



Written by [Jack Kenny](#) on June 7, 2013

Secret Records Seizures Called “Critical Tool” in Protecting America

In what President Obama has called [“the most transparent administration in history”](#) a secret order from a secret court, authorizing the secret collection of untold millions of Americans’ phone records, was defended Thursday by a White House official speaking anonymously. As Kevin O’Brien observed in the [Plain Dealer](#), the Obama administration “is giving transparency a bad alias.”



A “senior administration official” defended the National Security Agency’s collecting of the telephone records of Verizon’s U.S. customers for a three-month period under a “TOP SECRET” order issued by the Foreign Intelligence Surveillance Court. News of the order was published Wednesday night by *The Guardian* of London.

“Information of the sort described in the *Guardian* article has been a critical tool in protecting the nation from terrorist threats to the United States,” the official said, “as it allows counter-terrorism personnel to discover whether known or suspected terrorists have been in contact with other persons who may be engaged in terrorist activities, particularly people located inside the United States.”

The court order, issued April 25, requires Verizon to turn over the records of each day’s calls until the order expires on July 19. The information to be turned over to the NSA daily includes the phone numbers of both parties to a call, along with data revealing the time, location, and duration of the calls, and “comprehensive communication routing information.” The order applies to calls made in the United States or between the United States and other countries. It does not apply to calls that originate and terminate in foreign countries. The contents of the conversations are not covered, *The Guardian* said.

“As we have publicly stated before, all three branches of government are involved in reviewing and authorising intelligence collection under the Foreign Intelligence Surveillance Act,” the White House official said. “Congress passed that act and is regularly and fully briefed on how it is used, and the Foreign Intelligence Surveillance Court authorises such collection. There is a robust legal regime in place governing all activities conducted pursuant to the Foreign Intelligence Surveillance Act.”

The order was issued in response to an application by the FBI under a provision of FISA that authorizes domestic surveillance for national security purposes, including demands for businesses of customer records. The provision was expanded by the controversial Section 215, the “business records” section, of the PATRIOT Act, passed by Congress shortly after the terrorist attacks on New York and Washington, D.C. on September 11, 2001. After 9/11, the Bush administration collected call logs, or “metadata,” from telecommunications without a court order. But the April 25 order, a copy of which was obtained by *The Guardian*, is the first public evidence that “under the Obama administration the communication records of millions of US citizens are being collected indiscriminately and in bulk — regardless of whether they are suspected of any wrongdoing,” the newspaper said.

While the order obtained by *The Guardian* covers a specific period of just under three months, that is



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but one segment of an ongoing operation, said Dianne Feinstein, (D-Calif.) “As far as I know this is the exact three-month renewal of what has been the case for the past seven years,” said Feinstein. The renewal is authorized by the FISA court “under the business records section of the Patriot Act. Therefore it is lawful,” she said. “It has been briefed to Congress.”

Under the FISA law, the records seized and search need not pertain to an individual suspected of a crime, but they are supposed to be related to an investigation of “foreign intelligence information” exchanged between “foreign powers” and “agents of foreign powers” in the United States. Agents of foreign powers may include citizens or permanent residents of the United States suspected of espionage or terrorism. FISA does not apply to investigations conducted outside the United States.

Under the Fourth Amendment, a warrant for a search must be “particularly describing the place to be searched and the persons or things to be seized.” The seizure and search of the call records of a telecommunications company’s millions of customers every day hardly fits that description.

“This type of secret bulk data collection is an outrageous breach of Americans’ privacy,” declared Sen. Jeff Merkley (D-Ore). “Can the FBI or the NSA really claim that they need data scooped up on tens of millions of Americans?”

Senators Ron Wyden of Oregon and Mark Udall of Colorado, both Democrats on the Senate Intelligence Committee, have often warned of how broadly the government has been interpreting its powers under the business records section of the PATRIOT Act. In a March 15, 2012 [letter](#) to Attorney General Eric Holder, they noted those powers have been “the subject of secret legal interpretations” contained in “classified opinions issued by the Foreign Intelligence Surveillance Court.”

The opinions are “so highly classified that most members of Congress do not have any staff who are cleared to read them,” they wrote. “As a result, we can state with confidence that most of our colleagues in the House and Senate are unfamiliar with the documents, and that many of them would be surprised and angry to learn how the Patriot Act has been interpreted in secret.” The general public might be alarmed as well, they said.

“We believe most Americans would be stunned to learn the details of how these secret court opinions have interpreted Section 215 of the Patriot Act. As we see it, there is a significant gap between what most Americans *think* the law allows and what the government *secretly claims* the law allows.” (Emphasis in the original.) Wyden and Udall reminded the attorney general that they and other senators had repeatedly asked in vain for the administration to “declassify these interpretations so that Congress and the public can have an informed debate about the purpose and scope of the law.”

The [National Security Agency](#) was established by a June 1952 order of President Harry Truman in a letter that was itself classified and the existence of the agency was not generally known. While its mandate is to investigate foreign intelligence operations, the agency has become increasingly focused on domestic communications. A 30-year employee of the agency, William Binney, resigned from the NSA shortly after 9/11 in protest at the agency’s focus on domestic activities, *The Guardian* reported.

Though amended many times, the Foreign Intelligence Surveillance Act was originally passed in 1978, following hearings in 1975 by a Senate select committee on the domestic surveillance activities of government agencies. The late Sen. Frank Church (D-Idaho), who chaired the committee, warned at the end of its investigations:

“The NSA’s capability at any time could be turned around on the American people, and no American would have any privacy left, such is the capability to monitor everything: telephone conversations,



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telegrams, it doesn't matter."

Photo of U.S. Foreign Intelligence Surveillance Court order to Verizon: AP Images



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