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BIPARTISAN COALITION PROPOSES FIX TO AP PHONE HACK

GOVERNMENT REQUIRED TO GET COURT ORDER UNDER AMASH, LOFGREN, MULVANEY, POLIS PLAN

Washington, D.C. – Rep. Justin Amash (R-MI), joined by Rep. Zoe Lofgren (D-CA), Rep. Mick Mulvaney (R-SC), and Rep. Jared Polis (D-CO), today introduced legislation to prevent federal agencies from seizing Americans’ telephone records without a court order.

H.R. 2014, the Telephone Records Protection Act, requires court approval when the government demands telephone records from service providers. Current law allows the government to subpoena such records unilaterally, without any judicial review. The Department of Justice likely used its administrative subpoena authority to seize the Associated Press’s telephone records in its recent investigation of a CIA leak.

“The Justice Department’s seizure of the AP’s phone records—likely without the sign-off of a single judge—raises serious First and Fourth Amendment concerns. Regardless of whether DOJ violates the legitimate privacy expectations of reporters or ordinary Americans, we deserve to know that the federal government can’t seize our records without judicial review,” said Amash.

“Americans’ phone records deserve greater protection from the government than a mere subpoena,” Lofgren said. “The lack of discretion of the Department of Justice with regard to the Associated Press has demonstrated weaknesses in our surveillance laws that impair the First Amendment. This bill takes necessary, but reasonable corrective action to strengthen the privacy of Americans’ phone records from the government.”

“I was honestly surprised to learn that the government could get this sort of private, personal information without a court order. If that is indeed the law, as the Department of Justice insists that it is, then the law needs to change,” said Mulvaney. “I am more than willing to acknowledge that there may be times that the government needs access to this sort of information. That being said, if the case in favor of acquiring this information is so compelling, it seems a requirement that the government get a court order should be no impediment to the conduct of a valid government investigation.”

Polis said, “Americans of all political stripes were shocked to find out that the Department of Justice had been accessing telephone records of reporters at the Associated Press. The Department of Justice claims that they operated within the confines of the law, which makes it abundantly clear that we need to provide a higher level of protection against government intrusion into an individual’s private records. I am excited to be working with Representatives Amash, Lofgren, and Mulvaney on this important privacy protection bill.”

18 U.S.C. § 2703 allows the government to demand that electronic communication services such as telephone companies turn over basic subscriber information with an administrative subpoena.

Basic subscriber information includes the name, address, telephone records, credit card number, and other information related to a customer's service.

The Telephone Records Protection Act strikes 18 U.S.C. § 2703(c)(2)(C), which includes telephone records on the list of basic subscriber information that can be accessed by administrative subpoena. If enacted, the bill would require the government to state "specific and articulable facts" that prove to a court that the information sought is "relevant and material to an ongoing criminal investigation."

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