

United States Senate

WASHINGTON, DC 20510

June 24, 2013

General Keith Alexander
Director
National Security Agency
Fort Meade, MD 20755

Dear General Alexander:

The NSA recently released a fact sheet on surveillance authorities that contains information about both section 702 of the Foreign Intelligence Surveillance Act (FISA) and section 215 of the USA Patriot Act. As you know, section 215 of the Patriot Act is the basis for the NSA's bulk phone records collection program, while section 702 of FISA governs the collection of phone and internet communications, and involves the PRISM computer system.

We were disappointed to see that this fact sheet contains an inaccurate statement about how the section 702 authority has been interpreted by the US government. In our judgment this inaccuracy is significant, as it portrays protections for Americans' privacy as being significantly stronger than they actually are. We have identified this inaccurate statement in the classified attachment to this letter.

We urge you to correct this statement as soon as possible. As you have seen, when the NSA makes inaccurate statements about government surveillance and fails to correct the public record, it can decrease public confidence in the NSA's openness and its commitment to protecting Americans' constitutional rights. Rebuilding this confidence will require a willingness to correct misstatements and a willingness to make reforms where appropriate.

Separately, we note that this same fact sheet states that under section 702, "Any inadvertently acquired communication of or concerning a US person must be promptly destroyed if it is neither relevant to the authorized purpose nor evidence of a crime." We believe that this statement is somewhat misleading, in that it implies that the NSA has the ability to determine how many American communications it has collected under section 702, or that the law does not allow the NSA to deliberately search for the records of particular Americans. In fact, the intelligence community has told us repeatedly that it is "not reasonably possible to identify the number of people located in the United States whose communications may have been reviewed under the authority" of the FISA Amendments Act.

We appreciate your attention to this matter. We believe that the US government should have broad authorities to investigate terrorism and espionage, and that it is possible to aggressively pursue terrorists without compromising the constitutional rights of ordinary Americans. Achieving this goal depends not just on secret courts and secret congressional hearings, but on informed public debate as well. We look forward to your response.

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Sincerely,

Ken Wyden

Mark Udall