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Secret documents on NSA surveillance released: Is there anything new? (+video)

The Obama administration unveiled three secret documents Wednesday that appear to confirm details of surveillance programs leaked by Edward Snowden, who worked for the NSA.



With a chart listing thwarted acts of terrorism, Senate Judiciary Committee Chairman Sen. Patrick Leahy, D-Vt. (l), and Sen. Dianne Feinstein, D-Calif., chair of the Senate Intelligence Committee, question top Obama administration officials on Capitol Hill in Washington, July 31, about NSA surveillance programs. (J. Scott Applewhite/AP)

By Mark Clayton, Staff writer / July 31, 2013 at 6:24 pm EDT

The Obama administration on Wednesday released previously secret reports and a court order that together broadly describe the legal basis for requiring US phone companies to provide the National Security Agency with the call records of Americans going back five years.

The document revelations come at a tipping point, as a growing number of lawmakers in Congress express displeasure over the scope of the NSA's two big surveillance programs. One gathers Internet data on foreigners, but it's the other program – collecting phone-call data on Americans as well as foreigners – that is the focal point of unhappiness.

In an apparent bid to improve transparency – and perhaps assuage lawmaker discontent – the Office of the Director of National Intelligence unveiled three secret documents in time for Wednesday’s Senate Judiciary Committee hearing on privacy rights, national security, and oversight of Foreign Intelligence Surveillance Act (FISA) activities.

The heavily redacted documents included 2009 and 2011 reports, each five pages long with a two-page cover letter, to the House and Senate intelligence and judiciary committees.

“Under the program based on Section 215 [of the Patriot Act], NSA is authorized to collect from telecommunications service providers certain business records that contain information about communications between two telephone numbers, such as the date, time, and duration of a call,” the 2009 document says.

“There is no collection of the content of any telephone call under this program,” it adds, “and under longstanding Supreme Court precedent the information collected is not protected by the Fourth Amendment.”

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In another document – an April 25, 2013, Foreign Intelligence Surveillance Court order – an unnamed phone company is required to hand over to the NSA “telephony metadata” for “communications (i) between the United States and abroad; or (ii) wholly within the United States, including local telephone calls.”

That document – in which the phone company name is blacked out – is the primary court order, which undergirds a more detailed secondary order that was leaked to the news media in June by Edward Snowden, who worked for the NSA.

The unnamed phone company in the just-released document was a Verizon subsidiary, The Washington Post reported, citing anonymous sources. The secondary document, leaked by Mr. Snowden, also requires a Verizon subsidiary to hand over all customers phone logs for a three-month period, an order that has been continually renewed.

But how much the document release will help ease concerns over the programs remains unclear. Last Friday, the Pew Research Center released a survey that found 47 percent of Americans were more concerned that government programs to fight terrorism were endangering civil liberties – while 35 percent were more concerned that the government did not go far enough. It was the first time the question tilted that way since Pew began asking it in 2004.

Set against that backdrop, momentum is building in Congress to restrict the phone-call program, and several analysts say at least some changes are likely.

Last week, the House defeated, 217 to 205, an amendment that would have shuttered the NSA's domestic phone-record tracking program. But the vote was far closer than expected, with members on both sides of the aisle unexpectedly moving to approve the amendment and rein in the program.

On its heels now are several new bills that would altogether eliminate, scale back, or substantially modify the NSA phone metadata program.

Federal officials told senators Wednesday that some adjustments could probably be made to the program to increase transparency, but they maintained that the phone metadata program – and its giant database – is vital to defending America.

“If you have one telephone number for a person you reasonably believe is plotting an act of terror against the homeland, how do you find possible connections to that number crossing the seam between the homeland and overseas?” asked John Inglis, deputy director of the NSA, in his prepared testimony. “In simple terms, you are looking for a needle, in this case a number, in a haystack.”

Reiterating that point directly to the committee, Deputy FBI Director Sean Joyce testified, “We must have the dots to connect the dots.”

But Judiciary Committee chairman Patrick Leahy (D) of Vermont said he had reviewed a classified list of terror plots that the metadata program had supposedly helped stop. Yet evidence supporting those cases was thin at best, he maintained.

“The list simply does not reflect dozens or even several terrorist plots that Section 215 helped thwart or prevent – let alone 54, as some have suggested,” Senator Leahy said in his prepared remarks. “This bulk collection program has massive privacy implications. The phone records of all of us in this room reside in an NSA database. I have said repeatedly that just because we have the ability to collect huge amounts of data does not mean that we should be doing so.”

So far, intelligence officials have publicly identified just one terror case that was discovered just by searching phone metadata records alone – involving San Diego men who contributed \$8,500 to Somali militants linked to Al Qaeda, according to the officials.

“It also has been far too difficult to get a straight answer about the effectiveness of the Section 215 phone records program,” Leahy added. “Whether this program is a critical national security tool is a key question for Congress as we consider possible changes to the law.... The patience and trust of the American people is starting to wear thin.”

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