



## PRIVACY & CIVIL LIBERTIES OVERSIGHT BOARD

February 6, 2014

The Honorable Mike Rogers  
Chairman, House Permanent Select Committee on Intelligence  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Rogers:

Thank you for your letter of January 30, 2014.

We welcome your recommendation that the Board consult with the intelligence oversight committees as part of its review process. We have scheduled meetings next week with staff from both the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence, as part of our study of the Section 702 program and before we develop any recommendations or conclusions. We would also welcome the opportunity to meet with you and other members of the Committee as we undertake our assessment of the Section 702 program and, pursuant to our legislative mandate, other actions taken by the United States Government to protect against terrorism.

You note your concern as to Recommendation 12 in the Board's report, which was one of several recommendations regarding increased transparency on the parts of the executive, judicial, and legislative branches. One of two recommendations that was not unanimous (members Brand and Cook declined to join), this recommendation is designed to balance two potentially competing concerns: the need for public discussion of the legal framework of our intelligence activities on the one hand, and the need to safeguard sensitive and classified operations on the other. A majority of the Board believes that the balance can and should be struck in favor of additional public discussion. Specifically, the majority explained:

[D]uring the process of developing legislation, some hearings and briefings may need to be conducted in secret to ensure that policymakers fully understand the intended use of a particular authority. But the government should not base an ongoing program affecting the rights of Americans on an interpretation

### **BOARD MEMBERS**

**David Medine,  
Chairman**

**Rachel Brand**

**Elisebeth Collins  
Cook**

**James Dempsey**

**Patricia Wald**

of a statute that is not apparent from a natural reading of the text.

To be clear, the Board does not believe that intelligence programs should be detailed in legislative text to an extent that would reveal sensitive operational details. The Board recognizes the obligation to safeguard information that is classified. The distinction the Board draws in Recommendation 12 is between the applicable legal framework on the one hand, which should not be secret, and the particular details, sources and methods in a given matter, which may be appropriately classified. Board members acknowledge that our review of programs classified in their entirety will also need to remain classified.

Finally, you inquired about the Board process for releasing its report on January 23rd. As a new agency without legislative affairs or press staff, the Board determined that it would be appropriate to provide embargoed copies to several congressional committees, leadership offices, and select news outlets prior to the public release of the report on January 23rd. The Board requested that anyone receiving an advance copy – press or congressional offices – not post the report online prior to the Board’s release of the report at its public meeting. We appreciate your concern as to this approach, and would welcome suggestions as to alternative processes for future reports.

We appreciate the work that you and your staff have done with respect to our national security programs, and we look forward working with you and your staff as we fulfill our statutory mandate.

Sincerely,

A handwritten signature in cursive script that reads "David Medine".

David Medine  
Chairman

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ON INTELLIGENCE**

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MINORITY STAFF DIRECTOR

January 30, 2014

**The Honorable David Medine**  
Chairman, Privacy and Civil Liberties Oversight Board  
2100 K Street NW, Suite 500  
Washington, DC 20036

Dear Chairman Medine:

On January 23, 2014, the Privacy and Civil Liberties Oversight Board released its report entitled "Report on the Telephone Records Program Conducted under Section 215 of the USA PATRIOT Act and on the Operations of the Foreign Intelligence Surveillance Court." Your report opines on the need for all three branches of government to develop a balance between security and transparency. I agree.

I am therefore disappointed that the Board developed its recommendations without consulting the congressional committees that have had the responsibility for overseeing the Section 215 program for many years. As you know, the congressional intelligence committees are the means by which Congress oversees U.S. intelligence programs. It is through these committees that the people's representatives review and authorize U.S. intelligence activities while keeping sensitive information from reaching America's adversaries. In your future reviews, I urge the Board to consult with the intelligence oversight committees before reaching its conclusions.

Further, at the Board's briefing to congressional staff on January 23rd, some members of the Board indicated a preference for detailing intelligence programs in legislative text. Similarly, the Board's report suggests that even where classified intelligence operations are involved, the framework and details of many programs should be debated in public. These broad statements give me concern that some on the Board may not fully appreciate the sensitivity and methodology of intelligence operations. Unfortunately, neither foreign intelligence agents nor

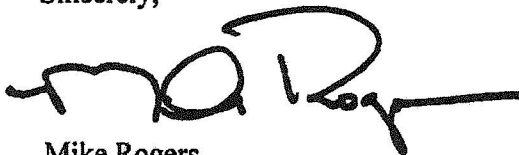
terrorists stop at the U.S. borders. Those individuals do, however, pay close attention to every public discussion about our intelligence operations.

I understand that you are preparing to review the FISA 702 program and that you are authorized to study the privacy and civil liberties impacts of other classified programs that have not been illegally disclosed and remain properly out of our enemies' view. In light of your stated preference, I would like a written statement explaining how the Board intends to approach classified programs that have not yet become public and what level of granularity the Board will expect in statutory text that authorizes a sensitive intelligence collection program.

Finally, on January 22, 2014, the Board shared an advance draft of its report with the Committee. As a condition for sharing the draft, the Board informed Committee staff that the report was strictly embargoed until 1:00 pm on January 23, 2014. Nevertheless, articles in the January 23rd morning editions of the *New York Times* and *Washington Post* described the report's recommendations in great detail, and we understand that certain publications obtained an advance, "embargoed" copy of the report. The Committee would like to know whether all members of the Board sanctioned the *Times* and the *Post* receiving advance copies of the report and what limitations, if any, were placed on the papers' use of the draft prior to its adoption by the Board.

Please provide your response no later than February 7, 2013. If you have any questions, please contact (b) (6) of the Committee staff at (202) 225- (b) (6)

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Rogers", with a long horizontal line extending to the right.

Mike Rogers  
Chairman

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ONE HUNDRED THIRTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

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January 27, 2014

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Mr. David Medine  
Chairman  
Privacy and Civil Liberties Oversight Board  
2100 K Street, NW  
Washington, D.C. 20427

Dear Mr. Medine,

The Committee on the Judiciary will hold a hearing on "Recommendations to Reform Foreign Intelligence Programs" on Tuesday, February 4, 2014 at 1:00 p.m. in room 2141 of the Rayburn House Office Building. I would like to invite you to testify at this hearing.

Please prepare a written statement for submission to the Committee prior to your appearance. The written statement may be as extensive as you wish and will be included in the hearing record. To allow sufficient time for questions at the hearing, please briefly highlight the most significant points of the written statement in an oral presentation lasting five minutes or less. Oral testimony at the hearing, including answers to questions, will be printed as part of the verbatim record of the hearing.

To facilitate preparation for the hearing, please send an electronic copy of your written statement and curriculum vitae to the Committee as soon as possible. The Committee will publish the statement on our website and, therefore, requests that you provide the documents in Word Perfect, Microsoft Word, or Adobe Acrobat. Please number all pages of the written statement, and attach a cover page with your name, position, date, and the title of the hearing. These documents may be e-mailed to (b) (6) on my staff at (b) (6) @mail.house.gov.

In addition, the Committee requests that you provide 50 copies of your written statement to (b) (6) 2138 Rayburn House Office Building, Washington, DC, 20515, 48 hours in advance of the hearing. Due to delays with our current mail delivery system, the copies should be hand delivered in an unsealed package. Also, please provide additional copies of your testimony the day of the hearing for public distribution. Should you intend to introduce a published document or report as part of your written statement, I ask that you provide 50 copies

Mr. David Medine  
January 27, 2014  
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for the hearing. Should such material be available on the Internet, please prepare a page containing citations to such material and provide the Committee with 50 copies.

The Rules of the House require a disclosure of the amount and source (by agency and program) of any Federal grant (or subgrant thereof) or contract (or subcontract thereof) which is relevant to your testimony and was received during the current fiscal year or either of the two preceding fiscal years by you or by an entity represented by you. This "disclosure" will be posted along with your written testimony to the Committee's web page the day of the hearing.

If you have any questions or concerns, please contact Ms. (b) (6) on my staff at 202-225- (b) (6)

I look forward to your participation in the hearing.

Sincerely,



Bob Goodlatte  
Chairman