

113TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To enhance transparency for certain surveillance programs authorized by the Foreign Intelligence Surveillance Act of 1978 and for other purposes.

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IN THE SENATE OF THE UNITED STATES

Mr. FRANKEN (for himself and Mr. HELLER) introduced the following bill; which was read twice and referred to the Committee on

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**A BILL**

To enhance transparency for certain surveillance programs authorized by the Foreign Intelligence Surveillance Act of 1978 and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Surveillance Trans-  
5 parency Act of 2013”.

1 **SEC. 2. ENHANCED PUBLIC REPORTING FOR ORDERS**  
2 **UNDER THE FOREIGN INTELLIGENCE SUR-**  
3 **VEILLANCE ACT OF 1978.**

4 (a) ENHANCED REPORTING FOR ELECTRONIC SUR-  
5 VEILLANCE ORDERS.—Section 107 of the Foreign Intel-  
6 ligence Surveillance Act of 1978 (50 U.S.C. 1807) is  
7 amended to read as follows:

8 **“SEC. 107. REPORT OF ELECTRONIC SURVEILLANCE.**

9 “(a) IN GENERAL.—In April of each year, the Attor-  
10 ney General shall transmit to the Administrative Office  
11 of the United States Court and to Congress a report set-  
12 ting forth with respect to the preceding calendar year—

13 “(1) the total number of applications made for  
14 orders and extensions of orders approving electronic  
15 surveillance under this title;

16 “(2) the total number of such orders and exten-  
17 sions either granted, modified, or denied;

18 “(3) the total number of individuals who were  
19 subject to electronic surveillance conducted under an  
20 order entered under this title, provided that if this  
21 number is fewer than 500, it shall exclusively be ex-  
22 pressed as a numerical range of ‘fewer than 500’  
23 and shall not be expressed as an individual number;  
24 and

25 “(4) the total number of citizens of the United  
26 States and aliens lawfully admitted for permanent

1 residence (as defined in section 101(a)(20) of the  
2 Immigration and Nationality Act (8 U.S.C.  
3 1101(a)(20)) who were subject to electronic surveil-  
4 lance conducted under an order entered under this  
5 title, provided that if this number is fewer than 500,  
6 it shall exclusively be expressed as a numerical range  
7 of ‘fewer than 500’ and shall not be expressed as an  
8 individual number.

9 “(b) FORM OF REPORT.—Each report required by  
10 this section shall be submitted in unclassified form and  
11 shall be made available to the public 7 days after the date  
12 such report is submitted to Congress.”.

13 (b) ENHANCED REPORTING FOR PEN REGISTERS  
14 AND TRAP AND TRACE DEVICES.—Section 406 of the  
15 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.  
16 1846) is amended by adding at the end the following:

17 “(c) ANNUAL REPORT ON USE OF PEN REGISTER  
18 AND TRAP AND RACE DEVICES.—

19 “(1) REQUIREMENT FOR REPORT.—Except as  
20 provided in paragraph (2), in April of each year, the  
21 Attorney General shall submit to Congress a report  
22 setting forth with respect to the preceding year—

23 “(A) the total number of applications made  
24 for orders approving the use of a pen register  
25 and trap and trace devices under this title;

1           “(B) the total number of such orders ei-  
2 ther granted, modified, or denied;

3           “(C) a good faith estimate of the total  
4 number of individual persons whose electronic  
5 or wire communications information was ob-  
6 tained through the use of pen register or trap  
7 and trace devices authorized under an order en-  
8 tered under this title;

9           “(D) good faith estimates of the total  
10 numbers of United States persons—

11           “(i) whose electronic or wire commu-  
12 nications information was obtained  
13 through the use of pen register or trap and  
14 trace devices authorized under an order en-  
15 tered under this title;

16           “(ii) whose electronic communications  
17 information was obtained through the use  
18 of pen register or trap and trace devices  
19 authorized under an order entered under  
20 this title, and the number of such persons  
21 whose information was subsequently re-  
22 viewed or accessed by a Federal officer,  
23 employee, or agent; and

24           “(iii) whose wire communications in-  
25 formation was obtained through the use of

1           pen register or trap and trace devices au-  
2           thorized under an order entered under this  
3           title, and the number of such persons  
4           whose information was subsequently re-  
5           viewed or accessed by a Federal officer,  
6           employee, or agent; and

7           “(E) the total number of computer-assisted  
8           search queries initiated by a Federal officer,  
9           employee, or agent in any database of electronic  
10          or wire communications information obtained  
11          through the use of a pen register or trap and  
12          trace device authorized under an order entered  
13          under this title, and the number of such queries  
14          whose search terms included information from  
15          the electronic or wire communications informa-  
16          tion of a United States person.

17          “(2) STATEMENT OF NUMERICAL RANGE.—If  
18          an estimate specified in subparagraphs (C) or (D) of  
19          paragraph (1) is fewer than 500, it shall exclusively  
20          be expressed as a numerical range of ‘fewer than  
21          500’ and shall not be expressed as an individual  
22          number.

23          “(3) FORM OF REPORT.—Each report under  
24          this section shall be submitted in unclassified form

1 and shall be made available to the public 7 days  
2 after the date such report is submitted to Congress.

3 “(4) CONSTRUCTION.—Nothing in this sub-  
4 section shall be construed to authorize or in any  
5 other way affect the lawfulness or unlawfulness of  
6 installing or using a pen register or trap and trace  
7 device.

8 “(5) DEFINITIONS.—In this subsection:

9 “(A) ELECTRONIC COMMUNICATION AND  
10 WIRE COMMUNICATION.—The terms ‘electronic  
11 communication’ and ‘wire communication’ have  
12 the meanings given those terms in section 2510  
13 of title 18, United States Code.

14 “(B) INDIVIDUAL PERSON.—The term ‘in-  
15 dividual person’ means any individual and ex-  
16 cludes any group, entity, association, corpora-  
17 tion, or governmental entity.

18 “(C) UNITED STATES PERSON.—The term  
19 ‘United States person’ means a citizen of the  
20 United States or an alien lawfully admitted for  
21 permanent residence (as defined in section  
22 101(a)(20) of the Immigration and Nationality  
23 Act (8 U.S.C. 1101(a)(20)).”.

1           (c) ENHANCED REPORTING FOR BUSINESS RECORDS  
2 REQUESTS.—Section 502 of the Foreign Intelligence Sur-  
3 veillance Act of 1978 (50 U.S.C. 1862) is amended—

4           (1) in subsection (b)(3), by adding at the end  
5 the following:

6           “(F) Records concerning electronic communica-  
7 tions.

8           “(G) Records concerning wire communications.

9           “(H) Information described in subparagraph  
10 (A), (B), (D), (E), or (F) of section 2703(c)(2) of  
11 title 18, United States Code.”; and

12           (2) by amending subsection (c) to read as fol-  
13 lows:

14           “(c) ANNUAL REPORT ON SECTION 501 ORDERS.—

15           “(1) REQUIREMENT FOR REPORT.—Except as  
16 provided in paragraph (2), in April of each year, the  
17 Attorney General shall submit to Congress a report  
18 setting forth with respect to the preceding year—

19           “(A) the total number of applications made  
20 for orders approving requests for the production  
21 of tangible things under section 501;

22           “(B) the total number of such orders ei-  
23 ther granted, modified, or denied;

24           “(C) a good faith estimate of the total  
25 number of individual persons whose tangible

1 things were produced under an order entered  
2 under section 501;

3 “(D) good faith estimates of the total  
4 numbers of United States persons—

5 “(i) whose tangible things were pro-  
6 duced under an order entered under sec-  
7 tion 501;

8 “(ii) who were a party to an electronic  
9 communication of which a record was pro-  
10 duced under an order entered under sec-  
11 tion 501, and the number of such persons  
12 whose records were subsequently reviewed  
13 or accessed by a Federal officer, employee,  
14 or agent;

15 “(iii) who were a party to a wire com-  
16 munication of which a record was produced  
17 under an order entered under section 501,  
18 and the number of such persons whose  
19 records were subsequently reviewed or  
20 accessed by a Federal officer, employee, or  
21 agent; and

22 “(iv) who were subscribers or cus-  
23 tomers of an electronic communication  
24 service or remote computing service and  
25 whose records, as described in subpara-

1 graph (A), (B), (D), (E), or (F) of section  
2 2703(c)(2) of title 18, United States Code,  
3 were produced under an order entered  
4 under section 501, and the number of such  
5 persons whose records were subsequently  
6 reviewed by a Federal officer, employee, or  
7 agent;

8 “(E) the total number of computer-assisted  
9 search queries initiated by a Federal officer,  
10 employee or agent in any database of tangible  
11 things produced under an order entered under  
12 section 501, and the number of such queries  
13 whose search terms included information from  
14 the electronic or wire communications contents  
15 or records of a United States person; and

16 “(F) a certification confirming that in the  
17 course of the preceding year no orders entered  
18 under section 501 were used to obtain the con-  
19 tents of an electronic or wire communication.

20 “(2) STATEMENT OF NUMERICAL RANGE.—If  
21 an estimate described in subparagraph (C) or (D) of  
22 paragraph (1) is fewer than 500, it shall exclusively  
23 be expressed as a numerical range of ‘fewer than  
24 500’ and shall not be expressed as an individual  
25 number.

1           “(3) FORM OF REPORT.—Each report under  
2 this subsection shall be submitted in unclassified  
3 form and shall be made available to the public 7  
4 days after the date such report is submitted to Con-  
5 gress.

6           “(4) CONSTRUCTION.—Nothing in this sub-  
7 section shall be construed to authorize or in any  
8 other way affect the lawfulness or unlawfulness of  
9 using an order for the production of tangible things  
10 under section 501 to obtain any of the items de-  
11 scribed in subparagraphs (A) through (H) of sub-  
12 section (b)(3).

13           “(5) DEFINITIONS.—In this subsection:

14           “(A) IN GENERAL.—The terms ‘contents’,  
15 ‘electronic communication’, ‘electronic commu-  
16 nication service’, and ‘wire communication’ shall  
17 have the meanings given those terms in section  
18 2510 of title 18, United States Code.

19           “(B) INDIVIDUAL PERSON.—The term ‘in-  
20 dividual person’ means any individual and ex-  
21 cludes any group, entity, association, corpora-  
22 tion, or governmental entity.

23           “(C) REMOTE COMPUTING SERVICE.—The  
24 term ‘remote computing service’ has the mean-

1           ing given that term in section 2711 of title 18,  
2           United States Code.

3                   “(D) UNITED STATES PERSON.—The term  
4           ‘United States person’ means a citizen of the  
5           United States or an alien lawfully admitted for  
6           permanent residence (as defined in section  
7           101(a)(20) of the Immigration and Nationality  
8           Act (8 U.S.C. 1101(a)(20)).”.

9           (d) ENHANCED REPORTING FOR ADDITIONAL PRO-  
10          CEDURES REGARDING CERTAIN PERSONS OUTSIDE THE  
11          UNITED STATES.—Section 707 of the Foreign Intelligence  
12          Surveillance Act of 1978 (50 U.S.C. 1881f) is amended  
13          by adding at the end the following:

14                   “(c) ANNUAL REPORT.—

15                           “(1) REQUIREMENT FOR REPORT.—In April of  
16           each year, the Attorney General shall submit to Con-  
17           gress a report setting forth with respect to the pre-  
18           ceding year—

19                                   “(A) the total number of—

20   “(i) directives issued under section  
21   702;

22   “(ii) orders granted under section  
23   703; and

24   “(iii) orders granted under section  
25   704;



1           sons whose communication contents were  
2           subsequently reviewed or accessed by a  
3           Federal officer, employee, or agent;

4           “(iii) who were a party to an elec-  
5           tronic communication whose records (other  
6           than content) were collected pursuant to a  
7           directive issued under section 702, and the  
8           number of such persons whose communica-  
9           tion records were subsequently reviewed or  
10          accessed by a Federal officer, employee, or  
11          agent;

12          “(iv) who were a party to a wire com-  
13          munication whose contents were collected  
14          pursuant to a directive issued under sec-  
15          tion 702, and the number of such persons  
16          whose communication contents were subse-  
17          quently reviewed or accessed by a Federal  
18          officer, employee, or agent;

19          “(v) who were a party to a electronic  
20          communication whose records (other than  
21          content) were collected pursuant to a direc-  
22          tive issued under section 702, and the  
23          number of such persons whose communica-  
24          tion records were subsequently reviewed or

1 accessed by a Federal officer, employee, or  
2 agent; and

3 “(vi) who were subscribers or cus-  
4 tomers of an electronic communication  
5 service or remote computing service whose  
6 records, as described in subparagraphs  
7 (A), (B), (D), (E), and (F) of section  
8 2703(c)(2) of title 18, United States Code,  
9 were produced pursuant to a directive  
10 issued under section 702, and the number  
11 of such persons whose records were subse-  
12 quently reviewed or accessed by a Federal  
13 officer, employee, or agent.

14 “(2) STATEMENT OF NUMERICAL RANGE.—If  
15 an estimate specified in subparagraphs (B) or (C) of  
16 paragraph (1) is fewer than 500, it shall exclusively  
17 be expressed as a numerical range of ‘fewer than  
18 500’ and shall not be expressed as an individual  
19 number.

20 “(3) PUBLIC AVAILABILITY.—Each report  
21 under this subsection shall be submitted in unclassi-  
22 fied form and shall be made available to the public  
23 7 days after the date such report is submitted to  
24 Congress.

25 “(4) DEFINITIONS.—In this subsection:

1           “(A) IN GENERAL.—The terms ‘contents’,  
2           ‘electronic communication’, ‘electronic commu-  
3           nication service’, and ‘wire communication’ have  
4           the same meanings given those terms in section  
5           2510 of title 18, United States Code.

6           “(B) INDIVIDUAL PERSON.—The term ‘in-  
7           dividual person’ means any individual and ex-  
8           cludes any group, entity, association, corpora-  
9           tion, or governmental entity.

10           “(C) REMOTE COMPUTING SERVICE.—The  
11           term ‘remote computing service’ shall have the  
12           same meaning given that term in section 2711  
13           of title 18, United States Code.

14           “(D) UNITED STATES PERSON.—The term  
15           ‘United States person’ means a citizen of the  
16           United States or an alien lawfully admitted for  
17           permanent residence (as defined in section  
18           101(a)(20) of the Immigration and Nationality  
19           Act (8 U.S.C. 1101(a)(20)).

20           “(5) CONSTRUCTION.—Nothing in this sub-  
21           section shall be construed to authorize or in any  
22           other way affect the lawfulness or unlawfulness of  
23           using an order or directive under section 702, 703,  
24           or 704 to collect any of the information described in  
25           subparagraph (B) or (C) of paragraph (1).”.

1 (e) RULES OF CONSTRUCTION.—Nothing in this sec-  
2 tion or the amendments made by this section shall be con-  
3 strued—

4 (1) to authorize the collection of any additional  
5 information, other than public demographic data, for  
6 the purpose of complying with the reporting require-  
7 ments of this section; or

8 (2) to authorize an amount of additional appro-  
9 priations to carry out this section that is more than  
10 the amount authorized for that purpose for fiscal  
11 year 2013.

12 **SEC. 3. PUBLIC DISCLOSURES OF AGGREGATE INFORMA-**  
13 **TION RELATED TO ORDERS UNDER THE FOR-**  
14 **EIGN INTELLIGENCE SURVEILLANCE ACT OF**  
15 **1978.**

16 (a) DISCLOSURES.—The Foreign Intelligence Surveil-  
17 lance Act of 1978 (50 U.S.C. 1801 et seq.) is amended  
18 by adding at the end the following:

19 **“TITLE IX—PUBLIC DISCLO-**  
20 **SURES OF AGGREGATE IN-**  
21 **FORMATION.**

22 **“SEC. 901. PUBLIC DISCLOSURES OF AGGREGATE INFOR-**  
23 **MATION.**

24 “(a) IN GENERAL.—Except as provided under sub-  
25 section (c), a person that has received an order under sec-

1 tion 105, 402, or 501, or an order or a directive under  
2 section 702, 703, or 704 may, every six months with re-  
3 spect to the preceding six month period, disclose to the  
4 public information with respect to each statutory authority  
5 as follows:

6           “(1) The total number of orders or directives  
7           received under the authority.

8           “(2) The percentage or total number of such  
9           orders or directives complied with, in whole or in  
10          part.

11          “(3) The total number of individual persons,  
12          users, or accounts whose information of any kind  
13          was produced to the Government, or was obtained or  
14          collected by the Government, under an order or di-  
15          rective received under the authority.

16          “(b) NATURE OF PRODUCTION.—Except as provided  
17          under subsection (c), a person that has received an order  
18          under section 402 or 501, or an order or a directive under  
19          section 702 may, every six months with respect to the pre-  
20          ceding six month period, disclose to the public the total  
21          number of individual persons, users, or accounts for whom  
22          the following information was produced to the Govern-  
23          ment, or was obtained or collected by the Government,  
24          with respect to each such authority, if applicable:

25                 “(1) The contents of electronic communications.

1           “(2) The contents of wire communications.

2           “(3) Records concerning electronic communica-  
3       tions.

4           “(4) Records concerning wire communications.

5           “(5) Information described in subparagraph  
6       (A), (B), (D), (E), or (F) of section 2703(c)(2) of  
7       title 18.

8           “(c) STATEMENT OF NUMERICAL RANGE.—If the  
9       total number of individual persons, users, or accounts  
10      specified in paragraph (3) of subsection (a) or in para-  
11      graphs (1), (2), (3), (4), or (5) of subsection (b) is fewer  
12      than 500, it shall exclusively be expressed as a numerical  
13      range of ‘fewer than 500’ and shall not be expressed as  
14      an individual number.

15          “(d) PERMITTED DISCLOSURE.—No cause of action  
16      shall lie in any court against any person for making a dis-  
17      closure in accordance with this section.

18          “(e) CONSTRUCTION.—Nothing in this section shall  
19      be construed—

20           “(1) to authorize or in any other way affect the  
21      lawfulness or unlawfulness of using an order or di-  
22      rective described in subsection (a) to obtain, collect,  
23      or secure the production of information described in  
24      paragraphs (1), (2), (3), (4), or (5) of subsection  
25      (b); or

1           “(2) to prohibit, implicitly preclude, or in any  
2 other way affect the lawfulness or unlawfulness of a  
3 disclosure not authorized by this section.

4           “(f) DEFINITIONS.—In this section:

5           “(1) IN GENERAL.—The terms ‘contents’, ‘elec-  
6 tronic communication’, and ‘wire communication’  
7 have the meanings given those terms in section 2510  
8 of title 18, United States Code.

9           “(2) INDIVIDUAL PERSON.—The term ‘indi-  
10 vidual person’ means any individual and excludes  
11 any group, entity, association, corporation, or gov-  
12 ernmental entity.

13           “(3) PERSON.—The term ‘person’ has the  
14 meaning given that term in section 101.”.

15           (b) CONFORMING AMENDMENTS.—The Foreign In-  
16 telligence Surveillance Act of 1978 is amended—

17           (1) in section 402(d)(2)(B)(ii)(I) (50 U.S.C.  
18 1842(d)(2)(B)(ii)(I)), by inserting “except as per-  
19 mitted by section 901,” before “shall not disclose”;  
20 and

21           (2) in section 501(d) (50 U.S.C. 1861(d))—

22           (A) in paragraph (1)—

23           (i) in subparagraph (B), by striking  
24 “or” at the end;

1 (ii) in subparagraph (C), by striking  
2 the period at the end and inserting a semi-  
3 colon and “or”; and

4 (iii) by adding at the end the fol-  
5 lowing:

6 “(D) the public as permitted by section 901.”;

7 and

8 (B) in paragraph (2)(A) by inserting “sub-  
9 paragraph (A), (B), or (C) of” after “pursuant  
10 to”.

11 (c) TABLE OF CONTENTS AMENDMENT.—The table  
12 of contents in the first section of th Foreign Intelligence  
13 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is  
14 amended by adding at the end the following:

“TITLE IX—PUBLIC DISCLOSURES OF AGGREGATE INFORMATION.

“Sec. 901. Public disclosures of aggregate information.”.