

United States Senate  
WASHINGTON, DC 20510-3703

COMMITTEES:

COMMITTEE ON FINANCE  
COMMITTEE ON BUDGET  
COMMITTEE ON ENERGY & NATURAL RESOURCES  
SELECT COMMITTEE ON INTELLIGENCE  
JOINT COMMITTEE ON TAXATION

May 20, 2020

The Honorable Richard Grenell  
Acting Director  
Office of the Director of National Intelligence  
Washington, D.C. 20511

Dear Director Grenell,

I am writing to inquire whether public reporting on the use of Section 215 of the PATRIOT Act would capture the government's collection of web browsing and internet searches. As you know, on May 13, 2020, 59 U.S. Senators voted to prohibit this form of warrantless surveillance, reflecting the broad, bipartisan view that it represents a dangerous invasion of Americans' privacy.

There have also been long-standing concerns about the inadequacy of public reporting on the use of Section 215, including whether the data released annually by the Director of National Intelligence adequately captures the extent of the government's collection activities and its impact on Americans. These concerns are magnified by the lack of clarity as to how the public reporting requirements would apply to web browsing and internet searches.

Current law requires the DNI to report publicly on the number of targets of Section 215 collection and the number of "unique identifiers used to communicate information" the government collects. In its annual Statistical Transparency Report, the Office of the Director of National Intelligence has used email addresses as an example of a "unique identifier." While this may help put into context the scale of the government's collection of email communications, I am concerned it does not necessarily apply to web browsing and internet searches. This ambiguity creates the likelihood that Congress and the American people may not be given the information to realize the scale of warrantless government surveillance of their use of the internet. I therefore request that you respond to the following questions:

How would the government apply the public reporting requirements for Section 215 to web browsing and internet searches? In this context, would the target or "unique identifier" be an IP address?

If the target or "unique identifier" is an IP address, would the government differentiate among multiple individuals using the same IP address, such as family members and roommates using the same Wi-Fi network, or could numerous users appear as a single target or "unique identifier"?

If the government were to collect web browsing information about everyone who visited a particular website, would those visitors be considered targets or "unique identifiers" for

purposes of the public reporting? Would the public reporting data capture every internet user whose access to that website was collected by the government?

If the government were to collect web browsing and internet searches associated with a single user, would the public reporting requirement capture the scope of the collection? In other words, how would the public reporting requirement distinguish between the government collecting information about a single visit to a website or a single search by one person and a month or a year of a person's internet use?

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ron Wyden", with a stylized, flowing script.

Ron Wyden  
United States Senator

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DIRECTOR OF NATIONAL INTELLIGENCE  
WASHINGTON, DC

NOV 06 2020

The Honorable Ron Wyden  
United States Senate  
Washington, DC 20510

Senator Wyden:

I am writing in response to your letter of 20 May 2020, regarding public reporting on the use of certain expired provisions of the Foreign Intelligence Surveillance Act (FISA), as amended, with respect to web browsing and internet searches.

As you know, the amendments to Title V of FISA made by Section 215 of the USA PATRIOT Act expired on 15 March 2020 and, to date, have not been reauthorized. In addition, and as noted below, none of the 61 orders issued pursuant to applications under Title V of FISA in 2019 resulted in the production of any information regarding web browsing or internet searches, and the Federal Bureau of Investigation (FBI) does not request and obtain pursuant to Title V the content of any communications from Internet Service Providers (ISPs), to include search terms submitted to an online search engine.

Consistent with Section 603 of FISA, the Office of the Director of National Intelligence (ODNI) publishes an Annual Statistical Transparency Report (Annual Report), which is publicly available and presents statistics on how often the government uses certain national security authorities. Among other things, the Annual Report includes the total number of orders issued pursuant to the Section 501(b)(2)(B) of FISA (commonly referred to as the "traditional" business records provision), as well as a "good faith estimate of (A) the number of targets of such orders; and (B) the number of unique identifiers used to communicate information collected pursuant to such orders."

As you know, the USA FREEDOM Act of 2015 amended Title V of FISA by, among other things, permanently banning bulk collection under the business records provision and requiring the use of a "specific selection term" to justify an application for a business records order. With respect to an application for the production of tangible things (other than for an application seeking the ongoing production of call detail records pursuant to Section 501(b)(2)(C) to which a separate "specific selection term" definition applies, *see* 50 U.S.C. § 1861(k)(4)(B)), a specific selection term must be a term that, among other things, "specifically identifies a person, account, address, or personal device, or any other specific identifier" and "is used to limit, to the greatest extent practicable, the scope of tangible things sought consistent with the purpose for seeking the tangible things." *Id.* § 1861(k)(4)(A). The statute also makes clear that multiple terms or identifiers may be used to meet these limiting requirements, *id.* § 1861(k)(4)(A)(iii), and that the Foreign Intelligence Surveillance Court (FISC) must be satisfied that the specific selection term used as the basis for the production meets the statutory requirements described above. *Id.* §§

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The Honorable Ron Wyden

1861(b)(2)(A) and 1861(c)(1). In addition, applications under Title V must be based on a statement of facts showing that there are reasonable grounds to believe that the tangible things sought are relevant to an authorized investigation “to obtain foreign intelligence information ... to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution.” Lastly, the FBI must apply FISC-approved minimization procedures to its handling of any business record production.

An Internet Protocol (IP) address could meet the statutory definition of a “specific selection term” if it complies with the statutory limitations set out above. Generally, the user of the IP address—which may be an individual person, group, entity composed of multiple individuals, or foreign power—would be a “target”<sup>1</sup> for purposes of the statutory reporting requirement under Section 603 of the Act, and an IP address collected pursuant to the business records order would be a “unique identifier” if it is used to communicate information. For example, if an IP address was the specific selection term that indicated the communication facility used by the target, both the target’s IP address and other IP addresses that were in contact with the target’s IP address would constitute “unique identifiers” that would be reported in ODNI’s annual report.

Consistent with Section 501(c)(2)(D) of FISA, however, the government only uses Title V to compel the production of business records that could otherwise be obtained through a grand jury subpoena or other order issued by a federal court. As a result, with respect to the use of Title V to obtain records from ISPs, the FBI does not request and obtain pursuant to Title V the content of any communications, to include search terms submitted to an online search engine. In addition, any non-content records obtained from an ISP generally would provide little or no information about the nature of any associated web browsing or internet search activity or the individual user(s) of an IP address at a particular time.

On 30 April 2020, the ODNI published the Annual Report for Calendar Year 2019. As indicated in that Annual Report, in 2019 there were 61 orders issued pursuant to applications under Section 501(b)(2)(B) of FISA, as well as an estimated 53 targets of such orders and an estimated 57,382 unique identifiers used to communicate information collected pursuant to such orders. As explained in the Annual Report, the estimated number of targets and unique identifiers is comprised of the number of unique identifiers received from communication service providers and uploaded into FBI systems. None of the 61 orders issued in 2019 resulted in the production of any information regarding web browsing or internet searches.

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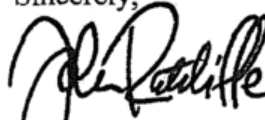
<sup>1</sup> In certain limited circumstances, the user of a specific selection term may not be the designated subject of the underlying FBI national security investigation, but the information sought has nevertheless been determined by the FISC to be relevant to that investigation. Under such a circumstance, the subject of the investigation is counted as the target – not the user of the specific selection term.

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The Honorable Ron Wyden

I hope you find this information helpful. If you have any questions about this matter, you may contact Legislative Affairs at (703) 275-2474.

Sincerely,



John Ratcliffe

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DIRECTOR OF NATIONAL INTELLIGENCE  
WASHINGTON, DC

**NOV 25 2020**

The Honorable Ron Wyden  
U.S. Senate  
Washington, DC 20510

Senator Wyden:

I am writing to amend my 06 November 2020 response, to your letter of 20 May 2020, regarding public reporting on the use of certain expired provisions of the Foreign Intelligence Surveillance Act (FISA), as amended, with respect to web browsing and internet searches.

In my 06 November response, I wrote that “none of the 61 orders issued pursuant to applications under Title V of FISA in 2019 resulted in the production of any information regarding web browsing or internet searches.” This representation was based on information provided to my office by the Department of Justice. On Friday, 20 November 2020, the Department of Justice provided additional information to my office indicating that one of those 61 orders resulted in the production of information that could be characterized as information regarding “web browsing.” Specifically, as relevant to an authorized investigation to obtain foreign intelligence information, the order directed the production of log entries for a single, identified U.S. web page reflecting connections from IP addresses registered in a specified foreign country that occurred during a defined period of time.

I regret that this additional information was not included in my earlier letter. I have directed my staff to consult with the Department of Justice and advise me of any necessary corrective action, to include any amendments to information previously reported in the Annual Statistical Transparency Report required under Section 603 of the FISA.

Consistent with the commitment to transparency I made during my confirmation hearing, I am writing to ensure you are notified of these steps. I will follow up with additional information as soon as my staff completes their review.

If you have any questions about this matter, you may contact Legislative Affairs at (703) 275-2474.

Sincerely,



John Ratcliffe

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