

# United States Senate

WASHINGTON, DC 20510

July 14, 2011

The Honorable James R. Clapper, Jr.  
Director of National Intelligence  
Washington, DC 20511

Dear Director Clapper:

In the coming months Congress is likely to consider various legislative initiatives that would modify different aspects of domestic surveillance law. We believe that the debate over these initiatives will be better informed if Congress and the public are provided with more unclassified information about how these initiatives will affect current intelligence authorities and activities.

The FISA Amendments Act of 2008 significantly modified the US government's surveillance authorities with regard to individuals believed to be located outside the United States. These new authorities are currently scheduled to expire in late 2012, and Congress could begin considering possible extensions or revisions to these authorities later this year. Since any thorough consideration will require an understanding of how the FISA Amendments Act has been interpreted and implemented, we ask that you provide unclassified answers to the following questions:

- In a December 2007 Statement of Administration Policy on the FISA Amendments Act, the Office of Management and Budget said that it would "likely be impossible" to count the number of people located in the United States whose communications were reviewed by the government pursuant to the FISA Amendments Act. Is this still the case? If so, is it possible to estimate this number with any accuracy?
- Official documents released in 2010 noted that there have been multiple incidents in which intelligence agency personnel have failed to comply with the FISA Amendments Act, and that "Certain types of compliance incidents continue[d] to occur." Please elaborate on these compliance incidents to the extent possible, and explain why you believe that they have continued to recur.
- Have any apparently law-abiding Americans had their communications collected by the government pursuant to the FISA Amendments Act?
- Are any significant interpretations of the FISA Amendments Act currently classified?

Turning to another area of surveillance law, recent advances in geolocation technology have made it increasingly easy to secretly track the movements and whereabouts of individual Americans on an ongoing, 24/7 basis. Law enforcement agencies have relied on a variety of

different methods to conduct this sort of electronic surveillance, including the acquisition of cell phone mobility data from communications companies as well as the use of tracking devices covertly installed by the law enforcement agencies themselves.

Unfortunately, the law has not kept up with these advances in technology. As a result, courts in different jurisdictions have issued diverse, conflicting rulings about the evidence and procedures required for the government to surreptitiously track an individual's movements using a mobile electronic device. Congress is now considering multiple legislative proposals that would attempt to establish clear rules for this sort of surveillance and will need to determine at some point whether it is necessary to update the laws that apply to intelligence investigations as well as the laws that apply to law enforcement investigations.

While there is a substantial amount of public information available regarding different interpretations of this area of the law (including the executive branch's interpretation and the interpretations of various courts) all of these interpretations apply to law enforcement authorities, not intelligence authorities. Clearly Congress needs to also understand how intelligence authorities are being interpreted as it begins to consider legislation on this issue. For this reason, we request that you also provide unclassified answers to the following questions:

- Do government agencies have the authority to collect the geolocation information of American citizens for intelligence purposes?
- If yes, please explain the specific statutory basis for this authority. And to the extent that this statutory basis imposes any procedural requirements, such as judicial review or approval by particular officials, please describe these requirements.
- If no, please explain the statutory basis for this prohibition.

Thank you for your attention to this matter. We look forward to your prompt response.

Sincerely,



Ron Wyden  
United States Senator



Mark Udall  
United States Senator