

White House stays silent on renewal of NSA data collection order

Officials decline to comment on whether they will seek to renew order that permits bulk collection of Americans' phone records

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John Inglis, the deputy director of the NSA, testifies before the House judiciary committee. The NSA did not respond to Guardian questions. Photograph: Jim Watson/AFP/Getty Images

The Obama administration is refusing to say whether it will seek to renew a court order that permits the National Security Agency's bulk collection of phone records on millions of Verizon customers when it expires at the end of this week.

Officials declined to discuss what action they intend to take about the order at the center of the current

surveillance scandal, which formally expires at 5pm Friday.

The looming expiration of the order, issued by the secretive Fisa court, provides an early test of Barack Obama's claim to welcome debate over "how to strike this balance" between liberty and security. Beyond the question of the phone records collection, the court order authorizing it is a state secret.

On Thursday, the administration would not answer a question first posed by the Guardian six days ago about its intentions to continue, modify or discontinue the Verizon bulk-collection order. The White House referred queries to the Justice Department. "We have no announcement at this time," said Justice Department spokesman Brian Fallon. The NSA and office of the Director of National Intelligence did not respond to questions.

A spokesman for the Fisa court, Sheldon Snook, said the court "respectfully declines to comment".

Bipartisan criticism is mounting in Congress about the NSA's collection and stockpiling of millions of Americans' phone records without individual warrants or suspicions of connections to terrorism.

Congressman James Sensenbrenner, a Republican from Wisconsin and a senior member of the House judiciary committee, told the Guardian: "By renewing the Fisa court order, the Obama administration would reconfirm its support for the dragnet collection of telephone metadata, despite public outcry."

Senator Jeff Merkley, a Democrat from Oregon, asked if he thought Obama should let the Verizon order expire, said: "Yes. This type of secret bulk data collection is an outrageous breach of Americans' privacy. If the administration feels this program is vital to our national security, it should declassify the secret court interpretations that justify broad data collection so Congress and the American public can debate it in the light of day."

Judge Roger Vinson, until recently a member of the court that reviews the government's surveillance requests, approved the order for "all call data records or telephony metadata" from customers of Verizon Business Services on 25 April. The court has reauthorized the bulk phone records collection, in secret, every 90 days for about seven years.

At least two other major telecoms, AT&T and Sprint, reportedly receive similar orders. The dates of their expiration are unclear.

Obama administration and intelligence officials describe the collection of phone records – detailing phone numbers dialed, duration of the calls, and the times they occurred – as critical to uncovering terrorist plots. While the court orders permit the NSA to collect and store tens if not hundreds of millions of American phone records, NSA director General Keith Alexander has cited the phone records collection as contributing to the discovery of about 10 domestic plots.

Officials argue that Americans' liberties are protected because court criteria forbid the searches of the phone-records database absent "reasonable articulable facts," although NSA officials decide for themselves when those criteria are met. NSA claims to have searched through the database fewer than 300 times in 2012.

"It's the old adage: if you're looking for the needle in the haystack, you have to have the entire haystack to look through," deputy attorney general James Cole testified to the House judiciary committee on Wednesday. "But we're not allowed to look through that haystack willy-nilly."

But there is concern and even anger among legislators about the propriety and legality of the NSA's access to the haystack.

Sensenbrenner, the author of the Patriot Act, whose Section 215 provision the government uses to justify the bulk phone records collection, warned Cole and other officials on Wednesday: "You have to change how you operate Section 215, otherwise in the year and a half, or two and a half years, you're not going to have it anymore."

Sensenbrenner told the Guardian: "I would advise the president to reconsider his misinterpretation of Section 215 and rein in abuse."

Other members on the House Judiciary Committee, Republicans and Democrats, expressed strong opposition to the phone records collection. "This is unsustainable. It's outrageous, and must be stopped immediately," said congressman John Conyers, a Michigan Democrat. "Do I have a reasonable expectation of privacy in anything but maybe a letter I hand-deliver to my wife in a [secure facility]?" asked Blake Farenthold, a Republican from Texas.

Last week, senator Ron Wyden, an Oregon Democrat and a member of the Senate intelligence committee, commented that the Obama administration was "getting concerned about the bulk phone records collection" and speculated it might "move administratively" to restrict it.

"The bulk collection of ordinary Americans' records is at odds with the American values embodied in the Bill of Rights and the fourth amendment, and I continue to be opposed to the secret interpretations of the Patriot Act that are used to justify this bulk collection," Wyden told the Guardian.

"I have worked with my colleague Senator Udall and others to introduce legislation that would end this bulk collection, and I hope that while Congress considers legislation the intelligence community will examine the use of such bulk collection authorities and bring them more in line with the constitutional privacy protections the American people deserve."

Udall urged the White House to restrict the bulk collection in advance of the Wyden-Udall legislation.

"The federal government's dragnet, bulk collection of phone data runs contrary to our constitutional values and unnecessarily violates millions of law-abiding Americans' privacy," Udall, also member of the Senate intelligence committee, told the Guardian.

"I am strongly opposed to the Section 215 program continuing as it exists today and when the Verizon order was issued. Sen. Wyden and I have introduced a plan to narrow the scope of the Section 215 program, but the White House should in the meantime more narrowly focus its counter-terror efforts under the Patriot Act."

On Friday morning, hours before the expiration of the phone-records bulk collection order, the top lawyer for the director of national intelligence, Robert S Litt, is scheduled to speak at the Brookings Institution in Washington about the controversial surveillance and the laws bounding it.

At Wednesday's hearing, Litt was asked by Bob Goodlatte, the chairman of the House judiciary committee, if the administration thought if a surveillance program "of this magnitude ... could be indefinitely kept secret from the American people?"

"Well," Litt replied, "we tried."



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