

January 13, 2016

Hon. James R. Clapper
Director, Office of the Director of National Intelligence
Washington, DC 20511

Dear Director Clapper:

We received your office's December 23, 2015 response, signed by Civil Liberties Protection Officer Alexander W. Joel, to our October 29, 2015 letter, which requested that you provide basic information about how Section 702 of the Foreign Intelligence Surveillance Act (FISA) affects Americans and other U.S. residents. We continue to believe that the information requested in our October 29 letter is essential to providing Congress and the American people with crucial facts about Section 702 – especially

published nearly a year ago, and that to our knowledge the Intelligence Community has not yet released any new information publicly as result. Our October 29 letter acknowledged the PCLOB's recommendations but explained why additional data on Section 702 is needed and how it can feasibly be obtained.

Moreover, while the more limited data disclosures recommended by the PCLOB would certainly shed important light on how Section 702 affects Americans, the December 23 letter indicates that only the fourth recommendation is "in the process of implement[ation]." For the first three recommendations, the NSA "has been reviewing how to implement" them, and for the fifth, the data – which the NSA already tracks – is being "review[ed] for potential inclusion in public reporting." Four of the PCLOB's five recommendations are thus still under review fully eighteen months after the PCLOB issued its report.

provide little concrete information. Moreover, other agencies, such as the Treasury Department, must have their own interpretations regarding when they must provide notice of Section 702 surveillance, yet no information on these interpretations has been made publicly available or is provided in the December 23 letter.

We recognize that it may be both advantageous and necessary to engage in further dialogue regarding our requests in the October 29 letter. We welcome an in-person exchange between Intelligence Community officials and our organizations. However, for such a meeting to be productive, it is critical that officials be willing and prepared to respond to the specific proposals in our letter and, if

finding alternative methods of obtaining this information? (We ask that the relevant FBI official(s) attend the meeting to assist in answering these questions.)

- What policies or guidelines, if any, exist to help determine when evidence has been “obtained or derived from” FISA collection such that FISA’s notification requirement is triggered? Why have such policies or guidelines not been made public? (We ask that relevant officials from the Department of Justice be present at the meeting, as well as relevant officials from other agencies, such as the Treasury Department, that rely on Section 702-derived evidence in legal proceedings.)

The above questions provide a sense of the level of specificity and substance at which we hope to engage. We look forward to a productive discussion.

Sincerely,

Advocacy for Principled Action in Government
 American-Arab Anti-Discrimination Committee
 American Civil Liberties Union
 American Library Association
 Bill of Rights Defense Committee
 Brennan Center for Justice
 Center for Democracy & Technology
 The Constitution Project
 Constitutional Alliance
 Defending Dissent Foundation
 Demand Progress
 DownsizeDC.org, Inc.
 Electronic Frontier Foundation
 Electronic Privacy Information Center (EPIC)
 Fight for the Future
 Free Press
 Government Accountability Project
 Liberty Coalition
 National Association of Criminal Defense Lawyers
 National Security Counselors
 New America’s Open Technology Institute
 Niskanen Center
 OpenTheGovernment.org
 PEN American Center
 Project On Government Oversight
 R Street
 Restore the Fourth
 The Sunlight Foundation
 TechFreedom
 World Privacy Forum
 X-Lab