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Mr. Ted Dean
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Dear Mr. Antonipillai and Mr. Dean:

I am writing to provide further information about the manner in which the United States conducts bulk collection of signals intelligence. As explained in footnote 5 of Presidential Policy Directive 28 (PPD-28), “bulk” collection refers to the acquisition of a relatively large volume of signals intelligence information or data under circumstances where the Intelligence Community cannot use an identifier associated with a specific target (such as the target’s email address or phone number) to focus the collection. However, this does not mean that this sort of collection is “mass” or “indiscriminate.” Indeed, PPD-28 also requires that “[s]ignals intelligence activities shall be as tailored as feasible.” In furtherance of this mandate, the Intelligence Community takes steps to ensure that even when we cannot use specific identifiers to target collection, the data to be collected is likely to contain foreign intelligence that will be responsive to requirements articulated by U.S. policy-makers pursuant to the process explained in my earlier letter, and minimizes the amount of non-pertinent information that is collected.

As an example, the Intelligence Community may be asked to acquire signals intelligence about the activities of a terrorist group operating in a region of a Middle Eastern country, that is believed to be plotting attacks against Western European countries, but may not know the names, phone numbers, email addresses or other specific identifiers of individuals associated with this terrorist group. We might choose to target that group by collecting communications to and from that region for further review and analysis to identify those communications that relate to the group. In so doing, the Intelligence Community would seek to narrow the collection as much as possible. This would be considered collection in “bulk” because the use of discriminants is not feasible, but it is neither “mass” nor “indiscriminate”; rather it is focused as precisely as possible.

Thus, even when targeting through the use of specific selectors is not possible, the United States does not collect all communications from all communications facilities everywhere in the world, but applies filters and other technical tools to focus its collection on those facilities that are likely to contain communications of foreign intelligence value. In so doing, the United States’ signals intelligence activities touch only a fraction of the communications traversing the Internet.

Moreover, as noted in my earlier letters, because “bulk” collection entails a greater risk of collecting non-pertinent communications, PPD-28 limits the use that the Intelligence Community may make of signals intelligence collected in bulk to six specified purposes. PPD-28, and agency policies implementing PPD-28, also place restrictions on the retention and dissemination of personal information acquired through signals intelligence, regardless of whether the information was collected in bulk or through targeted collection, and regardless of the individual’s nationality.

Thus, the Intelligence Community’s “bulk” collection is not “mass” or “indiscriminate,” but involves the application of methods and tools to filter collection in order to focus the collection on material that will be responsive to policy-makers’ articulated foreign intelligence requirements while minimizing the collection of non-pertinent information, and provides strict rules to protect the non-pertinent information that may be acquired. The policies and procedures described in this letter apply to all bulk signals intelligence collection, including any bulk collection of communications to and from Europe, without confirming or denying whether any such collection occurs.

You have also asked for more information about the Privacy and Civil Liberties Oversight Board (PCLOB) and Inspectors General, and their authorities. The PCLOB is an independent agency in the Executive Branch. Members of the bipartisan, five-member Board are appointed by the President and confirmed by the Senate.¹ Each Member of the Board serves a six-year term. Members of the Board and staff are provided appropriate security clearances in order for them to fully execute their statutory duties and responsibilities.²

The PCLOB’s mission is to ensure that the federal government’s efforts to prevent terrorism are balanced with the need to protect privacy and civil liberties. The Board has two fundamental responsibilities – oversight and advice. The PCLOB sets its own agenda and determines what oversight or advice activities it wishes to undertake.

In its *oversight* role, the PCLOB reviews and analyzes actions the Executive Branch takes to protect the nation from terrorism, ensuring that the need for such actions is balanced with the need to protect privacy and civil liberties.³ The PCLOB’s most recent completed oversight review focused on surveillance programs operated under Section 702 of FISA.⁴ It is currently conducting a review of intelligence activities operated under Executive Order 12333.⁵

In its *advisory* role, the PCLOB ensures that liberty concerns are appropriately considered in the development and implementation of laws, regulations, and policies related to efforts to protect the nation from terrorism.⁶

¹ 42 U.S.C. 2000ee(a), (h).

² 42 U.S.C. 2000ee(k).

³ 42 U.S.C. 2000ee(d)(2).

⁴ See generally [HTTPS://WWW.PCLOB.GOV/LIBRARY.HTML#OVERSIGHTREPORTS](https://www.pclob.gov/library.html#oversightreports).

⁵ See generally [HTTPS://WWW.PCLOB.GOV/EVENTS/2015/MAY13.HTML](https://www.pclob.gov/events/2015/may13.html).

⁶ 42 U.S.C. 2000ee(d)(1); see also PCLOB Advisory Function Policy and Procedure, Policy 2015-004, available at [HTTPS://WWW.PCLOB.GOV/LIBRARY/POLICY-ADVISORY_FUNCTION_POLICY_PROCEDURE.PDF](https://www.pclob.gov/library/policy-advisory_function_policy_procedure.pdf).

In order to carry out its mission, the Board is authorized by statute to have access to all relevant agency records, reports, audits, reviews, documents, papers, recommendations, and any other relevant materials, including classified information consistent with law.⁷ In addition, the Board may interview, take statements from, or take public testimony from any executive branch officer or employee.⁸ Additionally, the Board may request in writing that the Attorney General, on the Board's behalf, issues subpoenas compelling parties outside the Executive Branch to provide relevant information.⁹

Finally, the PCLOB has statutory public transparency requirements. This includes keeping the public informed of its activities by holding public hearings and making its reports publicly available, to the greatest extent possible consistent with the protection of classified information.¹⁰ In addition, the PCLOB is required to report when an Executive Branch agency declines to follow its advice.

Inspectors General (IGs) in the Intelligence Community (IC) conduct audits, inspections, and reviews of the programs and activities in the IC to identify and address systemic risks, vulnerabilities, and deficiencies. In addition, IGs investigate complaints or information of allegations of violations of law, rules, or regulations, or mismanagement; gross waste of funds; abuse of authority, or a substantial and specific danger to the public health and safety in IC programs and activities. IG independence is a critical component to the objectivity and integrity of every report, finding, and recommendation an IG issues. Some of the most critical components to maintaining IG independence include the IG appointment and removal process; separate operational, budget, and personnel authorities; and dual reporting requirements to Executive Branch agency heads and Congress.

Congress established an independent IG office in each Executive Branch agency, including every IC element.¹¹ With the passage of the Intelligence Authorization Act for Fiscal Year 2015, almost all IGs with oversight of an IC element are appointed by the President and confirmed by the Senate, including the Department of Justice, Central Intelligence Agency, National Security Agency, and the Intelligence Community.¹² Further, these IGs are permanent, nonpartisan, officials who can only be removed by the President. While the U.S. Constitution requires that the President have IG removal authority, it has rarely been exercised and requires that the President provide Congress with a written justification 30 days before removing an IG.¹³ This IG appointment process ensures that there is no undue influence by Executive Branch officials in the selection, appointment, or removal of an IG.

⁷ 42 U.S.C. 2000ee(g)(1)(A).

⁸ 42 U.S.C. 2000ee(g)(1)(B).

⁹ 42 U.S.C. 2000ee(g)(1)(D).

¹⁰ 42 U.S.C. 2000eee(f).

¹¹ Sections 2 and 4 of the Inspector General Act of 1978, as amended (hereinafter "IG Act"); Section 103H(b) and (e) of the National Security Act of 1947, as amended (hereinafter "Nat'l Sec. Act"); Section 17(a) of the Central Intelligence Act (hereinafter "CIA Act").

¹² See Pub. L. No. 113-293, 128 Stat. 3990, (Dec. 19, 2014). Only the IGs for the Defense Intelligence Agency and the National Geospatial-Intelligence Agency are not appointed by the President; however the DOD IG and the IC IG have concurrent jurisdiction over these agencies.

¹³ Section 3 of the IG Act of 1978, as amended; Section 103H(c) of the Nat'l Sec. Act; and Section 17(b) of the CIA Act.

Second, IGs have significant statutory authorities to conduct audits, investigations, and reviews of Executive Branch programs and operations. In addition to oversight investigations and reviews required by law, IGs have broad discretion to exercise oversight authority to review programs and activities of their choosing.¹⁴ In exercising this authority, the law ensures that IGs have the independent resources to execute their responsibilities, including the authority to hire their own staff and separately document their budget requests to Congress.¹⁵ The law ensures that IGs have access to the information needed to execute their responsibilities. This includes the authority to have direct access to all agency records and information detailing the programs and operations of the agency regardless of classification; the authority to subpoena information and documents; and the authority to administer oaths.¹⁶ In limited cases, the head of an Executive Branch agency may prohibit an IG's activity if, for example, an IG audit or investigation would significantly impair the national security interests of the United States. Again, the exercise of this authority is extremely unusual and requires the head of the agency to notify Congress within 30 days of the reasons for exercising it.¹⁷ Indeed, the Director of National Intelligence has never exercised this limitation authority over any IG activities.

Third, IGs have responsibilities to keep both heads of Executive Branch agencies and Congress fully and currently informed through reports of fraud and other serious problems, abuses, and deficiencies relating to Executive Branch programs and activities.¹⁸ Dual reporting bolsters IG independence by providing transparency into the IG oversight process and allowing agency heads an opportunity to implement IG recommendations before Congress can take legislative action. For example, IGs are required by law to complete semi-annual reports that describe such problems as well as corrective actions taken to date.¹⁹ Executive Branch agencies take IG findings and recommendations seriously and IGs are often able to include the agencies' acceptance and implementation of IG recommendations in these and other reports provided to Congress, and in some cases the public.²⁰ In addition to this IG dual-report structure, IGs are

¹⁴ See Sections 4(a) and 6(a)(2) of the IG Act of 1947; Section 103H(e) and (g)(2)(A) of the Nat'l Sec. Act; Section 17(a) and (c) of the CIA Act.

¹⁵ Sections 3(d), 6(a)(7) and 6(f) of the IG Act; Sections 103H(d), (i), (j) and (m) of the Nat'l Sec. Act; Sections 17(e)(7) and (f) of the CIA Act.

¹⁶ Section 6(a)(1), (3), (4), (5), and (6) of the IG Act ; Sections 103H(g)(2) of the Nat'l Sec. Act; Section 17(e)(1), (2), (4), and (5) of CIA Act.

¹⁷ See, e.g., Sections 8(b) and 8E(a) of the IG Act; Section 103H(f) of the Nat'l Sec. Act; Section 17(b) of the CIA Act.

¹⁸ Section 4(a)(5) of the IG Act; Section 103H(a)(b)(3) and (4) of the Nat'l Sec. Act; Section 17(a)(2) and (4) of the CIA Act.

¹⁹ Section 2(3), 4(a), and 5 of the IG Act; Section 103H(k) of the Nat'l Sec. Act; Section 17(d) of the CIA Act. The Inspector General of the Department of Justice makes its publicly released reports available on the internet at <http://oig.justice.gov/reports/all.htm>. Similarly, the Inspector General for the Intelligence Community makes its semi-annual reports publicly available at <https://www.dni.gov/index.php/intelligence-community/ic-policies-reports/records-requested-under-foia#icig>.

²⁰ Section 2(3), 4(a), and 5 of the IG Act; Section 103H(k) of the Nat'l Sec. Act; Section 17(d) of the CIA Act. The Inspector General of the Department of Justice makes its publicly released reports available on the internet at <http://oig.justice.gov/reports/all.htm>. Similarly, the Inspector General for the Intelligence Community makes its semi-annual reports publicly available at <https://www.dni.gov/index.php/intelligence-community/ic-policies-reports/records-requested-under-foia#icig>.

also responsible for shepherding Executive Branch whistleblowers to the appropriate congressional oversight committees to make disclosures of alleged fraud, waste, or abuse in Executive Branch programs and activities. The identities of those who come forward are protected from disclosure to the Executive Branch, which shields the whistleblowers from potential prohibited personnel actions or security clearance actions taken in reprisal for reporting to the IG.²¹ As whistleblowers are often the sources for IG investigations, the ability to report their concerns to the Congress without Executive Branch influences increases the effectiveness of IG oversight. Because of this independence, IGs can promote economy, efficiency, and accountability in Executive Branch agencies with objectivity and integrity.

Finally, Congress has established the Council of Inspectors General on Integrity and Efficiency. This Council, among other things, develops IG standards for audits, investigations and reviews; promotes training; and has the authority to conduct reviews of allegations of IG misconduct, which serves as a critical eye on IGs, who are entrusted to watch all others.²²

I hope that this information is helpful to you.

Regards,

A handwritten signature in dark ink, appearing to be 'RL', written in a cursive style.

Robert S. Litt
General Counsel

²¹ Section 7 of the IG Act; Section 103H(g)(3) of the Nat'l Sec. Act; Section 17(e)(3) of the CIA Act.

²² Section 11 of the IG Act.