

## S 2685

### USA FREEDOM Act of 2014

**Congress:** 113 (2013–2015, Ended)

**Chamber:** Senate

**Policy Area:** Crime and Law Enforcement

**Introduced:** Jul 29, 2014

**Current Status:** Cloture on the motion to proceed to the measure not invoked in Senate by Yea-Nay Vote. 58 - 42. Reco

**Latest Action:** Cloture on the motion to proceed to the measure not invoked in Senate by Yea-Nay Vote. 58 - 42. Record Vote Number: 282. (consideration: CR S6079-6080; text: CR S6079) (Nov 18, 2014)

**Official Text:** <https://www.congress.gov/bill/113th-congress/senate-bill/2685>

### Sponsor

**Name:** Sen. Leahy, Patrick J. [D-VT]

**Party:** Democratic • **State:** VT • **Chamber:** Senate

### Cosponsors (20 total)

Cosponsor	Party / State	Role	Date Joined
Sen. Blumenthal, Richard [D-CT]	D · CT		Jul 29, 2014
Sen. Coons, Christopher A. [D-DE]	D · DE		Jul 29, 2014
Sen. Cruz, Ted [R-TX]	R · TX		Jul 29, 2014
Sen. Durbin, Richard J. [D-IL]	D · IL		Jul 29, 2014
Sen. Franken, Al [D-MN]	D · MN		Jul 29, 2014
Sen. Heinrich, Martin [D-NM]	D · NM		Jul 29, 2014
Sen. Heller, Dean [R-NV]	R · NV		Jul 29, 2014
Sen. Hirono, Mazie K. [D-HI]	D · HI		Jul 29, 2014
Sen. Klobuchar, Amy [D-MN]	D · MN		Jul 29, 2014
Sen. Lee, Mike [R-UT]	R · UT		Jul 29, 2014
Sen. Markey, Edward J. [D-MA]	D · MA		Jul 29, 2014
Sen. Sanders, Bernard [I-VT]	I · VT		Jul 29, 2014
Sen. Schumer, Charles E. [D-NY]	D · NY		Jul 29, 2014
Sen. Udall, Tom [D-NM]	D · NM		Jul 29, 2014
Sen. Whitehouse, Sheldon [D-RI]	D · RI		Jul 29, 2014
Sen. Booker, Cory A. [D-NJ]	D · NJ		Jul 31, 2014
Sen. Brown, Sherrod [D-OH]	D · OH		Aug 1, 2014
Sen. Menendez, Robert [D-NJ]	D · NJ		Aug 1, 2014
Sen. Murray, Patty [D-WA]	D · WA		Nov 17, 2014
Sen. Boxer, Barbara [D-CA]	D · CA		Nov 20, 2014

### Committee Activity

No committee referrals or activity are recorded for this bill.

## Subjects & Policy Tags

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### Policy Area:

Crime and Law Enforcement

### Related Bills

Bill	Relationship	Last Action
113 HR 3361	Related bill	Jun 5, 2014: Select Committee on Intelligence. Hearings held.

Uniting and Strengthening America by Fulfilling Rights and Ensuring Effective Discipline Over Monitoring Act of 2014 or the USA FREEDOM Act of 2014 - **Title I: FISA Business Records Reforms** - Amends the Foreign Intelligence Surveillance Act of 1978 (FISA) to establish a new process to be followed when the Federal Bureau of Investigation (FBI) submits an application to a FISA court for an order requiring the production of tangible things (commonly referred to as business records) for an investigation to obtain foreign intelligence information not concerning a U.S. person or to protect against international terrorism or clandestine intelligence activities.

Requires the FBI to include in such tangible thing applications a specific selection term to be used as the basis for production.

Provides for applications seeking the production of call detail records to be considered under such revised tangible thing production requirements.

Defines "call detail record" as session identifying information (including an originating or terminating telephone number, an International Mobile Subscriber Identity number, or an International Mobile Station Equipment Identity number), a telephone calling card number, or the time or duration of a call. Excludes from such definition: (1) the contents of any communication; (2) the name, address, or financial information of a subscriber or customer; or (3) cell site location information.

Establishes two separate frameworks for the production of such call detail records with different standards that apply based on whether the application seeks:

- production on a daily basis of call detail records created before, on, or after the date of the application relating to an authorized investigation to protect against international terrorism, in which case the specific selection term is only required to specifically identify an individual, account, or personal device; or
- production of call detail records in any other manner under revised FISA requirements for the production of all other tangible things, in which case a narrowly limited specific selection term is required to specifically identify a person, account, physical or electronic address, personal device, or another specific identifier to narrowly limit the scope of tangible things sought to the greatest extent reasonably practicable and is prohibited from including a term: (1) based on a broad geographic region, including a city, state, zip code, or area code, when not used as part of a specific identifier; or (2) identifying an electronic communication service provider or a provider of remote computing service when not used as part of a specific identifier, unless the provider is itself a subject of an authorized investigation for which the specific selection term is used as the basis of production.

Requires the FBI, in applications seeking the production on a daily basis of call detail records created before, on, or after the date of an application relating to an authorized investigation to protect against international terrorism, to include a statement of facts showing: (1) reasonable grounds to believe that the call detail records sought to be produced based on the specific selection term are relevant to such investigation; and (2) a reasonable, articulable suspicion that such specific selection term is associated with a foreign power or an agent of a foreign power engaged in international terrorism or activities in preparation for such terrorism.

Requires a judge approving the release, on a daily basis, of call detail records created before, on, or after the date of application relating to an authorized investigation to protect against international terrorism to:

- limit such production to a period not to exceed 180 days, but allow such orders to be extended upon application

with judicial approval;

- permit the government to require the prompt production of such records using: (1) a specific selection term that satisfies the reasonable, articulable suspicion standard that the term is associated with a foreign power or an agent of a foreign power; and (2) call detail records with a direct connection to such specific selection term as the basis for production of a second set of call detail records (thus limiting the government to what is commonly referred to as two "hops" of call records when the order concerns production on a daily basis of call detail records created before, on, or after the date of the application relating to an authorized investigation to protect against international terrorism); and
- direct the government to: (1) adopt minimization procedures requiring prompt destruction of such call records that the government determines are not foreign intelligence information, and (2) destroy all call detail records produced under the order as prescribed by such procedures.

Requires applications and orders under FISA for production of call detail records in any other manner (other than in the manner required for a daily production of such records created before, on, or after the date of an application relating to an authorized investigation to protect against international terrorism) to be considered under the standards applicable to all other applications and orders for the production of tangible things. (Thus, requires a specific selection term but does not subject the production to the additional requirements--including the reasonable, articulable suspicion standard regarding an association with a foreign power or an agent of a foreign power, the 180-day period limitation, the two-hop limitation, and the prompt destruction requirements for records that are not foreign intelligence information--that are applicable only to the daily production of call detail records created before, on, or after the date of the application relating to an authorized investigation to protect against international terrorism.)

Authorizes the Attorney General to require the emergency production of tangible things, without first obtaining a court order, if the Attorney General: (1) reasonably determines that an emergency situation requires the production of tangible things before an order authorizing production can be obtained with due diligence, (2) reasonably determines that a factual basis exists for the issuance of such a production order, (3) informs a FISA judge of the decision to require such production at the time the emergency decision is made, and (4) makes an application to a FISA judge within seven days after the Attorney General requires such emergency production.

Terminates the authority for such emergency production of tangible things when the information sought is obtained, when the application for the order is denied, or after the expiration of seven days from the time the Attorney General begins requiring such emergency production, whichever is earliest.

Prohibits information obtained or evidence derived from such an emergency production from being received in evidence or disclosed in any proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a state, or a political subdivision if: (1) the subsequent application for court approval is denied, or (2) the production is terminated and no order is issued approving the production. Bars information concerning any U.S. person acquired from such production from being used or disclosed in any other manner by federal officers or employees without the consent of such person, except with approval of the Attorney General if the information indicates a threat of death or serious bodily harm.

Requires FISA court orders approving the production of tangible things to include each specific selection term used as the basis for such production.

Prohibits FISA courts from authorizing the collection of tangible things without the use of a specific selection term.

Requires minimization procedures for orders in which the specific selection term does not specifically identify an individual, account, or personal device to prohibit the dissemination, and require the destruction within a reasonable time period specified in the order, of any information that has not been determined to relate to a person: (1) who is a subject of an authorized investigation, a foreign power, or a suspected agent of a foreign power; or (2) who is reasonably likely to have information about the activities of, or who is in contact with or known to, a subject of an authorized investigation or a suspected agent of a foreign power associated with a subject of an authorized investigation. Exempts from such minimization procedures tangible things or information that indicates a threat of death or serious bodily harm or that is disseminated to another element of the intelligence community for the sole purpose of determining whether it relates to such a person.

Requires a FISA court, as a condition to approving an application for a tangible thing production order, to find that the minimization procedures submitted with the application meet applicable FISA standards.

Removes a requirement that a judge considering a petition to modify or set aside a nondisclosure order treat as conclusive a certification by the Attorney General, Deputy Attorney General, an Assistant Attorney General, or the FBI Director that disclosure may endanger national security or interfere with diplomatic relations.

Extends liability protections to: (1) persons required to provide information, facilities, or technical assistance for the production of tangible things; and (2) persons who provide technical assistance to the government for such production or to implement amendments made by this Act to FISA's requirements for such production. (Currently, liability protections are limited to persons who produce such tangible things.)

Requires the government to compensate a person for reasonable expenses incurred for: (1) producing tangible things or providing information, facilities, or assistance in accordance with an order issued for the production of daily-basis call detail records created before, on, or after the date of the application or an emergency production that requires an application for such daily-basis call records; or (2) providing such technical assistance to the government or to implement the tangible thing production amendments of this Act.

Amends the USA PATRIOT Improvement and Reauthorization Act of 2005 to require the Inspector General of the Department of Justice (DOJ) to audit the effectiveness and use of FISA authority to obtain production of tangible things from 2012 to 2014, including an examination of whether minimization procedures adopted by the Attorney General adequately protect the constitutional rights of U.S. persons. Directs the Inspector General of the Intelligence Community, for the same 2012-2014 period, to assess: (1) the importance of such information to the intelligence community; (2) the manner in which such information was collected, retained, analyzed, and disseminated; and (3) the adequacy of minimization procedures, including an assessment of any minimization procedures proposed by an element of the intelligence community that were modified or denied by the court.

Prohibits this Act from being construed to authorize the production of the contents of any electronic communication from an electronic communication service provider under such tangible thing requirements.

**Title II: FISA Pen Register and Trap and Trace Device Reform** - Requires the government's FISA applications for orders approving pen registers or trap and trace devices to include a narrowly limited specific selection term as the basis for the installation or use of the register or device.

Directs the Attorney General to ensure that appropriate procedures are in place to safeguard nonpublicly available information concerning U.S. persons that is collected through the use of a pen register or trap and trace device installed with FISA court approval. Requires such procedures to include privacy protections for the collection, retention, and use of

information concerning U.S. persons.

**Title III: FISA Acquisitions Targeting Persons Outside the United States Reforms** - Sets forth limitations on the use of information obtained through an authorization by the Attorney General and the Director of National Intelligence (DNI) to target persons outside the United States other than U.S. persons. Requires, if the FISA court orders a correction of a certification or minimization procedures for such targeting, that no information obtained or evidence derived from an acquisition pursuant to the deficient part of the certification or procedures concerning a U.S. person be received in evidence or otherwise disclosed in any proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a state, or a political subdivision. Prohibits information concerning any U.S. person acquired pursuant to such part of such certification from being used or disclosed subsequently in any other manner by federal officers or employees without the consent of the U.S. person, except with approval of the Attorney General if the information indicates a threat of death or serious bodily harm.

**Title IV: Foreign Intelligence Surveillance Court Reforms** - Directs the presiding judges of the FISA court and the FISA court of review to jointly appoint at least five attorneys to serve as special advocates. Requires such courts to designate such a special advocate attorney to serve as *amicus curiae* to assist in the consideration of questions of law that the FISA court certifies for review to the FISA court of review, as well as any application for an order or a review that presents a novel or significant interpretation of the law, unless the court issues a finding that such appointment is not appropriate.

Requires such a special advocate to advocate in support of legal interpretations that advance individual privacy and civil liberties.

Permits such courts to allow an individual or organization to serve as *amicus curiae* or provide technical expertise in any other instance as such courts deem appropriate.

Allows the FISA court of review to: (1) certify a question of law to be reviewed by the Supreme Court, and (2) designate special advocates to provide briefings as prescribed by the Supreme Court.

Requires the DNI to: (1) conduct a declassification review of each decision, order, or opinion issued by the FISA court or the FISA court of review that includes a significant construction or interpretation of law, including any novel or significant construction or interpretation of "specific selection term" as defined in this Act; and (2) make such decisions, orders, or opinions publicly available to the greatest extent practicable, subject to permissible redactions.

Authorizes the DNI to waive such review and public availability requirements if: (1) a waiver is necessary to protect the national security of the United States or properly classified intelligence sources or methods, and (2) an unclassified statement prepared by the Attorney General is made publicly available to summarize the significant construction or interpretation of law.

**Title V: National Security Letter Reform** - Amends the federal criminal code, the Right to Financial Privacy Act of 1978, and the Fair Credit Reporting Act to require: (1) the FBI to use a term that specifically identifies a person, entity, telephone number, or account as the basis for requests (commonly referred to as "national security letters") to wire or electronic communication service providers for telephone toll and transactional records; (2) government authorities to use a term that specifically identifies a customer, entity, or account when requesting financial records for certain intelligence or protective functions; and (3) the FBI and government agencies to use a term that specifically identifies a consumer or account when requesting consumer reports from consumer reporting agencies for counterintelligence or counterterrorism purposes.

Revises nondisclosure procedures relating to such requests, as well as requests under the National Security Act of 1947, to require the FBI or the appropriate agency official to determine annually, and upon closure of an investigation, whether facts no longer support a nondisclosure requirement that prohibits the recipient of a production request from disclosing publicly that it has received such a request. Requires notification to the relevant wire or electronic service provider, financial institution, or consumer reporting agency if a nondisclosure requirement is no longer in effect.

Modifies procedures under which a recipient of a request may petition for judicial review of nondisclosure requirements. Removes a requirement that the court treat as conclusive a certification by the Attorney General, Deputy Attorney General, an Assistant Attorney General, or FBI Director that disclosure may endanger U.S. national security or interfere with diplomatic relations.

**Title VI: FISA Transparency and Reporting Requirements** - Requires the Attorney General to expand an annual report to Congress regarding tangible thing applications to include a summary of compliance reviews and the total number of: (1) applications made for the daily production of call detail records created before, on, or after the date of an application relating to an authorized investigation to protect against international terrorism; and (2) orders approving such requests.

Directs the Administrative Office of the U.S. Courts to submit annually to Congress, and make available publicly on an Internet website, the number of: (1) FISA applications submitted and orders entered, modified, or denied under specified FISA authorities; and (2) appointments of an individual to serve as amicus curiae for FISA courts, including the name of each appointed individual, as well as any written findings that such an appointment is not appropriate. Makes the Internet availability of such information subject to a declassification review by the Attorney General and DNI.

Directs the DNI to make available publicly a report that identifies, for the preceding 12-month period, the total number of: (1) FISA court orders issued for electronic surveillance, physical searches, the targeting of persons outside the United States, pen registers and trap and trace devices, call detail records, and other tangible things; and (2) national security letters issued.

Requires specified reports to include the estimated number of: (1) targets affected; (2) individuals whose communications were collected, as well as individuals reasonably believed to have been in the United States at the time of collection; (3) search terms that included information concerning a U.S. person that were used to query a database of the contents of certain communications; and (4) search queries initiated by a U.S. officer, employee, or agent whose search terms included information concerning a U.S. person in any database of noncontents information relating to such communications.

Allows a phone number registered in the United States to provide the basis for a reasonable belief that the individual using the number is located in the United States at the time of collection.

Permits a person who is subject to a nondisclosure requirement accompanying a FISA order, directive, or national security letter to choose one of three methods to report publicly, on a semiannual or annual basis, the aggregate number of orders, directives, or letters with which the person was required to comply. Specifies the categories of orders, directives, and letters to be itemized, the details authorized to be included with respect to contents or noncontents orders and the number of customer accounts affected, and the ranges within which the number of orders, directives, or letters received may be reported aggregately in bands under each permitted method (i.e., reported in bands of 1000, 500, 250, or 100 depending on the chosen method).

Delays the time periods within which persons may make certain FISA-related disclosures by: (1) requiring reports to include information for the period ending not less than 180 days before the information is publicly reported in the case of

a semiannual report (or the period ending not less than one year before the information is publicly reported in the case of an annual report); and (2) prohibiting disclosure until 540 days after a new order or directive is received with respect to a platform, product, or service for which a person did not previously receive such an order or directive.

Expands the categories of FISA court decisions, orders, or opinions that the Attorney General is required to submit to Congress within 45 days after issuance of the decision to include: (1) a denial or modification of an application under FISA; and (2) a change of the application, or a novel application, of any FISA provision. (Currently, the Attorney General is only required to submit decisions regarding a significant construction or interpretation of any FISA provision.)

Revises reporting requirements regarding electronic surveillance, physical searches, and tangible things to include the House Judiciary Committee as a recipient of such reports.

Requires the Attorney General to identify in an existing semiannual report each agency on behalf of which the government has applied for orders authorizing or approving the installation and use of pen registers or trap and trace devices under FISA.

**Title VII: Sunsets** - Amends the USA PATRIOT Improvement and Reauthorization Act of 2005 and the Intelligence Reform and Terrorism Prevention Act of 2004 to extend until December 31, 2017 (thereby aligning the expiration date of the following provisions with the expiration date of provisions under the FISA Amendments Act of 2008), specified authority concerning: (1) the production of business records and other tangible things, (2) roving electronic surveillance orders, and (3) a revised definition of "agent of a foreign power" to include any non-U.S. person who engages in international terrorism or preparatory activities (commonly referred to as the "lone wolf" provision). (Currently, such provisions are scheduled to expire on June 1, 2015.)

## **Actions Timeline**

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- **Nov 18, 2014:** Motion to proceed to measure considered in Senate. (consideration: CR S6079-6080)
- **Nov 18, 2014:** Cloture on the motion to proceed to the measure not invoked in Senate by Yea-Nay Vote. 58 - 42. Record Vote Number: 282. (consideration: CR S6079-6080; text: CR S6079)
- **Nov 12, 2014:** Motion to proceed to consideration of measure made in Senate. (consideration: CR S5902)
- **Nov 12, 2014:** Cloture motion on the motion to proceed to the measure presented in Senate. (consideration: CR S5902; text: CR S5902)
- **Jul 30, 2014:** Read the second time. Placed on Senate Legislative Calendar under General Orders. Calendar No. 499.
- **Jul 29, 2014:** Introduced in Senate
- **Jul 29, 2014:** Sponsor introductory remarks on measure. (CR S5053-5055)
- **Jul 29, 2014:** Introduced in the Senate. Read the first time. Placed on Senate Legislative Calendar under Read the First Time. (text of measure as introduced: CR S5055-5065)