

# USA PATRIOT Act Renewal



## FBI Office of General Counsel National Security Law Branch



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Last updated 31 March 2006.

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# Test

- USA PATRIOT Act is an acronym.
- Who can give me the full title?

# Answer

- “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.”

March 9, 2006

President renewed the USA PATRIOT Act  
2001



Unclassified

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# USA PATRIOT Act 2001 Renewal Debate

- Congressional Activity 2005
- Between April 5, 2005 and June 10, 2005 Congress held 18 hearings concerning reauthorizing the USA Patriot Act. Hearings were held by:
  - Senate Select Committee on Intelligence (SSCI)
  - Senate Judiciary Committee (SJC)
  - House Judiciary Committee (HJC)
  - HJC's Subcommittee on Crime, Terrorism and Homeland Security
  - House Permanent Select Committee on Intelligence (HPSCI)

# USA PATRIOT Act 2001 Renewal Debate

- Witnesses included:
  - Attorney General (along with 22 other DOJ employees).
  - FBI Director, General Counsel, Assistant Director of the Counterterrorism Division (along with three other FBI employees).
  - NSA and CIA officials.

# USA PATRIOT Act 2001 Renewal Debate

- Congress concerned about other FBI activities --
  - Collection of information concerning innocent citizens.
  - Deposit of US Person information into government databases.
  - Data-mining.

# USA PATRIOT Act 2001 Renewal Debate

- Trend during the debate—
- Congress wanted more Congressional, Judicial, and Public oversight.
- This oversight trend is reflected in the USA PATRIOT Act 2001 renewal.



# USA PATRIOT Act 2001 Renewal

Actually required 2 new Public Laws to accomplish.

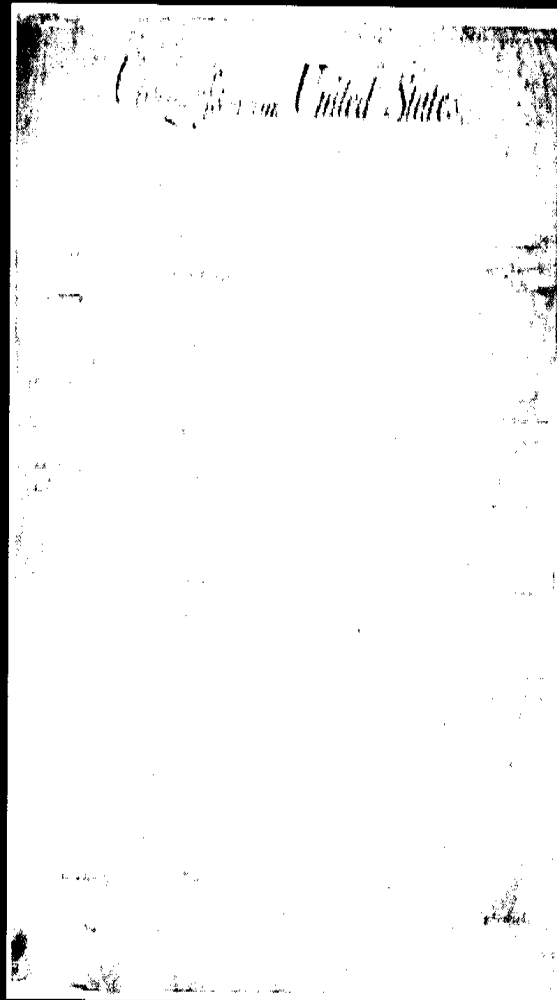
Public Law 109-177

Public Law 109-178

# 1<sup>st</sup> Amendment

- Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

## Bill of Rights



# 1<sup>st</sup> Amendment

- Section 124 of the USA PATRIOT IRA 2005 – expressed the sense of Congress that “federal investigations should not be based solely upon an American citizen’s membership in a non-violent political organization or their otherwise lawful political activity.”
- Reminder of FBI policy – Neither criminal nor national security investigations of US Persons may be predicated solely on their exercise of First Amendment rights.

Will cover changes in the new laws  
as follows:

- Part 1 - Sunset Provisions.
- Part 2 - Changes in FISA tools. Outside the Scope



# Part 1

# Sunset Provisions of the USA PATRIOT Act 2001

# USA PATRIOT Act 2001 Sunset Provisions - Permanent

- USAPA IRA makes most of the original USA PATRIOT Act 2001 (USAPA) sunset provisions permanent:

Outside the Scope

# New Sunset Provisions

- December 31, 2009 [4 years] for –
- USA PATRIOT Act 2001 Section 206 **FISA Roving surveillance.**
- USA PATRIOT Act 2001 Section 215 **FISA Business Records.**
- FISA "lone wolf" provision of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA Section 6001).
  - This addressed the "lone wolf" terrorist by broadening the definition of "agent of a foreign power" to include an individual other than a USP who "engages in international terrorism or activities in preparation thereof."

## Part 2

# Foreign Intelligence Surveillance Act (FISA) Investigative Tools



# Changes to FISA Tools

Outside the Scope



- **FISA Business Records.**



# FISA Business Records

- Changes to FISA Business Records Under Section 215 of the USA PATRIOT Act 2001.

# FISA Business Records

- New "presumptive relevance" test.
- Special categories of tangible things.
- Recipient challenge/Judicial review.
- Minimization procedures w/i 180 days.

# FISA Business Records

This authority may be used to obtain **"any tangible things (including books, records, papers, documents, and other items."**

- Broad – similar in scope to a Federal grand jury subpoena.
- The scope of this authority has not been changed.

# FISA Business Records

Application shall include a statement of facts showing that there are **reasonable grounds** to believe that the tangible things sought are **relevant** to an authorized investigation (**other than a threat assessment**)...

- to obtain foreign intelligence information not concerning US person, or
- to protect against international terrorism or clandestine intelligence activities...

[This makes explicit the existing standard practice.]

# FISA Business Records

The tangible things are **presumptively relevant** if the facts show they pertain to –

- (i) a foreign power or an agent of a foreign power;
- (ii) the activities of a suspected agent of a foreign power who is the subject of such authorized investigation; or
- (iii) an individual in contact with, or known to, a suspected agent of a foreign power who is the subject of such authorized investigation.

[These cases probably cover most situations.]

# FISA Business Records

- Describe the tangible things with **sufficient particularity** to permit them to be fairly identified.
- Contain a **date of return**.
- Date must give recipient **reasonable period of time** to produce.
- May only require the production of tangible things that would be available with a GJ subpoena or a District Court order [this maintains privileges (ex.: attorney/client)].

# FISA Business Records

<b>Special Categories:</b>	<ul style="list-style-type: none"><li>▪Library circulation records and Library patron lists.</li><li>▪Book sales records and Book customer lists.</li><li>▪Firearm sales records.</li><li>▪Tax return information.</li><li>▪Educational records.</li><li>▪Medical records.</li></ul>
<b>Special Approval Level:</b>	The <b>Director, the Deputy Director, or the Executive Assistant Director for National Security</b> must make the application for special categories of tangible things that contain information that would identify a person...



# FISA Business Records

**Congressional Reporting:**

AG must report annually on Special Categories to HPSCI, HJC, SSCI, and SJC.

**Note:**

Approval authority for all FISA Business Record requests (except special categories):

1. Deputy Director;
2. EAD and associate EAD for the NSD;
3. the Assistant Director and all Deputy Assistant Directors of Counterterrorism, Counterintelligence, and Cyber Divisions;
4. the General Counsel, and the DGC for the National Security Law Branch.

# FISA Business Records

No person shall disclose the fact that the FBI has sought tangible things [same as before].

Recipient may disclose order to –

- (1) Persons to whom disclosure is necessary to comply [same as before];
- (2) An attorney to obtain legal advice or assistance with respect to the production [new provision made explicit what had been implicit];
- (3) A person a permitted by the Director (or designee).

# FISA Business Records

- Recipient shall notify the person of the nondisclosure.
- Person shall be subject to the nondisclosure.
- Director (or designee) may ask the recipient to identify the other persons to whom disclosure made **(except that the recipient does not have to identify the attorney)**.

# FISA Business Records

- Recipient may move to modify or set aside the order [FISC jurisdiction].
- FISC may grant the motion only if the order does not meet FISA requirements or is otherwise unlawful.
- Security: All filings will be under seal, in addition to FISC established security measures.

# FISA Business Records

Timing:	Not less than 1 year after order – recipient may move to modify or set aside the nondisclosure order.
FISA Court (FISC)	FISC may grant only if, based on the government's application and recipient's petition, no reason to believe that disclosure – <b>may endanger the national security of the U.S., interfere with a criminal, counterterrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of any person.</b>

# FISA Business Records

## Conclusive Certification

- After recipient's petition challenging nondisclosure, the government may choose to submit a certification by the AG, the DAG, an AAG, or the Director that a disclosure may endanger the national security or interfere with diplomatic relations.
- The FISC must treat the certification as conclusive.

# FISA Business Records

- W/in 180 days of enactment (approx 9/9/2006).
- AG shall adopt minimization procedures to govern the retention and dissemination of information.
- Minimize the retention/Prohibit the dissemination:
  - Nonpublicly available info re unconsenting USPs.
  - Consistent with the US IC need to obtain, produce and disseminate foreign intelligence information.
- Evidence of a Crime: Procedures should allow for the retention and dissemination of this information.

# FISA Business Records

▪AG to report annually (April) to HPSCI, HJC, SSCI & SJC.

▪Report on

- (1) total # of FISA BR applications,
- (2) total # of orders granted, modified, or denied, and
- (3) total # orders granted, modified, or denied for special categories.

▪AG to make an **unclassified annual report** (April) on the total # of FISA BR applications and total # of orders granted, modified, or denied (gives the public a view of activities).



# FISA Business Records

<b>Scope &amp; Timing</b>	Comprehensive audit of effectiveness (including any improper or illegal use) covering 2002 to 2006. ▪Report to HSPCI, HJC, SSCI and SJC.
<b>Effectiveness of FISA BRs Process (including):</b>	▪How often FBI requested DOJ OIPR to submit an application and the request was not submitted (and why?). ▪Justification for the failure of AG to issue implementing procedures in a timely fashion, and whether the delay harmed national security. ▪Whether bureaucratic or procedural impediments prevent the FBI from fully using the tool.

# FISA Business Records

Effectiveness of  
FISA BRs  
(including):

- Categories of info obtained and the importance of the info to the FBI and the IC.
- How info is collected, retained, analyzed, and disseminated by the FBI (including access of "raw data" to other agencies of the Federal, state, local, or tribal governments, or private sector entities).
- Minimization procedures adopted by AG.
- Whether/how often FBI used info to produce analytical intelligence products for the FBI, the IC, or other agencies of the federal, state, local or tribal governments.
- Whether/how often FBI provided info to law enforcement for criminal proceedings.

FEDERAL BUREAU OF INVESTIGATION  
FOIPA  
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