

Sessions Commits to Enforcing USA FREEDOM Act

January 12, 2017

On Tuesday, January 10, 2017, in his confirmation hearing before the Senate Judiciary Committee, Senator Jeff Sessions, (R., AL), the president-elect's nominee to lead the Department of Justice (DOJ), said that he intends to follow the USA FREEDOM Act, which prohibits the National Security Agency (NSA) from bulk collection of phone records. For more on the USA FREEDOM Act, please read our client advisory [here](#).

During the hearing, Senator Patrick Leahy, (D., VT), asked Senator Sessions various questions about the law, noting that Sessions had been among the "very small minority of members" who opposed passage of the law. In response to Senator Leahy's questions, Senator Sessions stated "I will follow the law", and added "I do not believe [the USA FREEDOM Act] can be disregarded and it should be followed."

The USA FREEDOM Act is a complicated piece of legislation with important compliance implications. Although the Act does not expand upon carrier data retention requirements, it forces telecommunications carriers to process requests for records previously collected directly by the NSA.

Moreover, carriers remain subject to various statutory and regulatory customer record retention obligations. For example, carriers offering toll telephone services must retain billing records on long distance calls for 18 months. These records must contain the name, address and phone number of the caller, the number dialed, and the date, time, and length of the call. In addition, providers of services for E-Rate and the Connect America Fund must retain documents pertaining to their delivery of services for at least ten years.

While the USA FREEDOM Act does not change such obligations, it may change the acceptable means of processing law enforcement requests. For example, whereas previous FCC definitions of call detail records included location information, the USA FREEDOM Act explicitly excludes cell site location information and GPS information from the definition of call detail records.

Over time, the USA FREEDOM Act is likely to increase the number of law enforcement requests carriers face. The presidential transition period is an ideal time for carriers to review their data retention practices to ensure compliance with federal law and FCC rules.

Kelley Drye's Communications and Privacy & Information Security practice groups are well-versed in privacy law at the federal and state level, and stand ready to help interested parties understand the scope of these obligations and how to operationalize them. Should you have any questions, please contact the authors or your regular Kelley Drye contact.