



NEW JERSEY LIBRARY ASSOCIATION

RESOLUTION ON 2009 REAUTHORIZATION OF THE USA PATRIOT ACT

WHEREAS, the New Jersey Library Association is committed to encouraging free and open inquiry by preserving the privacy rights of library users, library employees, and persons in the United States; and

WHEREAS, the New Jersey Library Association opposes governmental actions that suppress or chill free and open inquiry and has called for the USA PATRIOT Act to be amended to restore fundamental constitutional rights and safeguards that protect civil liberties; and

WHEREAS, Section 215 of the USA PATRIOT Act allows the FBI to request and obtain library records for large numbers of individuals without reason to believe they are involved in illegal activity; and

WHEREAS, Section 505 of the USA PATRIOT Act has no established sunset and permits the FBI to easily obtain records using National Security Letters (NSL) without prior judicial oversight and without "clear and articulable facts" that the information sought is relevant to an ongoing authorized investigation; and

WHEREAS, Section 215 automatically requires and Section 505 permits the FBI to impose a "gag" order on the recipients, thereby prohibiting the reporting of abuse of government authority and abrogating the recipients' First Amendment rights; and

WHEREAS, The library exemption that was included in the USA PATRIOT Reauthorization Act is so ambiguous that no library can be certain it is exempt; and

WHEREAS, FBI Director Robert S. Mueller III testified before the Senate Judiciary Committee on March 25, 2009, that the FBI had used Section 215 of the USA PATRIOT Act 223 times between 2004 and 2007^[1] and the Office of the Inspector General (OIG) of the Department of Justice reported in March 2008 that the FBI had made 192,499 NSL requests from 2003 through 2006^[2]; and

WHEREAS, Section 215 revisions provide only limited safeguards so long as Section 505 permits warrantless access to personal information through NSLs, as demonstrated by OIG's March 2008 report finding, "The FISA Court twice refused to authorize Section 215 orders based on concerns that the investigation was premised on protected First Amendment activity, and the FBI subsequently issued NSLs to obtain information" under Section 505 instead^[3]; and

WHEREAS, members of Congress have introduced legislation to restore constitutional rights and address the concerns of the New Jersey Library Association such as: The Freedom to Read Protection Act (H.R. 1157 in the 108th Congress); the National Security Letters Reform Act (S. 2088 in the 110th Congress and H.R. 1800); and the Judiciously Using Surveillance Tools In Counterterrorism Efforts Act (S. 1686 in the 111th Congress); now therefore

BE IT RESOLVED that the New Jersey Library Association:

1. Opposes initiatives on the part of the United States government to constrain the free expression of ideas or to inhibit the use of libraries and information centers; and

2. Urges Congress sunset Section 215, returning FISA warrants to their pre-PATRIOT Act standards for issuance and limiting the types of business records subject to a warrant; and
3. Urges Congress to amend Section 505 to include a clear exemption for library records; and
4. Urges Congress to allow nondisclosure orders of limited scope and duration *only* when there is a clear and articulable national security interest and only upon the authority of a court, and to ensure that targets of such orders have a meaningful right to challenge them before a fair and neutral arbiter; and
5. Further urges Congress to intensify its oversight of the use of the USA PATRIOT Act as well as other government surveillance legislation that limits the civil and constitutional rights of the library community, broadly defined; and
6. Communicates this resolution to the New Jersey Congressional delegation, New Jersey Legislature, the Governor of the State of New Jersey, and the New Jersey State Librarian; and
7. Urges its members, New Jersey librarians, New Jersey library trustees, library users and all intellectual freedom advocates to ask Congress to enact crucial safeguards protecting civil liberties.

SOURCES

[1.] Robert S. Mueller. (March 25, 2009). "Oversight of the Federal Bureau of Investigation," *Hearing of the Senate Judiciary Committee*. Accessed through LexisNexis Congressional database.

[2.] Office of the Inspector General, U.S. Department of Justice. (March 2008). *A Review of the FBI's Use of National Security Letters: Assessment of Corrective Actions and Examination of NSL Usage in 2006*, p. 110. Available at <http://www.usdoj.gov/oig/special/s0803b/final.pdf>

[3.] Office of the Inspector General, U.S. Department of Justice. (March 2008). *A Review of the FBI's Use of Section 215 Orders for Business Records in 2006*, p. 73. Available at <http://www.usdoj.gov/oig/special/s0803a/final.pdf>

Adopted by the New Jersey Library Association Executive Board, Nov. 17, 2009