



U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

DEC 23 2002

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed please find a response to your written question submitted to the Deputy Attorney General at the hearing before the Senate Judiciary Committee on May 8, 2002. We are providing a response to question 19 relating to the changes section 215 of the USA PATRIOT Act made to provisions of the Foreign Intelligence Surveillance Act (FISA). The Department is continuing to gather information to answer the remaining questions posed to the Deputy Attorney General and the Director of the Federal Bureau of Investigation, and we will forward those responses as soon as possible.

Please note that the response to question 19 requires the Department to provide information that is classified at the SECRET level. That classified information is being delivered to the Committee under separate cover and in accordance with the longstanding Executive branch practices on the sharing of operational intelligence information with Congress.

We appreciate your oversight interest in the Department's activities pursuant to the USA PATRIOT Act. We look forward to continuing to work with the Committee as the Department implements these important new tools for law enforcement in the fight against terrorism. If we can be of further assistance on this, or any other matter, please do not hesitate to contact this office.

Sincerely,

Daniel J. Bryant
Assistant Attorney General

Enclosure

cc: The Honorable Orrin G. Hatch
Ranking Minority Member

**Questions Submitted by Chairman Leahy
Senate Judiciary Committee Hearing on
May 8, 2002**

Questions for Director Mueller and Deputy Attorney General Thompson

- 19. Section 215 of the Patriot Act allows all FBI Special Agents in Charge to obtain court orders requiring the production of "any tangible things (including books, records, papers, documents, and other items)" in connection with terrorism investigations. There have been reports that this authority is being used to obtain records, without showing probable cause that a crime has been committed, from a library or bookstore about what books a person has signed out or purchased.**

(a) Has the FBI, in fact, requested such records in any investigation of terrorism?

Answer: Section 215 amended the business records authority found in Title V of the Foreign Intelligence Surveillance Act (FISA). Under the old language, the FISA Court would issue an order compelling the production of certain defined categories of business records upon a showing of relevance and "specific and articulable facts" giving reason to believe that the person to whom the records related was an agent of a foreign power. The USA PATRIOT Act changed the standard to simple relevance and gives the FISA Court the authority to compel production in relation to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a U.S. person is not conducted solely upon the basis of activities protected by the First Amendment to the Constitution.

The classified semi-annual report discussing the use of sections 1861-1863 of FISA for the period June 30, 2001 through December 31, 2001 was provided to the Intelligence and Judiciary committees of both houses of Congress on April 29, 2002. That report was provided under cover letter to each committee chairman. Although not specified in the statute, the Department's practice has been to submit the reports covering January 1 through June 30 of a given year, by the end of December of that year. The Department of Justice is currently preparing the semi-annual report covering the period January 1, 2002 through June 30, 2002.

The Department is able at this time to provide information pertaining to the implementation of section 215 of the USA PATRIOT Act from January 1, 2002 to the present (December 23, 2002). That information is classified at the SECRET level and, accordingly, is being delivered to the Committee under separate cover.

(b) Can such an order be served on a public library to require the library to produce records about where a library patron has surfed on the Internet? Has such an order been sought by the Department or the FBI?

Answer: Such an order could conceivably be served on a public library although it is

unlikely that public libraries maintain those types of records. If the FBI were authorized to obtain the information the more appropriate tool for requesting electronic communication transactional records would be a National Security Letter (NSL). NSLs can be served on Internet Service Providers to obtain information such as subscriber name, screen name or other on-line names, records identifying addresses of electronic mail sent to and from the account, records relating to merchandise orders/shipping information, and so on but not including message content and/or subject fields.

(c) Do you think that library and bookstore patrons have a "reasonable expectation of privacy" in the titles of the books they have purchased from a bookstore or borrowed from a library?

Answer: Any right of privacy possessed by library and bookstore patrons in such information is necessarily and inherently limited since, by the nature of these transactions, the patron is reposing that information in the library or bookstore and assumes the risk that the entity may disclose it to another. Whatever privacy interests a patron may have are outweighed by the Government's interest in obtaining the information in cases where the FBI can show the patron's relevance to an authorized full investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the First Amendment to the Constitution.