



Legislative Affairs
One Whitehall Street
New York, NY 10004
212-607-3300
www.nyclu.org

2023-2024 Legislative Memorandum

Subject: The New York Electronic Communications Privacy Act - S.2615 (Parker)

Position: SUPPORT

To participate in society, New Yorkers rely on mobile devices, computers, tablets, and other networked devices to connect, communicate, work, study, and manage personal matters, including sensitive or confidential matters. Smart devices have taken hold of every area in people's lives, including our homes, workplaces, modes of transport, and even our exercise and leisure activities. Unfortunately, federal and state laws protecting electronic information are antiquated and fail to address the surveillance capabilities of modern technology.

Law enforcement has long been taking advantage of outdated privacy laws to turn mobile phones into tracking devices and to access emails, documents, and text messages without proper judicial oversight. For example, in the first half of 2022 Verizon received 116,572 law enforcement requests for customer data, and warrants were used in only 14 percent of these request.¹ In 2021, Google, Meta, Verizon, AT&T, and T-Mobile received in sum more than 1.3 million requests.² Law enforcement agencies do not maintain data on the number or scope of their requests for electronic data or the types of legal process used. Most of what we know about law enforcement requests for electronic data is based on information revealed as a result of litigation, media reports, and bi-annual transparency reports released by telecommunications and tech companies.

The legislature must step in to protect the privacy and due process rights of New York residents by passing S.2615, the New York Electronic Communications Privacy Act, which will update New York privacy laws to reflect the capabilities and consequences of everyday technologies.

¹ Verizon, U.S. Transparency Report 2022 (1st half), *available at*

<https://www.verizon.com/about/sites/default/files/US-Transparency-Report-1H-2022.pdf>.

² See: Google Transparency Report, <https://transparencyreport.google.com/user-data/overview?hl=en>; Verizon, U.S. Transparency Reports, <https://www.verizon.com/about/investors/transparency-report>; Meta, U.S. Government Requests for User Data, <https://transparency.fb.com/data/government-data-requests/country/US/>; AT&T Transparency Report Library, <https://about.att.com/csr/home/reporting/library.html#transparency>; and T-Mobile US Transparency

Report for 2021, <https://www.t-mobile.com/news/admin/uploads/2022/07/2021-Transparency-Report.pdf>.

S.2615 will require law enforcement to obtain a search warrant before they can physically or electronically access electronic device information. Law enforcement would be required to describe with particularity the electronic information sought under the warrant and the government agency must provide contemporaneous notice to the target of the warrant, with exceptions for emergency situations. The bill would direct all government agencies that obtain electronic communication information pursuant to this bill to annually report information to the Attorney General. The bill provides enforcement mechanisms if government agencies or agents fail to comply with its provisions.

As courts have increasingly recognized, there is a growing need to ensure strong protections for Fourth Amendment privacy rights as law enforcement agencies expand their investigatory capabilities in the digital realm. In *Riley v. California*, the U.S. Supreme Court recognized that digital data stored on a cell phone differ in “a quantitative and qualitative sense from other objects”³; therefore, law enforcement must get a warrant before searching the data on a cell phone incident to arrest. Similarly, in *United States v. Jones*, the Court found warrantless government surveillance using location tracking violated the Fourth Amendment. Yet, in *Jones*, Justice Alito urged lawmakers to take action, noting that in circumstances involving dramatic technological change “a legislative body is well suited to gauge changing public attitudes, to draw detailed lines, and to balance privacy and public safety in a comprehensive way.”⁴ S.2615 heeds the call in *Jones* for the legislature to safeguard New Yorker’s personal privacy and support public safety by updating privacy law to match the modern, digital world.

It’s time to bring our laws in line with the technologies we live with day in and day out. New Yorkers should no longer be forced to choose between using digital devices and their privacy.

The New York Civil Liberties Union strongly supports S.2615 and urges lawmakers to pass it promptly.

³ *Riley v. California*, 134 S. Ct. 2473, 2489 (2014).

⁴ *United States v. Jones*, 132 S. Ct. 945, 964 (2012).