Senate Bill Would Mandate Disclosure of Data Mining

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The Justice Department is opposing bipartisan Senate legislation that would require federal agencies to disclose to Congress data-mining programs they use to find patterns of criminal or terrorist activity, saying that it duplicates a reporting requirement mandated in the 2006 renewal of the USA Patriot Act.

The department, however, missed the March 9 deadline to report on its data-mining programs as required by the law. Senate Democrats, who have pressed for disclosure to ensure that privacy and civil liberties were not violated, are not pleased.

"This is more stonewalling by the administration to avoid congressional oversight," said Senate Judiciary Committee Chairman Patrick J. Leahy (D-Vt.), who co-sponsored the data-mining provision with Sens. Russell Feingold (D-Wis.) and John E. Sununu (R-N.H.). "We specifically placed sunshine provisions in the Patriot Act reauthorization to ensure some reasonable checks on the department's data-mining activities that affect millions of Americans," Leahy said.

The 2006 Patriot Act mandated a one-time report on Justice data-mining initiatives. The Senate proposal would establish a yearly reporting requirement for all federal agencies.

A Justice Department inspector general's report revealed recently that the FBI improperly gathered telephone

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and financial records of U.S.
residents using administrative
subpoenas called national
security letters, and in some cases merely by citing "exigent
circumstances." The report, released two weeks ago, was
mandated in the reauthorized Patriot Act over the Bush
administration's objections. The report also found that the FBI
"significantly understated" to Congress the number of national
security letters it had issued.

In January, Leahy asked Attorney General Alberto R. Gonzales
whether the Justice Department would produce a report on its
data-mining activities. He received no reply.

But Friday, with the department trying to contain fallout from the
inspector general's report and a controversy over its firing of eight
U.S. attorneys, Richard A. Hertling, the acting assistant attorney
general, wrote Leahy that the department was "working
diligently" to complete the report and send it to Congress "as
expeditiously as possible."

In a Feb. 28 letter to Leahy, Hertling said the legislation is
"largely duplicative" of the Patriot Act requirement and that its
scope is "potentially quite broad" and "might be read to include a
wide range of normal, everyday investigative techniques."

Hertling said the Department of Homeland Security "has many of
these same concerns."

The Senate passed the data-mining measure last week as part of a
Homeland Security bill. There is no similar provision in the House
version of the larger bill and differences between the two bills will
have to be resolved in a conference committee.

Jim Harper, director of information policy at the Cato Institute, a
libertarian think tank, said that the administration's opposition to
reporting on data-mining programs appears to reflect on one hand
"simple, bureaucratic intransigence . . . less oversight is better for
a bureaucracy." On the other, he said, in light of the inspector
general's report, Justice Department officials might fear that data-
mining oversight "would reveal a great deal more that offends
privacy."

The Justice Department "appreciates the importance of
congressional oversight on these critical matters," said Dean
Boyd, a spokesman.
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