

FACT SHEET: Implementation of the USA FREEDOM Act of 2015

November 27, 2015

In 2014, the Office of the Director of National Intelligence and the Department of Justice recommended to the President an approach that would end the National Security Agency's (NSA) bulk telephony metadata program conducted under Section 215 of the USA PATRIOT Act, while preserving key capabilities and strengthening privacy protections. That approach was enshrined in the USA FREEDOM Act of 2015, which directs that the United States Government will no longer collect telephony metadata records in bulk under Section 215 of the USA PATRIOT Act, including records of both U.S. and non-U.S. persons. The new approach becomes effective on November 29, 2015, following a 6-month transition period from the previous system. This fact sheet describes key changes to the process for obtaining important lead information about international terrorist threats from telephony metadata held by U.S. telecommunications providers.

When will NSA end the collection of bulk telephony metadata under Section 215?

- The collection of bulk telephony metadata (call detail records) authorized under the transition provision of the USA FREEDOM Act of 2015 will end by 11:59 PM on November 28, 2015.
- There will be no analytic access to the collected metadata after this time because the data available under the USA FREEDOM Act is expected to be operationally sufficient.
- NSA has requested continued access to historical bulk telephony metadata until February 29, 2016 solely for technical testing purposes. Separately, NSA remains under a continuing legal obligation to preserve records subject to ongoing civil litigation actions.
- Upon receiving direction from the appropriate Court, NSA will destroy the required call detail records received under the bulk program.

How does the new process required by the USA FREEDOM Act differ from the previous program?

- Effective November 29, the United States Government will no longer be authorized to collect bulk telephony metadata under Section 215.
- Under the new process, the call detail records will be held and queried by the telecommunications service providers, not by the government. That means NSA will send specific telephone numbers or other identifying "selectors" related to international terrorism to the providers and receive results from the providers' queries of their business records.

- Absent an emergency situation, the government may obtain the records only pursuant to individual orders from the FISC approving the use of specific selectors for queries based on a link to international terrorism.
- In an emergency situation, the Attorney General, or her designee, approves the use of specific selectors in the first instance, and then NSA subsequently submits them to the FISC for final approval. If an emergency request is appropriate and all necessary statutory determinations have been made, the Attorney General or her designee will generally be able to approve it within hours or less of the initial request.

When will NSA implement the new, selected telephony metadata process required by the USA FREEDOM Act?

- Implementation will officially occur once the government submits to the FISC an appropriately predicated application consistent with the USA FREEDOM Act and then receives orders approving the use of specific selection terms for the targeted production of call detail records. NSA has developed a technical architecture to support the new process and expects to be operationally ready on November 29, 2015.
- Testing of internal system functionality at both NSA and the telecommunications providers has been ongoing. NSA will continue to work with the telecommunications providers to address issues that might arise during testing and the initial stages of operational use.

What is the purpose of the new process?

- The new process has been designed to continue supporting necessary intelligence capabilities and fill the gaps that the previous Section 215 program addressed, without the government acquiring the telephony metadata in bulk.
- There is still a need to be able to identify communications between terrorists abroad and individuals with whom they are in contact in the United States. Passage of the USA FREEDOM Act acknowledged the need to address such threats, while strengthening privacy protections for all Americans. Neither terrorist threats nor Americans' expectations for privacy have receded.

Under the USA FREEDOM Act, will the Intelligence Community still be able to access the call detail records from selectors that it suspects are related to international terrorism?

- Yes. The process established by the USA FREEDOM Act will continue to provide important lead information for investigation into terrorist threats by making call detail records (which contain information about the fact of calls,

but not the content) available to the Intelligence Community to aid in the investigation of these threats.

- Moreover, the overall volume of call detail records subject to query pursuant to court order is greater under USA FREEDOM Act.

How does the new process work?

- NSA analysts will identify specific selectors (such as a phone number or handset identifier) used by individuals associated with international terrorism. They will document evidence of this association and submit it to the Department of Justice for filing with the FISC (or to the Attorney General, Deputy Attorney General, or Assistant Attorney General for National Security, in emergency situations) for approval of the specific selection terms based on the legal standard of reasonable, articulable suspicion – the standard mandated by the USA FREEDOM Act.
- Only the FISC (or the Attorney General, Deputy Attorney General, or Assistant Attorney General for National Security, in an emergency) can approve the request.
- If approval is received, NSA will generate query requests and send them to the providers. The legal framework permits providers to return call detail records which are either one or two “hops” away from a FISC-approved, terrorist-associated selection term. First hop selection terms (e.g., those that are in direct contact with a FISC-approved selection term) may be obtained from providers as well as from information identified independently by the government. These first hop selection terms may then be sent by NSA as query requests to the providers to obtain second hop records.
- The court-approved selectors may be used to query the providers’ call detail records over a limited period of time (up to 180 days) without returning to the FISC for approval.

Does the new USA FREEDOM Act process protect individuals’ privacy rights?

- By barring the government from collecting bulk telephony metadata under the Section 215 Program and having the telecommunication providers hold and query this data, we have made great strides in strengthening privacy safeguards for individuals.
- The goal of the new USA FREEDOM Act was to create a technical solution that enables the government to still obtain necessary phone records essential to an investigation involving international terrorism while increasing privacy and civil liberties protections.
- The minimization procedures, which must be adopted by the Attorney General and approved by the FISC, are reasonably designed to protect privacy consistent with the government’s needs to obtain, produce and

disseminate necessary foreign intelligence information related to international terrorism. Technical controls will limit access to only those personnel who are authorized and have been appropriately and adequately trained.

- Moreover, NSA's Civil Liberties and Privacy Office has played an integral role in implementing the new process, ensuring that privacy risks and impacts were thoroughly assessed from the outset.