

With law expired, Senate mulls changes to phone collection

June 2 2015, by Ken Dilanian



Senate Majority Leader Mitch McConnell of Ky. arrives on Capitol Hill in Washington, Monday, June 1, 2015, before debate continues in the Senate on renewing the Patriot Act. (AP Photo/Andrew Harnik)

The Senate now will decide the fate of a House bill backed by the president that would end the National Security Agency's collection of American calling records while preserving other surveillance authorities.

But whatever the outcome of a scheduled Tuesday vote, the last two days in Congress have made this much clear: The NSA will ultimately be out of the business of collecting and storing American calling records.

While Congress debated, the law authorizing the collection expired at midnight Sunday. The NSA stopped gathering the records from [phone companies](#) hours before the deadline. Other post-9/11 [surveillance](#) provisions considered more effective than the phone-data collection program also lapsed, leading intelligence officials to warn of critical gaps.

The bill before the Senate, known as the USA Freedom Act, would reauthorize the surveillance, but would phase out NSA phone records collection over time. It passed the House overwhelmingly and is backed by President Barack Obama. Sen. Rand Paul, who doesn't believe it goes far enough, objected Monday, for the second day in a row, to an attempt by Senate Majority Leader Mitch McConnell to call for an early vote. But Paul can't stop the vote scheduled for Tuesday morning.

If it becomes law over the next few days, the NSA will resume gathering the phone records, but only for a transition period of six months, in the House version, or a year in the Senate version.

If the bill fails amid congressional politics, the collection cannot resume, period.

This turn of events is a resounding victory for Edward Snowden, the former NSA contractor who disclosed the calling records collection in 2013. Senators on the intelligence committee had been issuing veiled and vague warnings about the phone records program for years. If only Americans knew how the Patriot Act had been interpreted, the senators said, they would be outraged.

But it was Snowden who revealed the details. He's now living in Moscow, having fled U.S. prosecution for disclosing classified information.

Because of Snowden, "people have some more insight into exactly how they are being spied upon and how the law has been twisted to authorize mass surveillance of people who have no connection to a crime or terrorism," said Harley Geiger, senior counsel with the Center for Democracy and Technology, an advocacy group that supports the USA Freedom Act.

Still, the USA Freedom Act would hardly count as a defeat for the NSA, Snowden's former employer. NSA officials, including former director Keith Alexander, have long said they had no problem with ending their collection of phone records, as long as they can continue to search the data held by the companies, which the legislation allows them to do.

The USA Freedom Act doesn't address the vast majority of Snowden revelations, which concern NSA mass surveillance of global internet traffic that often sweeps in American communication.

Two former senior NSA officials, speaking on condition of anonymity because they did not want to discuss the matter publicly, said that if the USA Freedom Act is the central congressional response to the Snowden revelations, the NSA will have emerged almost unscathed, at least legally.

If the freedom act fails and the surveillance provisions expire, that would be a blow to U.S. intelligence and law enforcement agencies. The legal lapse affected not only the NSA's ability to collect domestic [phone records](#) in bulk. It also meant a halt in the FBI's authority to gather business records in terrorism and espionage investigations, and to more easily eavesdrop on a suspect who is discarding cellphones to avoid

surveillance.

"There are specific tools that our national security professionals have previously used ... that they can as of today no longer use because of the partisan dysfunction in the United States Senate," White House spokesman Josh Earnest said Monday.

The amendments proposed by Sen. Richard Burr, the North Carolina Republican who chairs the intelligence committee, were designed, he said, to win quick House approval. One requires the director of national intelligence to certify that the NSA can effectively search records held by the phone companies in terrorism investigations. Another would require the phone companies to notify the government if they change their policy on how long they held the records.

A third, to extend the transition from six months to 12 months, promises to be somewhat controversial. But lawmakers may face a choice between controversy and the continued expiration of laws used to hunt spies and terrorists.

On Monday afternoon, House backers of the USA Freedom Act denounced the Senate's plan to amend it.

"These amendments only serve to weaken the House-passed bill and postpone timely enactment of legislation that responsibly protects [national security](#) while enhancing civil liberty protections," said the statement by Republican Bob Goodlatte of Virginia, who chairs the judiciary committee, and three other key members.

"The House is not likely to accept the changes proposed by Senator McConnell...These amendments will likely make that sunset permanent. The Senate must act quickly to pass the USA Freedom Act without amendment."

Earnest said the White House, too, opposes adding any amendments in the Senate to the House-passed bill.

A senior member of the House GOP leadership, Rep. Kevin McCarthy of California, said the best course would be for the Senate to approve the measure as written. But he pointedly did not rule out revisions.

"I don't know what the Senate could do. They said a lot of things," he told reporters.

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Citation: With law expired, Senate mulls changes to phone collection (2015, June 2) retrieved 26 April 2024 from <https://phys.org/news/2015-06-law-expired-senate-mulls.html>

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