Senators Challenge Value of NSA Surveillance Programs

This statement was released on June 19, 2013.

Washington, D.C.—U.S. Senators Ron Wyden (D-Ore.) and Mark Udall (D-Colo.) issued the following statement, responding to comments made by members of the Intelligence Community about the value of certain NSA surveillance programs. Both Senators sit on the Senate Intelligence Committee.

"Over the past few days the Intelligence Community has made new assertions about the value of recently declassified NSA surveillance programs. In addition to the concerns that we have about the impact of large-scale collection on the civil liberties of ordinary Americans, we are also concerned that the Foreign Intelligence Surveillance Act (FISA) Section 702 collection program (which allows collection of phone or internet communications, and involves the PRISM computer system) and the bulk phone records collection program operating under Section 215 of the USA PATRIOT ACT are being conflated in a way that exaggerates the value and usefulness of the bulk phone records collection program.

"Based on the evidence that we have seen, it appears that multiple terrorist plots have been disrupted at least in part because of information obtained under section 702 of FISA. However, it appears that the bulk phone records collection program under section 215 of the USA Patriot Act played little or no role in most of these disruptions. Saying that "these programs" have disrupted "dozens of potential terrorist plots" is misleading if the bulk phone records collection program is actually providing little or no unique value.

"The Intelligence Community notes that the massive collection of phone records under Section 215 has provided some relevant information in a few terrorism cases, but it is still unclear to us why agencies investigating terrorism do not simply obtain this information directly from phone companies using a regular court order. If the NSA is only reviewing those records that meet a "reasonable suspicion" standard, then there is no reason it shouldn't be able to get court orders for the records it actually needs. Making a few hundred of these requests per year would clearly not overwhelm the FISA Court. And the law already allows the government to issue emergency authorizations to get these records quickly in urgent circumstances. The NSA's five-year retention period for phone records is longer than the retention period used by some phone companies, but the NSA still has not provided us with any examples of instances where it relied on its bulk collection authority to review records that the relevant phone company no longer possessed.

"In fact, we have yet to see any evidence that the bulk phone records collection program has provided any otherwise unobtainable intelligence. It may be more convenient for the NSA to collect this data in bulk, rather than directing specific queries to the various phone companies, but in our judgment convenience alone does not justify the collection of the personal information of huge numbers of ordinary Americans if the same or more information can be obtained using less intrusive methods.

"If there is additional evidence for the usefulness of the bulk phone records collection program that we have not yet seen, we would welcome the opportunity to review it."