

Library, Bookseller, and Personal Records Privacy Act (S. 1507) (Feingold)

Summary

This bill would protect the privacy of law-abiding Americans by limiting the government's access to library, bookseller, medical, and other sensitive personal records under the Foreign Intelligence Surveillance Act (FISA) and related foreign intelligence authority. It would amend the USA PATRIOT Act to require the FBI to set forth a factual, individualized showing that the information sought pertains to a suspected terrorist or spy.

Section 1. Title – Library, Bookseller, and Personal Records Privacy Act

Section 2. Privacy Protections on Government Access to Library, Bookseller, and Other Personal Records Under Foreign Intelligence Surveillance Act of 1978.

This provision would amend section 215 of the Patriot Act (Public Law 107-56) to place reasonable limits on the seizure of library, bookseller, and other personal records by the FBI under FISA. This provision re-inserts a pre-Patriot Act section 215 standard that required the FBI to set forth specific and articulable facts giving reason to believe that the person to whom the records pertain is a suspected terrorist or spy.

This provision also strengthens judicial review of FBI applications by requiring the court to make a finding that the application meets the individualized suspicion requirement.

This provision, however, maintains the Patriot Act's expansion of the category of documents authorized to be seized by the FBI. Prior to the Patriot Act, the FBI was allowed to subpoena only travel and storage facility records under the records provision of FISA. Under this bill, the FBI can continue to subpoena any business records, not only travel and storage facility records.

Finally, this provision modifies the reporting requirement. Currently, the Attorney General need only fully inform the House and Senate Intelligence Committees about applications under section 215. This bill would require the Attorney General to also fully inform the House and Senate Judiciary Committees about applications filed pursuant to section 215. This improvement is needed to allow Congress to exercise proper oversight of the use of this law.

Example: The FBI is conducting an investigation of an international terrorist organization. It has information that the terrorist organization may be planning an attack based on the plot in a Tom Clancy novel and that suspected members of the group live in a particular neighborhood. Under current law, the FBI could serve a subpoena on a library in that neighborhood for all records about all its patrons simply by asserting that they want the records for a terrorism investigation. But

under this bill, the FBI could not do so. The FBI would have to set forth specific and articulable facts giving reason to believe that the person to whom the records pertain is a suspected terrorist. The FBI could only seek those library records that pertain to the suspected terrorists. The FBI could not obtain library records concerning individuals who are not suspected terrorists.

Section 3. Privacy Protections on Government Access to Information About Computer Users at Booksellers and Libraries Under National Security Authority.

This provision would amend section 505 of the Patriot Act as it applies to the FBI's access to records maintained by electronic communication providers that are libraries or booksellers. Libraries or bookstores with internet access for customers could be deemed "electronic communications providers" and therefore be subject to a request by the FBI under the national security authority modified by section 505 of the Patriot Act. This bill would require the FBI, as part of its certification already required by law, to set forth that there is a factual, individualized suspicion that the information sought pertains to a suspected terrorist or spy when seeking such information from a library or bookseller.

Finally, this provision would subject section 505 of the Patriot Act to the same sunset as certain other provisions in the Patriot Act. Many surveillance related provisions in the Patriot Act, including section 215, were subject to a sunset. It makes sense to sunset this provision, which grants broad administrative subpoena authority to the government to access information on law-abiding Americans.

Example: This bill would prevent the FBI from engaging in broad monitoring of persons who use library computers to access the internet and send email. For example, suppose the FBI has information that a particular individual is using library computers in the northern Virginia and Maryland suburbs of Washington, DC to communicate foreign intelligence information to a handler. The FBI has decided that it will seek access to the computer use records through its National Security Letter authority. Under the bill, the FBI would set forth this information in its certification and could request the computer use records that pertain to the suspected spy from libraries in the northern Virginia and Maryland suburbs. The FBI would not be able to request records about non-suspects.

Groups in Support of the Library, Bookseller and Personal Records Privacy Act:

American Booksellers Association

American Booksellers Foundation for Free Expression

American Civil Liberties Union

American Library Association

Center for Democracy and Technology

Center for National Security Studies

Open Society Policy Center