

January 27, 2016

Chairman Robert W. Goodlatte
House Judiciary Committee
United States House of Representatives

Ranking Member John Conyers
House Judiciary Committee
United States House of Representatives

Re: Call for Public Hearings on Reform of FISA Section 702

Dear Chairman Goodlatte and Ranking Member Conyers,

The undersigned organizations appreciate the promise you made during the debates on USA Freedom to hold hearings on Section 702 of the Foreign Intelligence Surveillance Act. We believe that robust congressional oversight of the implementation of this statute, which is used to acquire the communications of Americans and people around the world alike without a warrant, is critical. We were surprised when we recently learned that you may soon hold a hearing in a classified format, outside of public view. Doing so for the entirety of the hearing neither fully satisfies the promise to hold hearings nor permits the public debate that this nation deserves. Rather, it continues the excessive secrecy that has contributed to the surveillance abuses we have seen in recent years and to their adverse effects upon both our civil liberties and economic growth.

All congressional proceedings should be conducted in accordance with this country's highest principles of transparency and openness. Indeed, no committee should ever hold a classified hearing or briefing, when it can hold all or part of the hearing as an open, unclassified session. The Intelligence, Armed Services, and the Judiciary Committees of both chambers have been able to hold open hearings on matters of national security, deferring only those questions that require classified answers into a closed hearing. This judicious use of closed sessions meets the dual purposes of providing robust oversight and protecting national security.

In the case of Section 702 implementation oversight, a completely closed hearing is unnecessary to provide members with an adequate understanding of how the law is currently implemented by the executive branch and whether that exceeds Congress' original intent.

As you know, when the FISA Amendments Act was written, the deliberations happened largely in open session. Subsequently, executive branch officials have testified about the act in open session on at least six occasions¹ since it was written. The Privacy and Civil Liberties Oversight Board has published an unclassified report on the implementation of the statute. The government has itself declassified numerous relevant documents, including legal analyses and judicial interpretations. And, following the Snowden disclosures, the Senate Judiciary Committee held several public hearings on NSA surveillance programs, which included discussion of Section 702.

In today's global communications environment, disclosures of information about how Section 702 operates have confirmed the validity of many of the public's and civil society's concerns that this statute implicates the privacy rights of millions of people in the US and around the world who communicate

¹ http://fas.org/irp/congress/2011_hr/120811faa.pdf(2011); http://fas.org/irp/congress/2012_hr/020912monaco-faa.pdf(2012); http://fas.org/irp/congress/2013_hr/092613clapper.pdf(2013); http://fas.org/irp/congress/2013_hr/fisa-oversight.pdf(2013); http://fas.org/irp/congress/2013_hr/fisa.pdf(2013); http://fas.org/irp/congress/2014_hr/020414cole.pdf(2014)

with friends and colleagues abroad, including human rights activists who rely on secure communications for their safety. The way Section 702 is utilized also affects journalists who interact with confidential sources to report on issues in the public interest, and criminal defendants whose prosecutions may involve the use of evidence derived from intelligence surveillance.

In all of these circumstances and many more, it is up to Congress to ensure that the Administration is not violating the rule of law and the rights we all hold dear.

We urge you to change the designation of your upcoming session on Section 702 to “open,” consistent with Congress's constitutional oversight role, long standing congressional practice, and principles of transparency and justice. To the extent that the committee goes forward with the closed hearing, we urge you to fulfill your prior commitment by promptly holding public hearings, which include representation and engagement of privacy, civil liberties, and human rights organizations.

If you have any questions, please contact Patrice McDermott, Executive Director at OpenTheGovernment.org at 202-332-6736 at pmcdermott@openthegovernment.org, or Neema Singh Guliani, Legislative Counsel at the American Civil Liberties Union, at nguliani@aclu.org.

Sincerely,

Access Now
American-Arab Anti-Discrimination Committee (ADC)
American Civil Liberties Union
American Library Association
Amnesty International USA
Brennan Center for Justice
Californians Aware
Center for Democracy & Technology
Constitutional Alliance
The Constitution Project
Cyber Privacy Project
Electronic Frontier Foundation
Electronic Privacy Information Center (EPIC)
Essential Information

Free Press Action Fund
Government Accountability Project
Human Rights Watch
National Coalition Against Censorship
National Security Archive
New America's Open Technology Institute
Niskanen Center
OpenTheGovernment.org
Project On Government Oversight
Reporters Committee for Freedom of the Press
Restore The Fourth
R Street Institute