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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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July 1, 2014

President Barack Obama
The White House
1600 Pennsylvania Ave. NW
Washington, D.C. 20500

Dear Mr. President:

We applaud last week's voluntary release by the Office of the Director of National Intelligence of some information about the use of national security authorities. This report is a start, but it does not provide nearly enough information to the American people.

We write to respectfully urge you to support stronger transparency provisions such as those included in our bill, the Surveillance Transparency Act (S. 1621), in the USA FREEDOM Act, which will soon be taken up in the Senate. We support your decision to end bulk collection of Americans' phone call records, along with prohibiting bulk collection under several other authorities. But we fear that unless stronger transparency provisions are included in the USA FREEDOM Act, the American public will have no way to know if the government is following through on that decision.

Our bipartisan bill, the Surveillance Transparency Act of 2013, provides a blueprint for transparency by requiring the American government to release annual estimates of how many people had their information collected under each surveillance law, how many of those people were likely Americans, and how many of those Americans had their information actually reviewed by government officials. Our legislation also permits companies who received requests for information about their customers to release important information about those requests, including estimates of how many of their customers were affected by them. When introduced, *both* the House and Senate versions of the USA FREEDOM Act contained provisions that mirrored the above-referenced language in our bill; we will continue to work with the Senate sponsors to ensure their inclusion in any compromise bill.

Congress gave broad power to the intelligence community precisely because it was targeting our foreign enemies – not American citizens on American soil. When foreign intelligence powers are used to collect the information of American citizens, Americans deserve to know it. The transparency provisions in S. 1621 make that happen. They would let American companies give their customers hard data on the scope of government surveillance – and would dispel any misconceptions about the companies' role in those programs. They also give our nation's citizens a way to confirm that bulk collection is, in fact, over. And most importantly,

they would give the American people the information they need to reach an informed opinion about surveillance programs and hold the American government accountable.

Unfortunately, by the time the House of Representatives voted on the USA FREEDOM Act, most of these transparency provisions were removed from the bill. The House-passed bill does *not* require the American government to tell the American people how many of them have had their information collected – or how many have had their information reviewed. It requires only that the government disclose the number of “targets” affected by surveillance orders. This language will almost certainly undercount the number of people affected by NSA surveillance: as Congress has seen with NSA’s telephone records program, the search for the call records of a single “target” individual can involve the collection of the calling records of tens of thousands of people.

Your Administration has promised an end to bulk collection, but we believe that the American people will know that this promise has been met only if the government is required to report on all *individuals* affected by surveillance orders, not merely the number of targets affected by such orders. Appropriate transparency should also require the government to estimate the approximate number of *Americans* swept up in information collection – and, ideally, the number that had their information reviewed. Neither of these provisions is in the House bill, and neither figure was disclosed in the report issued last week by the Office of the Director of National Intelligence. We hope that you will support the restoration of these provisions in the USA FREEDOM Act when it is considered by the Senate.

We recognize that the House-passed bill does allow companies to release some aggregate figures about the government requests they receive. The rules for these disclosures were adapted from a legal settlement negotiated between the Department of Justice and leading Internet companies. But still, the rules for these disclosures often confuse more than they clarify. For some authorities, the bill lets companies disclose the number of “customer accounts affected”; yet for others, it lets companies disclose only the number of “selectors targeted” – with no explanation of either of those terms. Companies receiving FISA requests for information about a new product are put under a two-year gag order. The House bill also delays reporting and puts gag orders on companies receiving National Security Letters – delays and gags that did not exist in the companies’ settlement.

We respect the need to prevent company disclosures from tipping off our adversaries about the presence or absence of surveillance. But transparency is also an important goal. As Congress debates the USA FREEDOM Act, we encourage you to re-examine whether such long delay times are truly necessary to protect national security – and whether they’re necessary at all for National Security Letters. Any disclosure provisions should also uniformly allow company reporting in terms of all customers affected.

Thus, we respectfully urge you to formally and publicly support key improvements to any Senate surveillance reform bill drawn from our bipartisan surveillance transparency bill, including:

- Provisions requiring the American government to release annual estimates of the number of individuals and Americans that have had their information collected, and ideally also how many Americans have had their information reviewed;
- Provisions allowing companies to disclose more information about government requests for their customers' information in a more timely manner than provided for in the House bill; and
- Avoiding any reporting requirement or disclosure provision allowing disclosure only in terms of "targets" instead of total individuals affected.

If your administration is genuinely unable to provide any specific information due to national security concerns or bona fide operational issues, we are willing to provide flexibility in the law as necessary. For example, we are willing to allow the government to report the number of unique identifiers (e.g. email addresses, phone numbers, etc.) whose information has been collected, where reporting in terms of individuals is impossible.

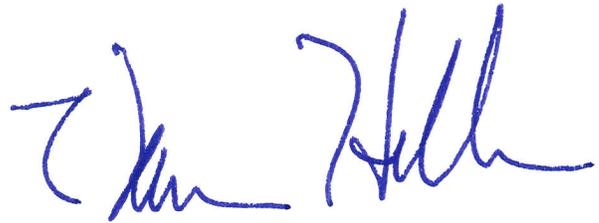
We appreciate your willingness to engage with us on these issues. After a long and difficult national debate on surveillance reform, we believe it critical that both you and Congress enact clear, consistent transparency standards for government and industry alike.

Thank you for your time and consideration.

Sincerely,



Al Franken
United States Senator



Dean Heller
United States Senator

cc:

Senator Patrick J. Leahy,
Chairman, Senate Judiciary Committee

Senator Chuck Grassley,
Ranking Member, Senate Judiciary Committee