

- U.S. Senator Tammy Baldwin -

Freedoms and Privacy Act of 2013

Senator Baldwin's *Freedoms and Privacy Act of 2013* strengthens transparency, oversight and accountability on National Security Agency domestic surveillance; protects Americans' right to privacy under the 4th Amendment; and improves constitutional due process procedures in relation to Intelligence Community (IC) and law enforcement information sharing.

“Over ten years ago, I voted against the USA PATRIOT Act because I believed it would open the door to government overreach. We have now seen that secret, domestic surveillance programs at the National Security Agency have crossed the line. I believe that we must fight terrorism while also protecting our American freedoms. This legislation improves transparency, oversight and accountability on National Security Agency domestic surveillance. It also helps ensure that our counter-terrorism efforts respect the constitutional civil liberties and freedoms of the American people.”

--- U.S. Senator Tammy Baldwin

The Freedoms and Privacy Act

Strengthens transparency, oversight and accountability

- Establishes a number of reporting and disclosure requirements to strengthen transparency, oversight and accountability both for IC-law enforcement information sharing, as well as for general Foreign Intelligence Surveillance Act (FISA) related minimization procedures (i.e. rules that dictate the parameters of what and how the government can collect, share and use FISA-authorized intelligence).
- Requires the Attorney General to report twice each year on:
 1. Aggregate data on FISA information shared between the intelligence community and law enforcement,
 2. Summaries of specific completed cases derived from such shared information,
 3. Rules governing such sharing, and
 4. Any certifications and authorizations of IC-law enforcement information sharing.

It also requires disclosure and annual review of all standard FISA minimization procedures.

Protects Americans' right to privacy under the 4th Amendment

- Requires a senior Justice Department official's certification for FISA-derived information to be shared with law enforcement for any non-terrorist, non-intelligence investigation, and for use in all court cases.
- The existence of these certifications must be made known to all parties in a court case, thus preventing the use of "parallel construction", whereby the government obscures FISA-derived origins of a case.
- Requires the acquisition of "foreign intelligence information" be "the primary purpose" (not just "a significant" one) of a FISA Court warrant application by the government.

Improves constitutional due process procedures in relation to Intelligence Community and law enforcement information sharing.

- Currently, the Classified Information Procedures Act (CIPA) sets the rules for use of all classified information in U.S. courts, except FISA-collected information. This bill brings FISA under CIPA.
- It requires the government to provide defendants or other "aggrieved persons" notification of, and access to, all FISA-related information that is relevant, not just to a court case, but to the entirety of an investigation that led to the court case, in compliance with CIPA's classified information safeguards.

More information

In the course of international terrorism or foreign intelligence investigations, the NSA often collects information under FISA—rather than under a traditional, constitutionally protected warrant process—and shares it with law enforcement agencies. Then, in order to obscure where they received the information from, these agencies recreate the origins of their investigation (a process called “parallel construction”). By the time the investigation reaches a criminal proceeding, the trail has been scrubbed of its FISA/NSA roots, thereby undermining due process. By disregarding due process, the prosecutors’ ability to convict criminals and defendants’ access to potentially exculpatory evidence is threatened.

The *Freedoms and Privacy Act* will strengthen the transparency, oversight and accountability of the over-zealous actions of our government’s intelligence infrastructure and FISA collection minimization procedures. In conjunction with other FISA-reform measures in front of the Senate, this will restore the needed safeguards to ensure both Americans’ security and constitutional rights are protected.

Support for the Freedoms and Privacy Act of 2013

The *Freedoms and Privacy Act* has earned the support of **U.S. Senators Ron Wyden (D-Ore.)** and **Mark Udall (D-Colo.)**.

“The information collected under the Foreign Intelligence Surveillance Act is often shared with civilian law enforcement for criminal prosecutions. This legislation would clarify the rules for using surveillance information for domestic law enforcement to improve protections for both American security and Americans’ constitutional rights. It will require government agencies to be more open about their rules for handling the personal information of regular Americans with no connection to suspicious activity. Importantly, it will also require defense counsel to be notified whenever FISA information is used in criminal cases.”

U.S. Senator Ron Wyden (D-Ore.)

“Following the Sept. 11, 2001 terrorist attacks, we learned about the importance of sharing information about international terrorism between intelligence agencies and law enforcement. But we need to ensure that any personal information collected on innocent Americans with no connection to terrorism or espionage is shared appropriately with law enforcement entities. We need strong, appropriate privacy protections” Udall said. “We also must ensure that the federal government provides appropriate notice when it uses information collected under or derived from the Foreign Intelligence Surveillance Act in domestic law enforcement cases. This bill would protect our security while also putting in place important constitutional safeguards.”

U.S. Senator Mark Udall (D-Colo.)

Endorsements: Amnesty International; National Association of Criminal Defense Lawyers (NACDL); Prof. Jennifer Granick - Director of Civil Liberties, Stanford Center for Internet and Society, Stanford University Law school.

“Particularly in light of the recent revelations regarding the expansive, yet still opaque, electronic surveillance activities conducted by the National Security Agency (NSA), Congress has an obligation to improve transparency, oversight and accountability for the conduct of U.S. surveillance activities. Senator Baldwin’s Freedoms and Privacy Act of 2013 is a significant step in the right direction. Senator Baldwin’s initiative would help propel the United States in the direction of being a leader on protecting rights in the digital space. It would also bring the United States one step closer to meeting international human rights standards regarding the right to privacy, a fundamental human right.”

--- Frank Jannuzi, Washington DC Office Head, Amnesty International

“Right now under FISA, intelligence information is secretly shared with law enforcement, a fact hidden from the courts, meaning Americans are deprived of their statutory and constitutional protections. By ensuring that people know when the evidence against them has been collected with much lower safeguards, as part of an intelligence investigation, Senator Baldwin’s Freedoms and Privacy Act adds a much needed dimension to current FISA reform efforts.”

--- Jennifer Stisa Granick, Director of Civil Liberties
Stanford Center for Internet and Society, Stanford University Law School

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Visit baldwin.senate.gov for more information.