

109TH CONGRESS
1ST SESSION

S. 1680

To reform the issuance of national security letters.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 12, 2005

Mr. CORNYN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To reform the issuance of national security letters.

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 “National Security Let-
5 ter Reform Act of 2005”.

6 **SEC. 2. JUDICIAL REVIEW OF NATIONAL SECURITY LET-**
7 **TERS.**

8 (a) IN GENERAL.—Chapter 223 of title 18, United
9 States Code, is amended by inserting after section 3510
10 the following:

11 **“§ 3511. Judicial review of requests for information**

12 **“(a) PETITION BY RECIPIENT.—**

1 “(1) IN GENERAL.—The recipient of a request
2 for records, a report, or other information under sec-
3 tion 2709(b) of this title, section 626(a) or (b) or
4 627(a) of the Fair Credit Reporting Act, section
5 1114(a)(5)(A) of the Right to Financial Privacy Act,
6 or section 802(a) of the National Security Act of
7 1947 may, in the United States district court for the
8 district in which that person or entity does business
9 or resides, petition for an order modifying or setting
10 aside the request.

11 “(2) COURT ACTION.—The court may modify or
12 set aside a request under this section if compliance
13 would be unreasonable or oppressive.

14 “(b) MODIFICATIONS OF NONDISCLOSURE REQUIRE-
15 MENT.—

16 “(1) PETITIONS.—The recipient of a request
17 for records, a report, or other information under sec-
18 tion 2709(b) of this title, section 626(a) or (b) or
19 627(a) of the Fair Credit Reporting Act, section
20 1114(a)(5)(A) of the Right to Financial Privacy Act,
21 or section 802(a) of the National Security Act of
22 1947, may petition any court described in subsection
23 (a) for an order modifying or setting aside a non-
24 disclosure requirement imposed in connection with
25 such a request.

1 “(2) WITHIN 1 YEAR.—

2 “(A) IN GENERAL.—If the petition under
3 paragraph (1) is filed not later than 1 year
4 after the request for records, a report, or other
5 information under section 2709(b) of this title,
6 section 626(a) or (b) or 627(a) of the Fair
7 Credit Reporting Act, section 1114(a)(5)(A) of
8 the Right to Financial Privacy Act, or section
9 802(a) of the National Security Act of 1947,
10 the court may modify or set aside such a non-
11 disclosure requirement if it finds that there is
12 no reason to believe that disclosure may endan-
13 ger the national security of the United States,
14 interfere with a criminal, counterterrorism, or
15 counterintelligence investigation interfere with
16 diplomatic relations, or endanger the life or
17 physical safety of any person.

18 “(B) EFFECT OF CERTIFICATION.—The
19 certification made at the time of the request
20 that disclosure may endanger the national secu-
21 rity of the United States or interfere with diplo-
22 matic relations shall be treated as conclusive
23 under this paragraph unless the court finds
24 that the certification was made in bad faith.

25 “(3) AFTER 1 YEAR.—

1 “(A) IN GENERAL.—If the petition is filed
2 1 year or more after the request for records, a
3 report, or other information under section
4 2709(b) of this title, section 626(a) or (b) or
5 627(a) of the Fair Credit Reporting Act, sec-
6 tion 1114(a)(5)(A) of the Right to Financial
7 Privacy Act, or section 802(a) of the National
8 Security Act of 1947, the issuing officer, within
9 90 days of the filing of the petition, shall either
10 terminate the nondisclosure requirement or re-
11 certify that disclosure may result in danger to
12 the national security of the United States, in-
13 terference with a criminal, counterterrorism, or
14 counterintelligence investigation, interference
15 with diplomatic relations, or danger to the life
16 or physical safety of any person.

17 “(B) RECERTIFICATION.—In the event of
18 recertification under this paragraph, the court
19 may modify or set aside such a nondisclosure
20 requirement if it finds that there is no reason
21 to believe that disclosure may endanger the na-
22 tional security of the United States, interfere
23 with a criminal, counterterrorism, or counter-
24 intelligence investigation, interfere with diplo-

1 matic relations, or endanger the life or physical
2 safety of any person.

3 “(C) CONCLUSIVE.—The recertification
4 that disclosure may endanger the national secu-
5 rity of the United States or interfere with diplo-
6 matic relations under this paragraph shall be
7 treated as conclusive unless the court finds that
8 the recertification was made in bad faith.

9 “(D) EFFECT OF DENIAL.—If the court
10 denies a petition for an order modifying or set-
11 ting aside a nondisclosure requirement under
12 this paragraph, the recipient shall be precluded
13 for a period of 1 year from filing another peti-
14 tion to modify or set aside such nondisclosure
15 requirement.

16 “(c) COMPLIANCE.—

17 “(1) EFFECT OF FAILURE.—In the case of a
18 failure to comply with a request for records, a re-
19 port, or other information made to any person or en-
20 tity under section 2709(b) of this title, section
21 626(a) or (b) or 627(a) of the Fair Credit Reporting
22 Act, section 1114(a)(5)(A) of the Right to Financial
23 Privacy Act, or section 802(a) of the National Secu-
24 rity Act of 1947, the Attorney General may invoke
25 the aid of any court of the United States within the

1 jurisdiction in which the investigation is carried on
2 or the person or entity resides, carries on business,
3 or may be found, to compel compliance with the re-
4 quest.

5 “(2) ORDER.—The court under paragraph (1)
6 may issue an order requiring the person or entity to
7 comply with the request.

8 “(3) CONTEMPT.—Any failure to obey the order
9 of the court under this subsection may be punished
10 by the court as contempt thereof.

11 “(d) PROCESS.—Any process under this section may
12 be served in any judicial district in which the person or
13 entity may be found.

14 “(e) PROCEEDINGS.—

15 “(1) CLOSED HEARING.—In all proceedings
16 under this section, subject to any right to an open
17 hearing in a contempt proceeding, the court shall
18 close any hearing to the extent necessary to prevent
19 an unauthorized disclosure of a request for records,
20 a report, or other information made to any person
21 or entity under section 2709(b) of this title, section
22 626(a) or (b) or 627(a) of the Fair Credit Reporting
23 Act, section 1114(a)(5)(A) of the Right to Financial
24 Privacy Act, or section 802(a) of the National Secu-
25 rity Act of 1947.

1 “(2) UNDER SEAL.—Petitions, filings, records,
2 orders, and subpoenas in proceedings under this sec-
3 tion shall be kept under seal to the extent and as
4 long as necessary to prevent the unauthorized disclo-
5 sure of a request for records, a report, or other in-
6 formation made to any person or entity under sec-
7 tion 2709(b) of this title, section 626(a) or (b) or
8 627(a) of the Fair Credit Reporting Act, section
9 1114(a)(5)(A) of the Right to Financial Privacy Act,
10 or section 802(a) of the National Security Act of
11 1947.

12 “(f) REVIEW OF GOVERNMENT SUBMISSION.—In all
13 proceedings under this section, the court shall, upon the
14 Federal Government’s request, review the submission of
15 the Government, which may include classified information,
16 ex parte and in camera.”.

17 (b) CHAPTER ANALYSIS.—The chapter analysis for
18 chapter 223 of title 18, United States Code is amended
19 by inserting at the end the following:

 “3511. Judicial review of request for information.”.

20 **SEC. 3. CONFIDENTIALITY OF NATIONAL SECURITY LET-**
21 **TERS.**

22 (a) TITLE 18.—Section 2709(c) of title 18, United
23 States Code, is amended to read:

24 “(c) PROHIBITION OF CERTAIN DISCLOSURE.—

1 “(1) IN GENERAL.—If the Director of the Fed-
2 eral Bureau of Investigation, or his designee in a po-
3 sition now lower than Deputy Assistant Director at
4 Bureau headquarters or a Special Agent in Charge
5 in a Bureau field office designated by the Director,
6 certifies that otherwise there may result a danger to
7 the national security of the United States, inter-
8 ference with a criminal, counterterrorism or counter-
9 intelligence investigation, interference with diplo-
10 matic relations, or danger to the life or physical
11 safety of any person, no wire or electronic commu-
12 nications service provider, or officer, employee, or
13 agent thereof, shall disclose to any person (other
14 than those to whom such disclosure is necessary in
15 order to comply with the request or an attorney to
16 obtain legal advice with respect to the request) that
17 the Federal Bureau of Investigation has sought or
18 obtained access to information or records under this
19 section.

20 “(2) NOTICE.—A request under this section
21 shall notify the person or entity to whom the request
22 is directed of the nondisclosure requirement under
23 paragraph (1).

24 “(3) DISCLOSURE.—Any recipient of a request
25 under this section disclosing to those persons nec-

1 essary to comply with the request or to an attorney
2 to obtain legal advice with respect to the request
3 shall inform such persons of any applicable non-
4 disclosure requirements. Any person who receives
5 such a disclosure under this subsection shall be sub-
6 ject to the same prohibitions on disclosure as under
7 paragraph (1).”.

8 (b) CONFIDENTIALITY OF DISCLOSURES TO FBI.—
9 Section 626(d) of the Fair Credit Reporting Act (15
10 U.S.C. 1681u(d)), as so designated by section 214(a)(1)
11 of the Fair and Accurate Credit Transactions Act of 2003
12 (Public Law 108–159, 117 Stat. 1980), is amended to
13 read as follows:

14 “(c) CONFIDENTIALITY.—

15 “(1) IN GENERAL.—If the Director of the Fed-
16 eral Bureau of Investigation, or the designee thereof
17 in a position not lower than Deputy Assistant Direc-
18 tor at Bureau headquarters or a Special Agent in
19 Charge in a Bureau field office designated by the
20 Director, certifies that otherwise there may result a
21 danger to the national security of the United States,
22 interference with a criminal, counterterrorism, or
23 counterintelligence investigation, interference with
24 diplomatic relations, or danger to the life or physical
25 safety of any person, no consumer reporting agency,

1 or officer, employee, or agent of a consumer report-
2 ing agency—

3 “(A) shall disclose to any person (other
4 than those to whom such disclosure is necessary
5 in order to comply with the request or an attor-
6 ney to obtain legal advice with respect to the re-
7 quest), that the Federal Bureau of Investiga-
8 tion has sought or obtained the identity of fi-
9 nancial institutions or a consumer report re-
10 specting any consumer under subsection (a),
11 (b), or (c); and

12 “(B) shall include in any consumer report
13 any information that would indicate that the
14 Federal Bureau of Investigation has sought or
15 obtained such information on a consumer re-
16 port.

17 “(2) NOTICE.—A request under this section
18 shall notify the person or entity to whom the request
19 is directed of the nondisclosure requirement under
20 paragraph (1).

21 “(3) PROHIBITIONS APPLICABLE TO FURTHER
22 DISCLOSURES.—Any recipient of a request under
23 this section disclosing to those persons necessary to
24 comply with the request or to an attorney to obtain
25 legal advice with respect to the request shall inform

1 such persons of any applicable nondisclosure require-
2 ments. Any person who receives such a disclosure
3 under this subsection shall be subject to the same
4 prohibitions on disclosure as under paragraph (1).”.

5 (c) CONFIDENTIALITY OF DISCLOSURES TO OTHER
6 GOVERNMENT AGENCIES.—Section 627(c) of the Fair
7 Credit Reporting Act (15 U.S.C. 1681v(c), as so des-
8 ignated by section 214(a)(1) of the Fair and Accurate
9 Credit Transactions Act of 2003 (Public Law 108–159,
10 117 Stat. 1980), is amended to read as follows:

11 “(c) CONFIDENTIALITY.—

12 “(1) IN GENERAL.—If the head of a govern-
13 ment agency authorized to conduct investigations or
14 intelligence or counterintelligence activities or anal-
15 ysis related to international terrorism, or the des-
16 ignee thereof, certifies that otherwise there may re-
17 sult a danger to the national security of the United
18 States, interference with a criminal,
19 counterterrorism, or counterintelligence investiga-
20 tion, interference with diplomatic relations, or dan-
21 ger to the life or physical safety of any person, no
22 consumer reporting agency, or officer, employee, or
23 agent of a consumer reporting agency, shall disclose
24 to any person (other than those to whom such dis-
25 closure is necessary in order to comply with the re-

1 request or an attorney to obtain legal advice with re-
2 spect to the request), or specify in any consumer re-
3 port, that a government agency has sought or ob-
4 tained access to information under subsection (a).

5 “(2) NOTICE.—A request under this section
6 shall notify the person or entity to whom the request
7 is directed of the nondisclosure requirement under
8 paragraph (1).

9 “(3) PROHIBITIONS APPLICABLE TO FURTHER
10 DISCLOSURES.—Any recipient disclosing to those
11 persons necessary to comply with a request or to an
12 attorney to obtain legal advice with respect to the
13 request shall inform such persons of any applicable
14 nondisclosure requirements. Any person who receives
15 such a disclosure under this subsection shall be sub-
16 ject to the same prohibitions on disclosure as under
17 paragraph (1).”.

18 (d) RIGHT TO FINANCIAL PRIVACY ACT.—Section
19 1114(a)(5)(D) of the Right to Financial Privacy Act (12
20 U.S.C. 3414(a)(5)(D)) is amended to read as follows:

21 “(D) PROHIBITION OF CERTAIN DISCLOSURE.—

22 “(i) If the Director of the Federal Bureau
23 of Investigation, or the designee thereof in a po-
24 sition not lower than Deputy Assistant Director
25 at Bureau headquarters or a Special Agent in

1 Charge in a Bureau field office designated by
2 the Director, certifies that otherwise there may
3 result a danger to the national security of the
4 United States, interference with a criminal,
5 counterterrorism, or counterintelligence inves-
6 tigation, interference with diplomatic relations,
7 or danger to the life or physical safety of any
8 person, financial institution, or officer, em-
9 ployee, or agent of such institution, shall dis-
10 close to any person (other than those to whom
11 such disclosure is necessary in order to comply
12 with the request or an attorney to obtain legal
13 advice with respect to the request) that the
14 Federal Bureau of Investigation has sought or
15 obtained access to a customer's or entity's fi-
16 nancial records under this paragraph.

17 “(ii) A request under this subsection shall
18 notify the person or entity to whom the request
19 is directed of the nondisclosure requirement
20 under paragraph (1).

21 “(iii) Any recipient disclosing to those per-
22 sons necessary to comply with the request or to
23 an attorney to obtain legal advice with respect
24 to the request shall inform such persons of any
25 applicable nondisclosure requirement. Any per-

1 son who receives such a disclosure under this
2 subsection shall be subject to the same prohibi-
3 tions on disclosure as under clause (i).”.

4 (e) NSA.—Section 802(b) of the National Security
5 Act of 1947 (50 U.S.C. 436(b)) is amended to read as
6 follows:

7 “(b) PROHIBITION OF CERTAIN DISCLOSURE.—

8 “(1) IN GENERAL.—If an authorized investiga-
9 tive agency described in subsection (a) certifies that
10 otherwise there may result a danger to the national
11 security of the United States, interference with a
12 criminal, counterterrorism, or counterintelligence in-
13 vestigation, interference with diplomatic relations, or
14 danger to the life or physical safety of any person,
15 no governmental or private entity, or officer, em-
16 ployee, or agent of such entity, may disclose to any
17 person (other than those to whom such disclosure is
18 necessary in order to comply with the request or an
19 attorney to obtain legal advice with respect to the
20 request) that such entity has received or satisfied a
21 request made by an authorized investigative agency
22 under this section.

23 “(2) NOTICE.—The request shall notify the per-
24 son or entity to whom the request is directed of the
25 nondisclosure requirement under paragraph (1).

1 “(3) DISCLOSURE.—Any recipient disclosing to
2 those persons necessary to comply with the request
3 or to an attorney to obtain legal advice with respect
4 to the request shall inform such persons of any ap-
5 plicable nondisclosure requirement. Any person who
6 receives a disclosure under this subsection shall be
7 subject to the same prohibitions on disclosure under
8 paragraph (1).”.

9 **SEC. 4. VIOLATION OF NONDISCLOSURE PROVISIONS OF**
10 **NATIONAL SECURITY LETTER.**

11 Section 1510 of title 18, United States Code, is
12 amended by adding at the end the following:

13 “(e) PENALTY.—Whoever knowingly violates section
14 2709(c)(1) of this title, sections 626(d) or 627(e) of the
15 Fair Credit Reporting Act (15 U.S.C. 1681u(d) or
16 1681v(c)), section 1114(a)(3) or 1114(a)(5)(D) of the
17 Right to Financial Privacy Act (U.S.C. 3414(a)(3) or
18 3414(a)(5)(D)), or section 802(b), of the National Secu-
19 rity Act of 1947 (50 U.S.C. 436(a)(5)(D)), or section
20 802(b) of the National Security Act of 1947 (50 U.S.C.
21 436(b)) shall be imprisoned for not more than 1 year, and
22 if the violation is committed with the intent to obstruct
23 an investigation or judicial proceeding, shall be imprisoned
24 for not more than 5 years.”.

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