



U.S. Department of Justice

Office of the Deputy Attorney General

Exec Sec
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Washington, D.C. 20530

July 6, 2004

The Honorable J. Dennis Hastert
Speaker
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

The Department of Justice is pleased to provide information about section 215 of the USA PATRIOT Act ("PATRIOT Act"), an important authority afforded to law enforcement and intelligence authorities when Congress overwhelmingly passed the Act almost three years ago. It is critical that Congress's decision whether to preserve this vital tool in the war on terror be informed by reason, rather than rhetoric. We would oppose any amendment that would unduly restrict our ability to compel the production of records relevant to sensitive national security cases.

Section 215 of the PATRIOT Act provides a useful tool for catching terrorists and spies by specifically authorizing the Foreign Intelligence Surveillance Court ("FISA court") to require a person or organization to produce "any tangible things" to investigators in international terrorism and espionage investigations. These are the same types of materials that prosecutors have long been able to obtain with grand jury subpoenas in criminal investigations. However, section 215 applies in a much narrower set of circumstances than do grand jury subpoenas. Section 215 can only be used "to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution." 50 U.S.C. § 1861(a)(1).

Further, contrary to misleading rhetoric about section 215, it does not empower FBI agents to obtain records without a court order. Rather, section 215 can be used to obtain documents only with an order from the FISA court. In no circumstance can agents use this authority unilaterally to compel anyone to turn over their records. Thus law enforcement's use of section 215 requires more scrutiny than grand jury subpoenas, which do not need to be approved in advance by a judge.

In addition to the requirement of FISA court approval, section 215 establishes other important safeguards. For instance, section 215 provides for thorough congressional oversight. On a semi-annual basis, the Attorney General is required to "fully inform" Congress of the number of times agents have sought a court order under section 215, as well as the number of times such requests were granted, modified, or denied during the preceding six month period. *See* 50 U.S.C. § 1862.

On September 18, 2003, the Attorney General declassified the fact that as of that date, section 215 of the PATRIOT Act had not been used. The fact that an authority may be used infrequently does not denigrate its importance; to the contrary, it is important that the authority exists for situations in which a section 215 order could be critical to the success of an investigation. Just as a police officer knows that his firearm may be invaluable in preventing crime, even if he cannot predict when he might need to draw it from his holster, section 215 provides investigators an authority they may find crucial to stop a terrorist plot.

Indeed, there are a number of situations in which the ability to access documents pursuant to a section 215 order could be critical to an international terrorism or espionage investigation, particularly in the early stages of an investigation when officers are trying to develop leads. For example, investigators might find important information about a terrorist's or spy's activities or contacts in employment or apartment leasing records, without which the investigation might run into a dead-end.

Section 215 has been attacked for its potential application to libraries, with some critics suggesting that libraries should be exempted from it or that the provision should be repealed altogether. These critics ignore statutory context, well-established grand jury practice, and the reality of the terrorist threat. First, although a section 215 order could be issued to a bookstore or library if it possessed records relevant to an espionage or international terrorism investigation, the provision does not single them out or even mention them. And such an order would require court approval in any event, ensuring an independent check on law enforcement.

Second, libraries and bookstores have never been exempt from similar investigative authorities. Prosecutors have always been able to obtain records for criminal investigations from bookstores and libraries through grand jury subpoenas. For instance, in the 1997 Gianni Versace murder case, a Florida grand jury subpoenaed records from public libraries in Miami Beach. Similarly, in the 1990 Zodiac gunman investigation, a grand jury in New York subpoenaed library records after investigators came to believe that the gunman was inspired by a Scottish occult poet and wanted to learn who had checked out that poet's books.

Finally, bookstores and libraries should not be carved out as safe havens for terrorists and spies. We know, for example, that spies have used public library computers to do research to further their espionage and to communicate with their co-conspirators. For example, Brian Regan, a former TRW employee working at the National Reconnaissance Office, who recently

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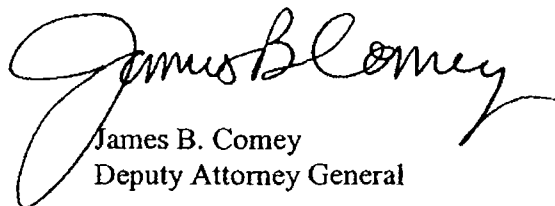
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was convicted of espionage, extensively used computers at five public libraries in Northern Virginia and Maryland to access addresses for the embassies of certain foreign governments. FBI agents watched his use of the computers over his shoulder, then used the web browser's "back" button to view the web pages he visited. Though the Regan prosecution did not involve the use of section 215, this evidence was important during his trial.

Simply put, section 215 of the PATRIOT Act provides law enforcement an important tool for investigating and intercepting terrorism, and at the same time establishes robust safeguards to protect law-abiding Americans. We hope this information assists you as you decide whether to preserve fully the Government's ability to prosecute the war on terror.

Thank you for the opportunity to present our views. Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,



James B. Comey
Deputy Attorney General