

United States Senate

WASHINGTON, DC 20510

May 4, 2011

The Honorable I. Charles McCullough, III
Inspector General of the Intelligence Community
Office of the Director of National Intelligence
Washington, DC 20511

Dr. George Ellard
Inspector General
National Security Agency
Washington, DC 20755

Dear Mr. McCullough and Dr. Ellard:

As you may be aware, Congress is now considering the reauthorization of the surveillance authorities created by the FISA Amendments Act of 2008. The central provision of this legislation, codified as section 702 of the Foreign Intelligence Surveillance Act (FISA), gave the US government significant new surveillance authorities. These authorities were specifically intended to be used to target the communications of individuals reasonably believed to be foreigners located outside the United States. Section 702 therefore contains several provisions that were expressly designed to prevent these new authorities from being used against people inside the United States.

The surveillance authorities in the FISA Amendments Act, including what is now section 702 of FISA, were all given an expiration date, to ensure that Congress would review the use of these authorities and examine whether they were working as intended. As the December 2012 expiration date approaches, we believe that Congress needs additional information about the impact this law is having on the privacy of people inside the United States.

In particular, we believe that it is important for Congress to better understand how many people inside the United States have had their communications collected or reviewed under the authorities granted by section 702. If only a handful of people inside the United States (or none at all) have been surveilled in this manner, then that would indicate to us that Americans' privacy is being protected. On the other hand, if a large number of people inside the United States have had their communications collected or reviewed because of this law, then that would suggest that the law needs to be revised, and that protections for Americans' privacy need to be strengthened.

We have raised this question with senior intelligence officials on a number of occasions, and we have been told 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.]” This response continues to concern us.

We accept that it might be difficult for intelligence personnel to determine the exact number of Americans whose communications have been reviewed under section 702, but we believe that even an estimate of this number would still be very useful. Learning approximately how many people inside the United States have had their communications collected or reviewed under this law would help Congress understand the law’s actual impact, and would help members of Congress decide whether the law should be reformed or simply reauthorized.

As the Inspectors General of the Intelligence Community and the National Security Agency, you and your offices appear well-positioned to conduct such an estimate. Mr. McCullough noted specifically at his Senate confirmation hearing that it would be proper for his office to conduct such an estimate, and that he anticipated having the expertise to carry it out. And it is a matter of public record that Mr. Ellard is authorized to evaluate the NSA’s compliance with procedures adopted pursuant to the FISA Amendments Act, and that his office reviews the collection, processing and reporting of data on a regular basis.

We ask, therefore, that you provide us with an assessment of your offices’ ability to conduct an estimate of this nature. In particular we would like to know whether you believe conducting such an estimate is feasible, and approximately how much work would be required from your offices. We expect that increased precision would require increased labor, so we would appreciate an explanation both of how much labor a more precise estimate would require, and how much would be required for a more approximate estimate.

If you have any questions about this request, please contact John Dickas or Jennifer Barrett at (202) 224-1700. Please feel free to respond jointly or separately, in whatever format you see fit. And as your response will help inform the Senate’s consideration of an important legislative matter, we respectfully request an expedited reply. Thank you for your attention to this matter.

Sincerely,



Ron Wyden
United States Senator



Mark Udall
United States Senator