

October 25, 2016

Mr. James R. Clapper, Director of National Intelligence  
Office of the Director of National Intelligence  
Washington, DC 20511

Dear Mr. Clapper:

The undersigned civil society groups write to express our concerns about [recent reports](#) of an order issued under the Foreign Intelligence Surveillance Act (FISA) that compelled Yahoo! to scan the emails of all of its users, in real time, for a “signature” associated with a foreign power. We believe such a massive scan of the emails of millions of people, particularly if it involves the scanning of email content, could violate FISA, the Fourth Amendment, and international human rights law, and has grave implications for privacy.

According to reports, the order was issued under Title I of FISA, which requires the government to demonstrate probable cause that its target is a foreign power or an agent of a foreign power (such as a spy or a terrorist), and probable cause that the “facility” at which the surveillance is conducted will carry the target’s communications. If reports are true, this authority to conduct a particularized search has apparently been secretly construed to authorize a mass scan. Observing the press reports, Senator Wyden warned, as he did prior to the Snowden disclosures, that the government has secretly interpreted the law to permit surveillance that would surprise and concern the public.

We call on you to:

- Honor the [pledge](#) your office made to “provide timely transparency on matters of public interest” by disclosing publicly the interpretation of law and of the Fourth Amendment that was relied upon to justify this surveillance;
- Release as quickly as possible the FISA Court opinion and order that compelled the surveillance to occur, as is required in the USA FREEDOM Act and as is consistent with the ODNI Principles of Intelligence Transparency [Implementation Plan](#);
- Disclose whether the reported practice involved the scanning of email content;
- Disclose the types of selectors that the government believes are permissible under the authority it used;
- Provide any legal interpretations of FISA that reflect the government’s view of the scope of technical assistance it can compel providers to afford it; and
- Indicate the total number of times such an order has been issued to a provider compelling a scan of all incoming email (or a search of comparable scope), as well as the year in which such a surveillance order was first issued.

These disclosures can and should be made without compromising sources and methods of surveillance, and many are consistent with the types of disclosures called for in the USA FREEDOM Act.

We would welcome the opportunity to meet with you to discuss these matters further.

Sincerely,

Access Now

Advocacy for Principled Action In Government

American-Arab Anti-Discrimination Committee

American Association of Law Libraries

American Civil Liberties Union

American Library Association

Amnesty International

Arab American Institute

Association of Research Libraries

Bill of Rights Defense Committee/Defending Dissent Foundation

Brennan Center

Center for Media and Democracy

Center for Democracy & Technology

Council on American-Islamic Relations

Constitution Project

Constitutional Alliance

Demand Progress

DownsizeDC.org, Inc.

Electronic Frontier Foundation

Free Press

Fight for the Future

FreedomWorks

Human Rights Watch

Liberty Coalition

National Association of Criminal Defense Lawyers

New America's Open Technology Institute

OpenTheGovernment.org

PEN America

R Street Institute

Reporter's Committee for Freedom of the Press

Restore the Fourth

Sunlight Foundation

TechFreedom