

# United States Senate

WASHINGTON, DC 20510

August 2, 2018

The Honorable Robert P. Storch  
Inspector General  
National Security Agency  
Fort George G. Meade, MD 20755

Dear Mr. Storch,

We write to request that you conduct an investigation into the circumstances surrounding, and any systemic problems that may have led to, the deletion by the National Security Agency (NSA) of certain call detail records (CDRs) collected from telecommunications service providers pursuant to Title V of the Foreign Intelligence Surveillance Act (FISA). In 2015, the USA FREEDOM Act amended Title V to prohibit bulk collection of CDRs and limit collection to CDRs of targets who are the subject of a Foreign Intelligence Surveillance Court (FISC) order, as well as CDRs two steps, or “hops” removed from those targets.

In its June 28, 2018, public announcement, NSA acknowledged that “technical irregularities” resulted in the production by the providers of some CDRs that NSA was not authorized to receive. NSA stated that it intends to delete all CDRs acquired since 2015 because it was infeasible to identify and isolate the CDRs that were properly collected by NSA.

We request that your investigation address the following questions:

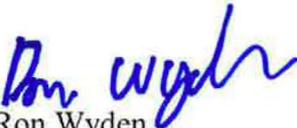
1. The telecommunications companies provide CDRs to NSA pursuant to court orders from the FISC under Section 501(b)(2)(c). To what extent do these orders provide sufficient direction to the companies to ensure that they provide only CDRs the NSA is allowed by law to receive?
2. According to NSA’s Civil Liberties and Privacy Office’s January 15, 2016, report (“Transparency Report: The USA FREEDOM Act Business Records FISA Implementation”), “NSA and the provider(s) have conducted a significant amount of systems engineering and testing to ensure that CDRs produced under the USA FREEDOM Act are accurate, relevant, timely and complete.” How can this systems engineering and testing assistance be improved to ensure that CDRs that are not responsive to orders are never sent to the NSA?
3. The Civil Liberties and Privacy Office report also stated that “NSA’s minimization procedures for the telephone metadata acquired pursuant to the USA FREEDOM Act require the Agency to inspect CDRs received from a provider through manual and/or automated means to confirm that the CDRs are responsive to the FISC’s production order.” In what ways were the minimization procedures insufficient to ensure that NSA conducts this review on *all* CDRs and does so *upon receipt* of the records? How is the implementation of these minimization procedures consistent with the statement in NSA’s

June 28, 2018, announcement, that it is “infeasible to identify and isolate properly produced data”?

4. According to the ODNI’s Statistical Transparency Report for calendar year 2017 (April 2018), the telecommunications companies produced over half a *billion* (534,396,285) CDRs in response to 40 orders covering 40 targets. To what extent has NSA’s implementation of minimization procedures intended to ensure that all CDRs are responsive to FISC orders been overwhelmed by the sheer volume of communications data provided to NSA under this authority?
5. NSA’s June 28, 2018, announcement stated that it has ensured that intelligence reports “were based on properly received CDRs.” How did NSA arrive at that conclusion? To what extent can CDRs be systematically reviewed for responsiveness and legality *prior* to their inclusion in intelligence reports?
6. Are CDRs electronically tagged so that NSA can easily associate them with targets and discern the number of “hops” from the targets? If not, what are the challenges to such tagging?
7. Was the deletion of data sufficient to ensure that all unauthorized production was, in fact, deleted?
8. NSA’s June 28, 2018, announcement stated that “[t]he root cause of the problem has since been addressed for future CDR acquisition.” Has the NSA adequately ensured, not only that the same unauthorized production will not reoccur, but also that systems are in place to prevent other technical irregularities from resulting in unauthorized production?

We request that this investigation be completed well in advance of the sunset of these collection authorities, on December 15, 2019. We further request that, to the extent possible, your report on this investigation be unclassified so that it can inform a public debate concerning that reauthorization. Thank you for your attention to this important matter.

Sincerely,

  
Ron Wyden  
United States Senator

  
Rand Paul  
United States Senator