



Written by [Jack Kenny](#) on September 18, 2013

Secret Surveillance Court Okays NSA Phone Data Collections

On Tuesday the U.S. government's secret surveillance court declassified and released a decision defending the practice of the National Security Agency in collecting billions of phone call records every day. In a 29-page decision of the Foreign Intelligence Surveillance Court, Judge Claire V. Eagan of the U.S. District Court of Northern Oklahoma ruled that the practice did not violate Americans' privacy rights. A key finding in Judge Eagan's ruling was that none of the telecommunications companies whose records were subpoenaed by order of the secret court has challenged the searches.



"To date, no holder of records who has received an order to produce bulk telephony metadata has challenged the legality of such an order," the judge wrote. The ruling also acknowledged the publicity and controversy the program has received since data engineer Edward J. Snowden, an employee of NSA contractor Booz Allen Hamilton, turned over documents revealing the nature of the program to the British newspaper *The Guardian*. The information revealed that the NSA has also been collecting billions of e-mail and other electronic communications daily. She ruled collection of the phone records legal, finding the records "are relevant to authorized investigations."

She cited as authority for such widespread investigations Section 215, pertaining to the collection of business records, of the PATRIOT Act, a law passed by Congress in the wake of the terrorist attacks on the United States on September 11, 2001. The searches have raised concerns, however, among defenders of constitutional guarantees related to searches, who have questioned how the collection of the phone records of virtually the entire population can be related to "authorized investigations." According to the Fourth Amendment of the U.S. Constitution, warrants may only be issued for searches "particularly describing the place to be searched, and the persons or things to be seized."

"This court is mindful that this matter comes before it at a time when unprecedented disclosures have been made about this and other highly sensitive programs designed to obtain foreign intelligence information and carry out counterterrorism investigations," wrote Judge Eagan. "In the wake of these disclosures, whether and to what extent the government seeks to continue the program discussed in this memorandum opinion is a matter for the political branches to decide." Eagan was appointed to the federal bench in 2001 by President George W. Bush. She was named by Chief Justice John Roberts this year to be one of 11 judges serving on the Foreign Intelligence Surveillance Court on a rotating basis.

The surveillance court was created by the Foreign Intelligence Surveillance Act of 1978 to rule on government investigations of foreign activities within the United States. Congress created the court to oversee such investigations and, ostensibly, to prevent the type of abuses in domestic spying activities of the CIA and FBI that had been uncovered by the investigation of a special U.S. Senate committee



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chaired by Sen. Frank Church (D-Idaho) in 1975. The court has granted nearly all of the applications for search warrants that it has received over the 3 1/2 decades of its existence.

The court's rulings are usually as secret as the subpoenas it issues, but the release Tuesday of Judge Eagan's August 29 decision was the second such disclosure in the past week. Last week the government released documents revealing a reprimand of the National Security Agency by another judge on the same court, who found the agency was misleading the court about how it was using the database it was compiling. The court found the agency was "automatically comparing each day's fresh batch of phone data with an 'alert list' of thousands of numbers its analysts had flagged, only about 10 percent of which met the standard of the court-imposed rules," the *New York Times* reported.

The rules themselves apparently remain secret, however, along with virtually everything else about the court. In February 2012, a Justice Department official, seeking [dismissal of Freedom of Information suits](#) by the *New York Times* and the American Civil Liberties Union, told a U.S. District Court judge that disclosing anything about the government's surveillance activities under the PATRIOT Act "could be expected to cause exceptionally grave damage to the national security of the United States." In a March 15, 2012 [letter](#) to Attorney General Eric Holder, U.S. Senators Ron Wyden of Oregon and Mark Udall of Colorado argued that the Foreign Intelligence Surveillance Court had been interpreting government powers far more broadly than intended by Congress.

"We believe most Americans would be stunned to learn the details of how these secret court opinions have interpreted Section 215 of the Patriot Act," they wrote. The same senators, both Democrats, wrote a similar letter to the attorney general in September 2011.

The authorization for the phone records collections has been routinely reissued by the surveillance court every three months, though the authorization issued on July 19 of this year followed an "extensive hearing to receive testimony and evidence on this matter," Judge Eagan wrote. She noted in a footnote, however, that the court followed its routine practice of allowing the government, and not opponents of the program, to participate in the hearing. That made the outcome all but inevitable, said American Civil Liberties Union attorney Alex Abdo. "When the court has in front of it only the government's arguments, it's not surprising that the opinion reads like a brief written by the government," he [said](#).



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