

But a report released last week by Justice Department Inspector General Michael E. Horowitz undermines McConnell’s claims. The report states that though the FBI tripled its bulk collection under Section 215 of the Patriot Act between 2004 and 2009, no major cases were broken as a result.

“The agents we interviewed did not identify any major case developments that resulted from use of the records obtained in response to Section 215 orders,” the inspector general concluded — though he said agents did view the material they gathered as “valuable” in developing other leads or corroborating information.

In the report, Horowitz also admits that it took the FBI far too long to create procedures to minimize the information it was gathering on nontargets.

These revelations could further fuel the already increased opposition to the government’s surveillance powers.

“This report adds to the mounting evidence that Section 215 has done little to protect Americans and should be put to rest,” said American Civil Liberties Union Staff Attorney Alex Abdo.

According to Stephen Kohn, attorney at Kohn, Kohn & Colapinto, LLP, bulk data collection does more harm than good, by creating false leads and tying up investigative resources. Kohn also contends that the FBI’s dependency on bulk data collection is an indication that the agency does not have the appropriate resources to engage in counterterrorism operations.

“They have a large amount of agents who are working counterterrorism that have no human resources, no leads, no infiltrations, so they have nothing else to do,” he said. “In other words, when they staffed up and made [counterterrorism] a major priority, these agents need to do something. And they’re doing what they know to do, and that’s electronic surveillance.”

Of course, trying to find a needle in a haystack by adding more hay does not make sense if the purpose is to find a needle — or in this case, a terrorist. But it surely must keep busy those who dig through the haystack of surveillance information looking for a needle.

A [ruling](#) out of a federal appeals court earlier this month lends credence to the arguments against the NSA program.

In the sweeping decision from the Second Circuit Court, Judge Gerard Lynch wrote on behalf of the three-judge panel that the NSA program “exceeds the scope of what Congress has authorized.”

The law “cannot be interpreted in a way that defies any meaningful limit,” he added. The government’s rationale for the program represents “a monumental shift in our approach to combating terrorism,” Lynch notes.

Judge Lynch elaborates that allowing the bulk collection of data creates a slippery slope.



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“If the government is correct, it could use § 215 to collect and store in bulk any other existing metadata available anywhere in the private sector, including metadata associated with financial records, medical records, and electronic communications (including e-mail and social media information) relating to all Americans,” Lynch wrote.

What will come of the expiring provisions of the Patriot Act remains to be seen.

President Obama has encouraged the Senate to pass the USA Freedom Act and do whatever it takes to prevent the Patriot Act provisions from expiring on Sunday night.

“Our intelligence communities are confident that they can work with the authorities that are provided in that act,” Obama said Tuesday. “It passed on a bipartisan basis and overwhelmingly. It was then sent to the Senate. The Senate did not act.”

“This needs to get done,” Obama added. “And I would urge folks to just work through whatever issues can still exist, make sure we don’t have, on midnight Sunday night, this task still undone, because it’s necessary to keep the American people safe and secure.”



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