

§ 2709. Counterintelligence access to telephone toll and transactional records

(a) **DUTY TO PROVIDE.**—A wire or electronic communication service provider shall comply with a request for subscriber information and toll billing records information, or electronic communication transactional records in its custody or possession made by the Director of the Federal Bureau of Investigation under subsection (b) of this section.

(b) **REQUIRED CERTIFICATION.**—The Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, may—

(1) request the name, address, length of service, and local and long distance toll billing records of a person or entity if the Director (or his designee) certifies in writing to the wire or electronic communication service provider to which the request is made that the name, address, length of service, and toll billing records sought are relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment to the Constitution of the United States; and

(2) request the name, address, and length of service of a person or entity if the Director (or his designee) certifies in writing to the wire or electronic communication service provider to which the request is made that the information sought is relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

(c) **PROHIBITION OF CERTAIN DISCLOSURE.**—

(1) If the Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, certifies that otherwise there may result a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person, no wire or electronic communications service provider, or officer, employee, or agent thereof, shall disclose to any person (other than those to whom such disclosure is necessary to comply with the request or an attorney to obtain legal advice or legal assistance with respect to the request) that the Federal Bureau of Investigation has sought or obtained access to information or records under this section.

(2) The request shall notify the person or entity to whom the request is directed of the nondisclosure requirement under paragraph (1).

(3) Any recipient disclosing to those persons necessary to comply with the request or to an attorney to obtain legal advice or legal assistance with respect to the request shall inform such person of any applicable nondisclosure requirement. Any person who receives a disclosure under this subsection shall be subject to the same prohibitions on disclosure under paragraph (1).

(4) At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under this section shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, except that nothing in this section shall require a person to inform the Director or such designee of the identity of an attorney to whom disclosure was made or will be made to obtain legal advice or legal assistance with respect to the request under subsection (a).

(d) **DISSEMINATION BY BUREAU.**—The Federal Bureau of Investigation may disseminate information and records obtained under this section only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

(e) **REQUIREMENT THAT CERTAIN CONGRESSIONAL BODIES BE INFORMED.**—On a semiannual basis the Director of the Federal Bureau of Investigation shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, concerning all requests made under subsection (b) of this section.

(f) **LIBRARIES.**—A library (as that term is defined in section 213(1) of the Library Services and Technology Act (20 U.S.C. 9122(1)), the services of which include access to the Internet, books, journals, magazines, newspapers, or other similar forms of communication in print or digitally by patrons for their use, review, examination, or circulation, is not a wire or electronic communication service provider for purposes of this section, unless the library is providing the services defined in section 2510(15) (“electronic communication service”) of this title.

(Added Pub. L. 99-508, title II, §201[(a)], Oct. 21, 1986, 100 Stat. 1867; amended Pub. L. 103-142, Nov. 17, 1993, 107 Stat. 1491; Pub. L. 104-293, title VI, §601(a), Oct. 11, 1996, 110 Stat. 3469; Pub. L. 107-56, title V, §505(a), Oct. 26, 2001, 115 Stat. 365; Pub. L. 109-177, title I, §116(a), Mar. 9, 2006, 120 Stat. 213; Pub. L. 109-178, §§4(b), 5, Mar. 9, 2006, 120 Stat. 280, 281.)

AMENDMENTS

2006—Subsec. (c). Pub. L. 109-177 reenacted heading without change and amended text generally. Prior to

amendment, text read as follows: “No wire or electronic communication service provider, or officer, employee, or agent thereof, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to information or records under this section.”

Subsec. (c)(4). Pub. L. 109-178, §4(b), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under this section shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, but in no circumstance shall a person be required to inform the Director or such designee that the person intends to consult an attorney to obtain legal advice or legal assistance.”

Subsec. (f). Pub. L. 109-178, §5, added subsec. (f).

2001—Subsec. (b). Pub. L. 107-56, §505(a)(1), inserted “at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director” after “Deputy Assistant Director” in introductory provisions.

Subsec. (b)(1). Pub. L. 107-56, §505(a)(2), struck out “in a position not lower than Deputy Assistant Director” after “(or his designee” and substituted “made that the name, address, length of service, and toll billing records sought are relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment to the Constitution of the United States; and” for “made that—

“(A) the name, address, length of service, and toll billing records sought are relevant to an authorized foreign counterintelligence investigation; and

“(B) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801); and”.

Subsec. (b)(2). Pub. L. 107-56, §505(a)(3), struck out “in a position not lower than Deputy Assistant Director” after “(or his designee” and substituted “made that the information sought is relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.” for “made that—

“(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and

“(B) there are specific and articulable facts giving reason to believe that communication facilities registered in the name of the person or entity have been used, through the services of such provider, in communication with—

“(i) an individual who is engaging or has engaged in international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States; or

“(ii) a foreign power or an agent of a foreign power under circumstances giving reason to believe that the communication concerned international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States.”

1996—Subsec. (b)(1). Pub. L. 104-293 inserted “local and long distance” before “toll billing records”.

1993—Subsec. (b). Pub. L. 103-142, §1, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as

follows: “REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation (or an individual within the Federal Bureau of Investigation designated for this purpose by the Director) may request any such information and records if the Director (or the Director’s designee) certifies in writing to the wire or electronic communication service provider to which the request is made that—

“(1) the information sought is relevant to an authorized foreign counterintelligence investigation; and

“(2) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).”

Subsec. (e). Pub. L. 103-142, §2, inserted “, and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate,” after “Senate”.

§ 2710. Wrongful disclosure of video tape rental or sale records

(a) DEFINITIONS.—For purposes of this section—

(1) the term “consumer” means any renter, purchaser, or subscriber of goods or services from a video tape service provider;

(2) the term “ordinary course of business” means only debt collection activities, order fulfillment, request processing, and the transfer of ownership;

(3) the term “personally identifiable information” includes information which identifies a person as having requested or obtained specific video materials or services from a video tape service provider; and

(4) the term “video tape service provider” means any person, engaged in the business, in or affecting interstate or foreign commerce, of rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials, or any person or other entity to whom a disclosure is made under subparagraph (D) or (E) of subsection (b)(2), but only with respect to the information contained in the disclosure.

(b) VIDEO TAPE RENTAL AND SALE RECORDS.—

(1) A video tape service provider who knowingly discloses, to any person, personally identifiable information concerning any consumer of such provider shall be liable to the aggrieved person for the relief provided in subsection (d).

(2) A video tape service provider may disclose personally identifiable information concerning any consumer—

(A) to the consumer;

(B) to any person with the informed, written consent (including through an electronic means using the Internet) of the consumer that—

(i) is in a form distinct and separate from any form setting forth other legal or financial obligations of the consumer;

(ii) at the election of the consumer—

(I) is given at the time the disclosure is sought; or

(II) is given in advance for a set period of time, not to exceed 2 years or until consent is withdrawn by the consumer, whichever is sooner; and

(iii) the video tape service provider has provided an opportunity, in a clear and con-