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September 6, 2013

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder:

The administration's legal interpretation of Section 215 of the Patriot Act—until recently secret—has been the subject of intense criticism since details of the National Security Agency's bulk collection of phone data became public. Section 215 allows the government to apply to the Foreign Intelligence Surveillance Court to issue an order for the production of tangible things if they are relevant to an authorized investigation into international terrorism.¹

Under this relevance standard, the administration has collected the details of every call made by every American, even though the overwhelming majority of these calls have nothing to do with terrorism. In passing Section 215, Congress intended to allow the government access to *specific* records. The administration's interpretation to allow for bulk collection is at odds with Congressional intent and with both the plain and legal meanings of "relevance."²

The implications of this flawed interpretation are staggering. The logic the administration uses for bulk collection would seem to support bulk collection of other personal data. A Federal Bureau of Investigation's (FBI) training manual specifically lists library records, book sales, firearm sales, tax returns, educational records, and medical records as examples of records the administration can obtain under the Patriot Act.³ The breadth of the administration's argument raises the question: What other records does the administration believe it can collect in bulk pertaining to every American?

In defending its bulk collection of phone records, the administration explicitly stated that its "conclusion does *not* mean that any and all types of business records—such as medical records or library or bookstore records—could be collected in bulk under this authority."⁴ Phone records are apparently

¹ 50 U.S.C. § 1861.

² Rep. Jim Sensenbrenner, *How Obama has Abused the Patriot Act*, L.A. Times (August 19, 2013).

³ FBI Training Manual on Foreign Intelligence Surveillance Act.

⁴ Administration White Paper: Bulk Collection of Telephony Metadata under Section 215 of the USA Patriot Act (August 9, 2013).

different from medical, library, and bookstore records because of the importance of the connections between individual data points.⁵

While it is unclear how the interconnectedness of data heightens the relevance of communications even where none of the communications are relevant, it is significant that this interconnectedness is not unique to phone records. Any commercial transaction involves interaction between multiple parties.

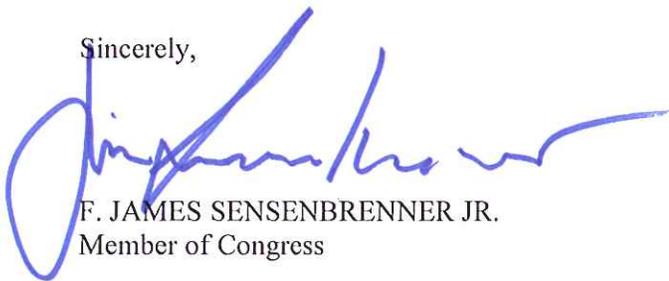
In, for example, a firearms sale, the FBI could easily conclude that it is interested, not only in the type of firearms being purchased, but also in who is selling firearms to whom—thereby ascribing importance to the connection between the buyers and sellers. The potential importance of these connections makes commercial transactions like firearms sales indistinguishable from phone records under the administration's analysis. The administration's sweeping legal view of Section 215 could support building a national gun registry despite Congress's express disapproval and the Second Amendment.

While this further highlights the flaws in the administration's interpretation of Section 215, it also raises important privacy questions. Please respond to the following by September 30, 2013:

1. Does the Department of Justice (Department) believe Section 215 of the Patriot Act authorizes it to collect all records of commercial transaction between Americans?
2. Does the Department believe that it has the authority to bulk collect all records of firearms sales?
3. Does the Department believe that Section 215 allows the administration to assemble a database of gun owners?
4. Is the administration collecting records in bulk other than phone records?
5. If the Department does not believe it has the authority to collect records of commercial transactions in bulk, how does the Department distinguish phone records from commercial transactions?

Thank you for your prompt response to this serious matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "F. James Sensenbrenner Jr.", written over a horizontal line.

F. JAMES SENSENBRENNER JR.
Member of Congress

⁵ *Id.* at 5.