

The Department of Justice (DOJ) Office of the Inspector General (OIG) announced today the release of a public version of its most recent report examining the Federal Bureau of Investigation's (FBI) use of the investigative authority granted by Section 215 of the Patriot Act to obtain business records. The OIG provided a classified version of this report to Congress and to DOJ leadership in February 2015. The report reviews the FBI's use of Section 215 authority from 2007 through 2009, and also examines the DOJ's and FBI's progress in addressing the recommendations contained in the OIG's 2008 report on the FBI's use of Section 215. This is the OIG's third report since 2007 on the FBI's use of Section 215 authority.

As described in the public version of the report released today, the OIG found that from 2007 through 2009 the DOJ, on behalf of the FBI, submitted 51 Section 215 applications to the Foreign Intelligence Surveillance Court (FISA Court), all of which were approved. The report notes that the scope of business records sought under Section 215 greatly expanded in response to legislative changes, technological advances, and strategic choices, and that Section 215 orders have been used in investigations of groups comprised of unknown members and to obtain information in bulk concerning persons who are not the subjects of or associated with any FBI investigation. We concluded that these developments require continued and significant oversight by appropriate entities, including the FISA Court and the DOJ's National Security Division. We also concluded that the DOJ and the FBI have addressed the three recommendations from our 2008 report, but that with respect to one of the recommendations the DOJ should have met its statutory obligation considerably earlier than it did.

More details about our findings are provided below, followed by additional information regarding the public version of the report publicly released today.

The FBI's Use of Section 215 from 2007 through 2009

The report publicly released today provides an overview of the FBI's use of Section 215 orders for business records from 2007 through 2009. We found that, during that period, the DOJ, on behalf of the FBI, submitted 51 Section 215 applications to the FISA Court. Each of the applications was approved. The report describes several Section 215 applications to illustrate the use of Section 215 authority to obtain new and varied types of information.

Section 215 allows the FBI to seek an order from the FISA Court to obtain "any tangible thing," including books, records, and other items, from any business, organization, or entity, provided the item or items are for an authorized investigation to protect against international terrorism or clandestine intelligence activities. The report publicly released today describes how legislative and technological changes, including society's increased use of the Internet, have expanded the quality and quantity of electronic information available through the use of Section 215 authority. We found that the FBI has broadened the scope of the materials it has sought, and that the materials produced in response to Section 215 orders range from hard copy reproductions of business ledgers and receipts to gigabytes of metadata and other electronic information. Moreover, Section 215 authority is not limited to requesting

information related to the known subjects of specific underlying investigations, and we found that the authority has been used in investigations of groups comprised of unknown members and to obtain information in bulk concerning persons who are not the subjects of or associated with any FBI investigation.

While the expanded uses of Section 215 orders can be important applications of this authority, we believe that they require continued and significant oversight by appropriate entities, including the FISA Court and the DOJ's National Security Division.

The DOJ's and FBI's Progress in Addressing the OIG's 2008 Recommendations

The report publicly released today also examines the DOJ's and FBI's progress in addressing the recommendations contained in the OIG's 2008 report on the FBI's use of Section 215. In our 2008 report, we recommended that the DOJ implement minimization procedures for the handling of non-publicly available information concerning U.S. persons produced in response to Section 215 orders, as required Patriot Reauthorization Act of 2005 (Reauthorization Act). We also recommended that the FBI develop procedures for reviewing materials received in response to Section 215 orders to ensure that the materials do not contain information outside the scope of the FISA Court order, and that the FBI develop procedures for handling material that is produced in response to, but outside the scope of, a Section 215 order. The report publicly released today finds that the DOJ and FBI have addressed all three of these recommendations.

However, the report publicly released today also finds that the DOJ should have met its statutory obligation to adopt minimization requirements considerably earlier than it did. The Reauthorization Act required that the DOJ adopt minimization procedures to govern the retention and dissemination of material produced pursuant to a Section 215 order by September 2006. Although the DOJ adopted "interim procedures" in September 2006, we found in our 2008 report that these procedures did not meet the requirements of the Reauthorization Act and recommended that the FBI develop final standard minimization procedures for business records that did meet the statute's requirements. The DOJ agreed to do so.

Nevertheless, we found that by mid-2009, the DOJ had not replaced the interim procedures, and FISA Court judges began to issue Supplemental Orders in Section 215 matters requiring the DOJ to report to the FISA Court on the implementation of the interim procedures. The Attorney General ultimately adopted final minimization procedures in March 2013. Given the significance of minimization procedures in the Reauthorization Act of 2005, the OIG's recommendation two years later, and the FISA Court's eventual issuance of the Supplemental Orders, we do not believe that the Department should have taken until 2013 to meet this statutory obligation. Our report also encourages the DOJ and FBI to periodically evaluate the final procedures' implementation to determine whether additional revisions or training are appropriate.

About the Public Version Released Today

In February 2015, the OIG provided a classified version of our report, with certain information redacted, to the relevant Congressional oversight and intelligence committees, as well as to DOJ leadership offices. We did not issue a public version of the report at that time because, although we had provided a final draft of the report to the Intelligence Community in June 2014 for a classification review, we had not been informed of when that review would be completed.

That classification review has since been completed and the public version of the report released today contains redactions of information the FBI and the Intelligence Community determined to be classified. With the issuance of today's public report, we have also reissued the report, classified and without redactions, to the relevant Congressional oversight and intelligence committees, and to DOJ leadership offices.

The public, unclassified version of today's report can be found on the OIG's website at the following link: <https://oig.justice.gov/reports/2015/o1505.pdf>.