



**PRIVACY AND
CIVIL LIBERTIES**
OVERSIGHT BOARD

Testimony of Board Chairman Adam I. Klein
Senate Committee on the Judiciary
Reauthorizing the USA FREEDOM Act of 2015
Wednesday, November 6, 2019 – 10:00 a.m.
Dirksen Senate Office Building, Room 226

Chairman Graham and Ranking Member Feinstein, thank you for inviting me to testify today. My name is Adam Klein. I am Chairman of the Privacy and Civil Liberties Oversight Board, an independent, bipartisan Executive Branch agency. Our mission is to ensure that efforts to protect the nation against terrorism are balanced with the need to protect privacy and civil liberties. We endeavor to inform the public about these counterterrorism-related programs while protecting classified information.

My remarks today are in my individual official capacity as Chairman, and do not necessarily reflect the views of the full five-member Board.

In 2013, unauthorized leaks revealed that NSA had been collecting virtually all call detail records held by certain U.S. telecom carriers. That collection took place under orders approved by the Foreign Intelligence Surveillance Court. Soon after the leaks, a bipartisan group of Senators asked our Board to investigate the program and provide an unclassified report. The Board issued that report in January 2014. It concluded that existing law did not provide an adequate legal basis for the program. The Board also recommended measures to enhance privacy, oversight, and transparency.

In 2015, Congress passed the USA Freedom Act, which implemented many of the recommendations in the Board's report. Most notably, the Act banned the use of FISA's business-records provision, known as Section 215, for bulk collection.

Instead, the Act provided a new, narrower authority for collecting call detail records. The new provision allows the government to request call records out to two degrees of separation from a court-approved phone number or other specific identifier associated with international terrorism. By law, these records cannot include the content of any calls, cell-site location information, GPS information, or the name or address of a subscriber.

The USA Freedom Act also included enhancements to oversight and transparency. Some of these were recommendations from the Board's 2014 report. For example, the Act created a panel of cleared *amicus* advocates to assist the FISA Court. In my view, that was an important reform that appears to be working well.

The government's collection of call detail records under the USA Freedom Act, while narrower than the bulk program it replaced, nonetheless involved a large number of records. The Intelligence Community's statistical transparency reports disclose that, in total, the NSA collected more than 1 billion call records under the Act, though that includes duplicates and "numbers used by business entities for marketing purposes." This collection was based on a small number of orders by the FISA Court: Last year, 14 orders brought in 434 million records.

This authority proved difficult to implement. In mid-2018, NSA announced that it had chosen to "delete all call detail records acquired since 2015" under the USA Freedom Act because of "technical irregularities in some data received from ... providers." Recently, NSA announced that it had "discontinued [the] program for technical and operational reasons."

In advance of this year's reauthorization deadline, our Board has reviewed NSA's collection of call detail records under the USA Freedom Act.

Our investigation involved months of fact-finding by our expert staff and bipartisan group of Board Members. We also held a public forum at which we heard from a range of outside experts in privacy, counterterrorism, and technology.

Recently, we submitted a 116-page draft report to the Intelligence Community for classification review. The report contains a comprehensive account of the “technical” and “operational” issues cited in NSA’s public statements. It also includes legal analysis, policy analysis, and the views of individual Board Members. I’d like to thank our staff for their many months of hard work on the report.

At present, the document remains classified, but I can provide a few top-line conclusions based on my knowledge of the facts that we found in our review. Our review found no malfeasance or abuse of this authority. Nor did it find any instance in which government officials intentionally sought records that were prohibited under the statute. The Board found no evidence that NSA received any of the statutorily prohibited categories of information: No subscriber names or addresses, no financial information, no cell-site location information, no GPS coordinates.

We also examined the government’s operational use of this program. NSA chose to suspend the program after balancing its “relative intelligence value” against other factors. Based on the facts we found, my view is that NSA’s decision was well supported by the available evidence.

Our report also contains a comprehensive account of the “compliance and data integrity concerns” that led NSA to delete data and eventually influenced its decision to suspend the program. Our review of these facts confirmed that the data-integrity challenges the program encountered were inadvertent, not willful. When NSA received records that raised questions about the scope of permitted collection under the statute, the agency chose to follow a narrower understanding of its authority under the USA Freedom Act, rather than a more expansive interpretation that would have given it greater leeway.

The basis for each of these findings is described in our draft report. We hope that the review process will proceed swiftly so that an unclassified version can be provided to the public soon. We are grateful to the Intelligence Community officials who responded to our investigative requests and are assisting with the review process.

If it would be helpful to Senators, I would be happy to discuss the program in greater detail in a classified setting. Board staff can also be made available to brief you and your staffs as you consider this important law.

Thank you again for the invitation to testify today. I look forward to answering your questions.