

**UNITED STATES FOREIGN  
INTELLIGENCE SURVEILLANCE COURT  
WASHINGTON, D.C.**

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IN RE APPLICATION OF THE FEDERAL  
BUREAU OF INVESTIGATION FOR AN  
ORDER REQUIRING THE PRODUCTION  
OF TANGIBLE THINGS

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Docket No. BR 13-109

**ORDER**

The Clerk of the Court received a letter from the Center for National Security Studies (“Center”) on September 26, 2013. In the letter, the Center makes several requests in connection with the possible renewal of authorities granted by the Court on July 19, 2013. On that date in the above-captioned docket, the Court entered an order pursuant to 50 U.S.C. § 1861 requiring the ongoing daily production to the National Security Agency of certain telephone call detail records in bulk. The order and the Court’s supporting amended memorandum opinion were declassified in substantial part by the Executive Branch and published by the Court on September 17, 2013. See <http://www.uscourts.gov/uscourts/courts/fisc/br13-09-primary-order.pdf>. The order in Docket Number BR 13-109 is set to expire on October 11, 2013, at 5:00 p.m. Eastern Time.

In the event the government applies for an order requiring the continuing bulk production of call detail records beyond October 11, the Center asks the Court to: (1) “direct the Government . . . to file on the public record an application and supporting brief that sets forth its argument on the legality of bulk telephony metadata collection;” (2) “establish a briefing schedule that enables interested persons or organizations to submit briefs [of] amicus curiae responding to the Government’s submission;” and (3) consider entertaining the matter en banc pursuant to 50 U.S.C. § 1803(a)(2). See Center Letter at 1-2.


FISC Rule 6 describes the means by which relief may be requested from this Court. Under Rule 6(d), the Center must make its requests by motion. The Center asks that “[i]f a formal motion is required,” the Court “treat [its] letter as a motion or advise [it] that it should be refiled as such.” Center Letter at 2. Because the Center’s letter fails to comply with the FISC Rules in several respects, the Court declines to treat it as a motion. See FISC Rule 7(c)(2) (form of submissions); Rule 7(h)(1) (bar information); Rule 7(i) (security clearance information); Rule 63 (practice before the Court).

The Center may re-submit its requests in the form of a motion that complies with all applicable requirements of the FISC Rules. Any such submission, however, should address the

question whether the Center's requests are foreclosed in whole or in part by the language and structure of Section 1861. See, e.g., 50 U.S.C. § 1861(c)(1) (directing the Court to "enter an ex parte order"), (d) (restricting disclosures relating to orders issued under § 1861), and (f) (providing detailed procedures for challenges to production orders pursuant to which only the recipient of a production order may contest the legality of that order, and requiring that such challenges be filed "under seal").

The FISC Rules are available at <http://www.uscourts.gov/uscourts/rules/FISC2010.pdf>.

SO ORDERED, this 9<sup>th</sup> day of October, 2013, in Docket No. BR 13-109.

  
**MARY A. McLAUGHLIN**  
Judge, United States Foreign  
Intelligence Surveillance Court



Center for National Security Studies  
*protecting civil liberties and human rights*

U.S. FOREIGN  
INTELLIGENCE  
SURVEILLANCE COURT  
Director

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Kate Martin

LEEANN FLYNN HALL  
CLERK OF COURT

September 25, 2013

The Honorable Reggie B. Walton  
Presiding Judge  
United States Foreign Intelligence Surveillance Court  
Washington, D.C. 20001

Dear Judge Walton,

Owing to the considerable importance of legal issues concerning bulk telephone metadata collection under section 501 of the Foreign Intelligence Surveillance, we are writing concerning the procedures the Court may use to ensure plenary consideration on a public record of these issues in the event that the Government seeks reauthorization of that collection.

First, we request that the Court direct the Government, if it seeks reauthorization, to file on the public record an application and supporting brief that sets forth its argument on the legality of bulk telephony metadata collection. While the Government may have supplemental classified information that is submitted to the Court under seal, it is important that there be a public record that describes the full legal basis for the Government's application.

We note that the Court has now published an opinion on telephony metadata collection under section 501 (per Judge Eagan). That decision, like earlier decisions of the Court, was reached after *ex parte* proceedings. Moreover, the Court notes (opinion fn. 4) that it explicitly did not consider the Administration White Paper on Bulk Collection of Telephony Metadata Under Section 215 of the USA PATRIOT Act (August 9, 2013) which was released after the Court's *ex parte* hearing with the Government. It is therefore important that in the briefing now being proposed the Government go first so that it is clear what legal analysis it is now relying on.

Second, we request that the Court establish a briefing schedule that enables interested persons or organizations to submit briefs *amicus curiae* responding to the Government's submission. This would be in accord with procedures utilized by the Court of Review in *In re Sealed Case*, 310 F.3d 717 (Foreign Intel. Surv. Ct. Rev. 2002) and in *In re: Directives Pursuant to Section 105B of the Foreign Intelligence Surveillance Act*, 551 F.3d 1004 (Foreign Intel. Surv. Ct. Rev. 2008). My organization, the Center for National Security Studies, participated as *amicus curiae* in the 2002 *In re Sealed Case*, and filed a Legal Memorandum *In re Warrantless Electronic Surveillance* before the Foreign Intelligence Surveillance Court in 2006.

Third, we believe that pursuant to section 103(a)(2), 50 USC 1803(a)(2) of the Foreign Intelligence Surveillance Act and implementing rules of this Court, this is an appropriate matter for the Court to consider en banc. Under the Act and the rules, a majority of the judges of the Court may order en banc consideration when “the proceeding involves a question of exceptional importance.” Any request by the Government to reauthorize bulk collection of telephony metadata would meet that standard.

We believe that the Court’s favorable action in response to these requests will promote the public interest in assuring that there is plenary consideration of the significant legal issues in this matter and help fulfill the Government’s commitment to greater transparency on these issues.

We are sending copies of this letter to John P. Carlin, Acting Assistant Attorney General for National Security, and Robert S. Litt, General Counsel, Office of Director of National Intelligence. We hope that they will join in these requests.

We are submitting these requests by letter. If a formal motion is required, we ask you to treat this letter as a motion or advise us that it should be refiled as such.

Thank you for your consideration of this matter.

Sincerely,



Kate Martin

cc: John P. Carlin  
Acting Assistant Attorney General for National Security  
U.S. Department of Justice  
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