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August 3, 2017

The Honorable Daniel R. Coats
Director of National Intelligence
Washington, D.C. 20511

Dear Director Coats:

I am writing with regard to your recent testimony concerning efforts to provide an estimate of the number of Americans whose communications have been collected under Section 702 of the Foreign Intelligence Surveillance Act (FISA). At the Senate Select Committee on Intelligence's June 7, 2017, hearing, you testified that: "it remains infeasible to generate an exact, accurate, meaningful and responsible methodology that can count how often a U.S. person's communications may be incidentally collected under 702." As you know, members of Congress from both parties have long sought an estimate of this number so that the public could have a better sense of the privacy implications of Section 702. Many were encouraged when, in April, the ODNI "recognize[d] the valid desire to have some sense of the nature of acquisition of incidental U.S. person communications," and stated that it was "working to produce a relevant metric that will inform the reauthorization debate." That is why your subsequent testimony was so troubling.

You have also indicated, however, that you are open to exploring ways to provide this "relevant metric." I have carefully reviewed both your unclassified and classified explanations for your June 7, 2017, testimony. In addition to this letter, I have sent you classified correspondence addressing your classified analysis. I ask that this exchange be declassified to the greatest extent possible.

For purposes of this letter, I wish to make three points. First, whatever challenges there may be to arriving at an estimate of *U.S. persons* whose communications have been collected under Section 702, those challenges may not apply equally to *persons located in the United States*. I believe that the impact of Section 702 on persons inside the United States would constitute a "relevant metric," and that your conclusion that an estimate is infeasible can and should be

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revisited on that basis.

Second, in its 2014 report on Section 702, the Privacy and Civil Liberties Oversight Board (PCLOB) provided several recommendations related to determining the impact of the authority on the privacy of U.S. persons and people located in the United States. It does not appear, however, that the IC has addressed all of these recommendations. As Board member Elisabeth Collins testified to the Senate Judiciary Committee on June 27, 2017, “I would add my voice to those who urge the DNI and the NSA to continue to find a way to provide some quantification or some estimates of incidental U.S. person collection.” I urge that you fully address the recommendations of the PCLOB.

Third, it has never been the case that members of Congress who have asked for this information have sought a “count” of the number of Americans whose communications are collected under Section 702. Rather, the request has been for an estimate that would provide the public a sense of the privacy implications of this authority. Moreover, whether a statistical sampling or other methodology results in an estimate close enough to constitute a “relevant metric” is a determination to be made by members of Congress, not the Intelligence Community. While the IC can, and should, explain the limitations of its estimate, it is the responsibility of Congress to determine what information is and is not relevant to its deliberations on the reauthorization of Section 702.

It is my view that the determination of a “relevant metric” is not “infeasible.” I look forward to continuing this discussion and to resolving this difference as soon as possible, so that members of Congress and the public have the information they need to make an informed decision about the reauthorization of Section 702.

Thank you for your attention to this important matter.

Sincerely,



Ron Wyden