

June 18, 2013

David Medine, Chair,  
Rachel Brand, Member  
Elisabeth Collins Cook, Member  
James Dempsey, Member  
Patricia Wald, Member  
Privacy and Civil Liberties Oversight Board

Dear Members of the Privacy and Civil Liberties Oversight Board,

We are very glad that the Board has been fully constituted, and we greatly appreciate your immediate attention and work in response to the recent disclosures concerning NSA surveillance.

We understand that you are meeting to consider the impact of these NSA programs on privacy and civil liberties. We write to ask that, as one of your first action items, you urge the administration to make public information about the legal authorities for government surveillance of Americans. We are pleased that President Obama has said that he welcomes a public debate on this issue and is considering declassifying additional information. We respectfully suggest that you ask the President to order the public disclosure of sufficient information to enable the public to understand the existing legal authorities for national security surveillance of Americans and the administration's interpretation of their scope, and to permit an informed public debate on government surveillance.

Such information would include existing documents that outline the legal issues and scope of current legal authorities – for instance, opinions by the Foreign Intelligence Surveillance Court (FISC) containing legal interpretations of section 215 of the Patriot Act and section 702 of the FISA Amendments Act (as well as any other relevant FISC opinions); the “primary orders” of the FISC establishing the limitations on the government's collection and use of Americans' telephony metadata; and relevant Office of Legal Counsel opinions and Inspector General reports, including the 2008-9 Report on the “Presidents' Surveillance Program.” Although it may be necessary to redact certain information – such as the specific evidence submitted to the FISC to justify a particular request for surveillance – the legal arguments and statutory interpretations should not be secret.

Beyond existing documents, we also hope you will urge disclosure of other information necessary for public understanding of the scope of surveillance authorities, safeguards for privacy rights and civil liberties, and the historical development of the law since 2001. For example, the public should know the basis on which the government and the FISC deemed the domestic call metadata database to come within section 215 standards. We need to understand whether that interpretation would apply to other sets of third-party records, and if not, why not; what other authorities (e.g., national security letters) authorize the collection of the same data, and what are the differences between the various authorities; and whether the government considers its regulation requiring destruction of the call records database in five years to be legally required, or whether that period could be extended by a subsequent regulation.

These are just a few of the relevant questions on which greater disclosure is needed to enable democratic decision-making on these fundamental questions of government power. We believe the PCLOB is well-positioned to help facilitate Americans' access to the necessary information, and we hope you will undertake this crucial role.

Thank you for your consideration.

Sincerely,

Advocacy for Principled Action in Government  
American-Arab Anti-Discrimination Committee (ADC)  
American Association of Law Libraries  
American Civil Liberties Union  
American Library Association  
American Society of News Editors  
Arab American Institute  
Association of Research Libraries  
Bill of Rights Defense Committee  
Brennan Center for Justice  
Center for Democracy and Technology  
Center for Effective Government (formerly OMB Watch)  
Center for Media and Democracy  
Center for National Security Studies  
Citizens for Responsibility and Ethics in Washington (CREW)  
Cyber Privacy Project  
Defending Dissent Foundation  
Demand Progress  
Electronic Frontier Foundation  
Federation of American Scientists  
Freedom of the Press Foundation  
Government Accountability Project  
National Freedom of Information Coalition  
National Security Counselors  
Open Society Foundations  
OpenTheGovernment.Org  
PolitiHacks  
Project on Government Oversight (POGO)  
Public Knowledge  
Society of Professional Journalists  
Sunlight Foundation  
The Constitution Project  
The Fund for Constitutional Government  
Understanding Government