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Democratic Senators Issue Strong Warning About Use of the Patriot Act

By CHARLIE SAVAGE

WASHINGTON — For more than two years, a handful of Democrats on the Senate intelligence committee [have warned that the government is secretly interpreting its surveillance powers under the Patriot Act](#) in a way that would be alarming if the public — or even others in Congress — knew about it.

On Thursday, two of those senators — [Ron Wyden](#) of Oregon and [Mark Udall](#) of Colorado — went further. They said a top-secret intelligence operation that is based on that secret legal theory is not as crucial to national security as executive branch officials have maintained.

The senators, who also said that Americans would be “stunned” to know what the government thought the Patriot Act allowed it to do, made their remarks [in a letter to Attorney General Eric H. Holder Jr.](#) after a Justice Department official last month [told a judge](#) that disclosing anything about the program “could be expected to cause exceptionally grave damage to the national security of the United States.”

The Justice Department has argued that disclosing information about its interpretation of the Patriot Act could alert adversaries to how the government collects certain intelligence. It is seeking the dismissal of two Freedom of Information Act lawsuits — by The New York Times and by the American Civil Liberties Union — related to how the Patriot Act has been interpreted.

The senators wrote that it was appropriate to keep specific operations secret. But, they said, the government in a democracy must act within publicly understood law so that voters “can ratify or reject decisions made on their behalf” — even if that “obligation to be transparent with the public” creates other challenges.

“We would also note that in recent months we have grown increasingly skeptical about the actual value of the ‘intelligence collection operation,’ ” they added. “This has come as a surprise to us, as we were initially inclined to take the executive branch’s assertions about the importance of this ‘operation’ at face value.”

The dispute centers on what the government thinks it is allowed to do under Section 215 of the Patriot Act, under which agents may obtain a secret order from the Foreign Intelligence Surveillance Court allowing them to get access to any “tangible things” — like business records — that are deemed “relevant” to a terrorism or espionage investigation.

There appears to be both an ordinary use for Section 215 orders — akin to using a grand jury subpoena to get specific information in a traditional criminal investigation — and a [separate, classified intelligence collection activity](#) that also relies upon them.

The interpretation of Section 215 that authorizes this secret surveillance operation is apparently not obvious from a plain text reading of the provision, and was developed through a series of classified rulings by the Foreign Intelligence Surveillance Court.

The letter from Mr. Wyden and Mr. Udall also complained that while the Obama administration told Congress in August 2009 that it would establish “a regular process for reviewing, redacting and releasing significant opinions” of the court, since then “not a single redacted opinion has been released.”

<http://www.nytimes.com/2012/03/16/us/politics/democratic-senators-warn-about-use-of-patriot-act.html>