



NSA Official Refuses to Reveal the Success — or Failure — of Phone Surveillance

Members of the Senate Judiciary Committee from both sides of the aisle are questioning the necessity of renewing one of the NSA's many telephone surveillance programs.

During a hearing on Wednesday, Republican Lindsey Graham of South Carolina and Democrat Dianne Feinstein of California each peppered an NSA representative regarding that organization's drive to continue its unconstitutional collection of Call Detail Records (CDR) of Americans, records that reveal personal data of millions of citizens.



The Hill offered the following summary of the surveillance program being debated:

The call detail records program gathered information on incoming and outgoing domestic text messages and phone calls to aid the government in terrorism investigations. Civil liberties advocates are pressing Congress to allow the program to sunset entirely, claiming that privacy concerns outweigh any national security benefits.

"Why should we reauthorize it?" Graham, the chairman of the Senate Judiciary Committee, asked NSA official Susan Morgan.

Feinstein followed suit. "It's really not clear to me why a program with limited intelligence value and clear compliance problems should be reauthorized," the California Democrat said. "And unless there is good reason to believe that it should, I do not believe we should reauthorize it."

Morgan parried the one-two combination calmly. She said the NSA "supports reauthorization of the ... provision so the government will retain this potentially valuable tool should it prove useful in the future." She told the senators that the surveillance program in question is "dynamic," and warned lawmakers that if the collection program is not renewed, the NSA would lose a valuable "tool in our toolbox."

That vague warning and dire prediction of putting the NSA at a disadvantage when it comes to "fighting terrorism," was all that was offered by Morgan in defense of the program.

"Can the NSA provide an example of information obtained by the [call detail records] program that resulted in discovery of previously unknown terrorist plot?" Feinstein asked, not content to rubber-stamp the surveillance program without at least a little evidence that it is "preventing terror."

Of course, Morgan demurred, claiming that such sensitive information could not be safely revealed "in an open setting."

Such stonewalling didn't sit well with Senator Mike Lee (R-Utah), and he called Morgan's bluff, offering to "go there right now," referring to a secure room near the Senate chamber.



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Not surprisingly, Morgan sat still, refusing to take Lee up on his offer.

Ben Sasse (R-Neb.) renewed the offer to run off to a secure location. “If you can’t answer this question, why don’t we go to a [sensitive compartmented information facility] right now?” Sasse offered. Again, Morgan didn’t budge.

After the hearing, civil rights watchdog Demand Progress’s policy counsel Sean Vitka issued a statement criticizing the data collection program and questioning its constitutionality and necessity,

Today’s hearing further proves the urgent need for Congress to end the Trump administration’s ability to spy on millions of innocent people in the United States. Despite this administration’s claims that it is concerned about unlawful surveillance and the ‘Deep State,’ it is fighting for the permanent reauthorization of a notorious mass surveillance authority that has never proven useful, and has rarely, if ever, been operated in full compliance with the laws and rules governing surveillance of call records.

However, repeal of the ‘Call Detail Records’ (CDR) program alone is not enough. Congress must prevent this government from using Section 215 to target First Amendment-protected activity and to collect location information without a warrant, and it must put an end to the government’s use of Section 215-derived information in court without giving notice to defendants.

Freedom Works and Demand Progress have partnered to publish information about the insidiousness and the unconstitutionality of Section 215. Here are a few highlights from the many documents the organization provides: The FBI and NSA use Section 215 to collect vast amounts of information about U.S. persons without a warrant. In 2018, under only one of two Section 215 provisions, the government collected 434,238,543 call records. The vast majority of those records relate to people who are not the targets of any investigations or suspected of wrongdoing.

Section 215 is scheduled to sunset on December 15, 2019.

The government’s extreme interpretation of Section 215 was the first subject of the Snowden revelations that shocked the country, most notably the “bulk telephone metadata program,” under which the government ordered major telephone providers to hand over records of all calls made by all customers.

Section 215 orders do not require a warrant based on a showing of probable cause, but rather a statement of facts to the Foreign Intelligence Surveillance Court. It is similar to an administrative subpoena.

Call Detail Records orders collect all of a target’s records, as well as all records of everyone who has communicated with that target, and does so on an ongoing basis. This ongoing, two-degree collection means the majority of records collected under the CDR program are not those of a target or anyone suspected of wrongdoing, or even of people in contact with someone who is.

Senators and bureaucrats can cavil over whether Section 215 — the Call Detail Records program — has proven successful in catching terrorists before they, well, terrorize, but the truth of the matter is that the program could have put hundreds of terrorists out of business, but that wouldn’t make the program any more constitutional and when it comes to the authority of the federal government, the enumerated powers of the Constitution is the alpha and omega.

In fact, the Framers abhorred the British practice of entering a man’s house without a warrant and rifling through his private papers to try and find a pretext for putting him in prison. They believed that



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“papers are often the dearest property a man can have” and that permitting the government to “sweep away all papers whatsoever,” without any legal justification, “would destroy all the comforts of society.”

In 1776, George Mason, the principal author of the Virginia Declaration of Rights — a document of profound influence on the construction of the federal Bill of Rights — upheld the right to be free from such searches, as well: “That general warrants, whereby any officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence [*sic*] is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.”

Thus, the Fourth Amendment: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

The rights guaranteed by the Fourth Amendment are under nearly constant assault by the forces of the federal government. From NSA surveillance to IRS use of tax records as a political tool, the papers, effects, and homes of all Americans are now *de facto* denied the protections our Founders held so dear.

The undeniable truth is that not a single one of our Founding Fathers, not even the most ardent advocate of a powerful central government, would have remained even one day at the Philadelphia Convention if he had believed that the government they were creating would become the instrument of tyranny that it has become.

Taken together, the federal government’s consolidation of control and cognizance reduces every American to the status of “suspect.”

These historical and constitutional facts should be all the evidence the Senate needs to permanently shut down Section 215.

Image: [Screenshot of NSA.gov](#)



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