

June 18, 2013

David Medine, Chair,
Rachel Brand, Member
Elizabeth 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
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 American Society of News Editors
The Constitution Project
The Fund for Constitutional Government
Understanding Government