

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

April 29, 2005

The Honorable Alberto Gonzales
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

Dear Attorney General Gonzales:

We are writing to follow up on our letter of September 30, 2004, requesting that the Justice Department declassify aggregate information about the use of the Foreign Intelligence Surveillance Act (FISA), such as the number of orders for business records issued by the FISA court pursuant to Section 215 of the USA PATRIOT Act. In a letter dated March 21, 2005, the Department responded that the information requested "continues to require protection in the interest of national security," and therefore could not be declassified.

Two weeks later, on April 5, 2005, you testified before the Senate Judiciary Committee about the USA PATRIOT Act. In the course of your oral testimony before the Committee, although not in written testimony provided to the Committee in advance of the hearing, you declassified certain aggregate numbers regarding the use of FISA. In particular, you indicated that the FISA court has granted requests for Section 215 business records orders 35 times as of March 30, 2005. You also provided additional details about the use of Section 215. You stated that the Department has not sought a Section 215 order for library, bookstore, medical or gun sale records. You also detailed the types of records that Section 215 orders have been used to obtain. In addition, you stated that the Department has obtained roving wiretaps under FISA 49 times.

Each of us is concerned that the U.S. government classifies more information than is actually necessary to protect national security. We also believe that debate and discussion about some of the more controversial provisions of the USA PATRIOT Act have been hampered due to lack of information about how they have been implemented. Thus, we appreciate the declassification of this information.

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However, we were disappointed that the Department chose to declassify this information at a time that suited its political ends, rather than in response to our oversight letter, which we sent to Attorney General Ashcroft more than six months ago.

If the Department's declassification of this basic FISA information was not timed for political purposes, then please explain what circumstances changed between March 21, 2005, and April 5, 2005, to allow the disclosure of this information without harming national security.

In addition, given that your recent actions strongly suggest that the declassification of aggregate FISA numbers does not harm national security, we would like to renew our request of September 30, 2004, that you declassify basic data about the Department's use of the four types of FISA orders. Your Committee testimony provided some, but not all, of this information. We believe that declassification of the remainder of this information is critical to allowing robust public debate about the USA PATRIOT Act, as well as appropriate oversight by the Judiciary Committee as we evaluate the provisions that sunset this year. We have attached our original September 30, 2004, letter for your reference. Given the impending sunset date, we ask for an immediate response.

Sincerely,



RUSSELL D. FEINGOLD
United States Senator



PATRICK LEAHY
Ranking Member



RICHARD J. DURBIN
United States Senator