



1718 Connecticut Ave NW

Suite 200

Washington DC 20009

USA

+1 202 483 1140 [tel]

+1 202 483 1248 [fax]

www.epic.org

June 7, 2013

Carmen L. Mallon
 Chief of Staff
 Office of Information Policy
 Department of Justice
 Suite 11050
 1425 New York Avenue, N.W.
 Washington, D.C. 20530-0001

RE: Freedom of Information Act Request and Request for Expedited Processing

Dear Ms. Mallon,

This letter constitutes a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted on behalf of the Electronic Privacy Information Center ("EPIC"). EPIC seeks documents containing communications with members of Congress regarding the government's legal justification for collecting all call detail records created by Verizon Business Services ("Verizon"), a Verizon Communications subsidiary.

Background

On April 25, 2013, the Foreign Intelligence Surveillance Court ("FISC") ordered Verizon Business Network Services, Inc. to:

[P]roduce to the National Security Administration (NSA) upon service of this Order, and continue production on an ongoing daily basis thereafter for the duration of this Order, unless otherwise ordered by the Court, an electronic copy of the following tangible thing: all call detail records or "telephony metadata" created by Verizon for communications (i) between the United States and abroad; or (ii) *wholly within the United States, including local telephone calls*. . . . Telephony metadata includes comprehensive communications routing information, including but not limited to session identifying information (*e.g.*, originating and terminating telephone number, International Mobile Subscriber Identity (IMSI) number, International Mobile station Equipment Identity (IMEI)

number, etc.), trunk identifier, telephone calling card numbers, and time and duration of call (emphasis added).¹

That order was signed by Judge Robert Vinson. The application was presented by the Federal Bureau of Investigation, a component of the Department of Justice.

Authority of FISC to Approve Applications for Domestic Communications

The Justice Department's interpretation of section 215 has been a matter of significant concern for many members of Congress. Senators Ron Wyden and Mark Udall have stated that there is a "significant gap" between the public's perception of the scope of the Patriot Act and the government's interpretation of that scope.²

Existence of Records Sought

Attorney General Eric Holder has confirmed that the executive branch regularly communicates with Congress regarding the Verizon surveillance program specifically. Mr. Holder stated that members of Congress were "fully briefed on the intelligence-gathering program that included the daily collection of telephone records from Verizon Communications."³ Senator Chambliss stated, "This has been going on for seven years ... *every member of the United States Senate has been advised of this*" (emphasis added).⁴

Requested Documents

All records consisting of communications between the Federal Bureau of Investigation and any member of Congress or Congressional staff regarding the Justice Department's interpretation of Section 215 of the Patriot Act (50 U.S.C. § 1861 *et seq.*).

Request for Expedited Processing

¹ *In re Application of the FBI for an Order Requiring the Production of Tangible Things from Verizon Bus. Network Serv., Inc. on Behalf of MCI Commc'n Serv., Inc. D/B/A Verizon Bus. Serv.*, Dkt. No. BR 13-80 at 1-2 (FISA Ct. Apr. 25, 2013) (hereinafter "Verizon Order"), available at <http://epic.org/privacy/nsa/Section-215-Order-to-Verizon.pdf>. See also Glenn Greenwald, *Verizon Forced to Hand Over Telephone Data – Full Court Ruling*, The Guardian, June 5, 2013, <http://www.guardian.co.uk/world/interactive/2013/jun/06/verizon-telephone-data-court-order>.

² Letter from Ron Wyden and Mark Udall to Eric Holder (Mar. 15, 2012), available at <http://www.wyden.senate.gov/download/wyden-udall-letter-to-attorney-general-holder-addressing-misleading-secret-law-statements>.

³ Reuters, "Congress fully briefed on Verizon records - U.S. attorney general" (Jun. 6, 2013, 12:12pm), available at <http://www.reuters.com/article/2013/06/06/usa-security-holder-idUSL1N0E10Y220130606>.

⁴ Tim Mak and Burgess Everett, "Dianne Feinstein on NSA: 'It's called protecting America,'" *Politico* (Jun. 6, 2013), available at <http://www.politico.com/story/2013/06/dianne-feinstein-on-nsa-its-called-protecting-america-92340.html#ixzz2VSGooD5z>.

This request warrants expedited processing because it is made by “a person primarily engaged in disseminating information...” and because it pertains to a matter about which there is an “urgency to inform the public about an actual or alleged federal government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II)(2008); *Al-Fayed v. Cent. Intelligence Agency*, 254 F.3d 300, 306 (D.C. Cir. 2001).

EPIC is “primarily engaged in disseminating information.” *Am. Civi Liberties Union v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004).

As discussed above, the communications between the FBI, NSA, and the members of Congress have serious privacy policy implications, including not only the specific use of section 215 to authorize a comprehensive domestic surveillance program, but also the secrecy of the process by which American surveillance law is interpreted and applied.

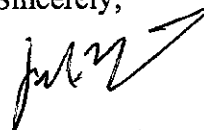
Request for “News Media” Fee Status

EPIC is a “representative of the news media” for fee waiver purposes. *EPIC v. Department of Defense*, 241 F. Supp. 2d 6 (D.D.C. 2003). Based on our status as a “news media requester,” we are entitled to receive the requested records with only duplication fees assessed. Furthermore, because disclosure of this information will “contribute greatly to public understanding of the operation or activities of the government,” duplication fees should be waived.

Conclusion

Thank you for your consideration of this request. As 5 U.S.C. § 552(a)(6)(E)(ii)(I) provides, I will anticipate your determination on our request within ten (10) calendar days. I can be contacted at 202-483-1140 x 120 or foia@epic.org.

Sincerely,



Julia Horwitz
EPIC Open Government Fellow