

January 16, 2014

President Barack Obama  
The White House  
Washington, D.C. 20500

Dear Mr. President:

The 1.7 million highly classified files compromised by Edward Snowden have done grievous harm to U.S. national security. Published reports based on his leaks - many of which have misled and, consequently, alarmed the American people - have created an impetus for "reforms" in the way intelligence collection is conducted and overseen.

There is no doubt a need to discuss privacy in the era of "big data." The Snowden leaks, however, should not precipitate a knee-jerk reaction to do something. They should generate a thoughtful discussion of very difficult issues. This is the opportunity to implement reforms that will strengthen intelligence capabilities, protect American civil liberties, and keep America safe.

Unfortunately, we believe that the Independent Review Commission has proposed a number of reforms that could prove to be detrimental to our government's ability to protect the U.S. in the face of today's and tomorrow's threats.

We respectfully suggest that any effort to improve America's vital intelligence collection, analytic and other capabilities should be guided by the following principles:

1. In a world that is every bit as dangerous as that of the immediate pre-9/11 period, a superior intelligence capability is the critical first line of defense in keeping our country safe.
2. U.S. intelligence is an institution subject to the checks and balances of the Constitution, which includes strong – and bipartisan – oversight of the intelligence community by the executive branch, the Congress and the courts.
3. U.S. intelligence programs must respect and protect American civil liberties.
4. U.S. citizens and people residing within the United States have constitutional protections with regard to privacy and civil liberties. Those rights do not, and must not, extend to non-U.S. persons abroad – who have none of the duties or obligations of citizens or residents.
5. Legitimate whistle-blowers can make an indispensable contribution to effective oversight and deserve appropriate legal protections.
6. U.S. businesses should not be subjected to undue burdens (either bureaucratic or competitive) in the course of cooperation with U.S. government entities engaged in intelligence collection against foreign threats.

These principles give rise to the following recommendations as you and the Congress consider reforms to U.S. intelligence practices, programs and policies:

**Foreign Collection:** Robust collection of intelligence overseas is essential. It is a dangerous world and U.S. intelligence must be allowed and tasked to monitor potential foreign sources of threats, unencumbered.

Proposals to bar intelligence collection against non-U.S. persons on the basis of political beliefs or religion are naïve and unacceptable.

There should be no laws or rules barring NSA from breaking internet encryption or engaging in other cyber and software methods to obtain foreign intelligence. Were we to foreclose that option, we would effectively make off-limits the communications and computers of U.S. adversaries, to the serious detriment of America's security.

**"Section 215":** The part of the U.S. Code governing intelligence collection inside the United States known as Section 215 has been indispensable in keeping Americans safe from terrorism. As a practical matter, in order to find out with whom terrorists are communicating inside the U.S., you have to check the phone logs. The question is who should be charged with storing such data, the government or private sector parties?

The National Security Agency should continue to store the data, under existing tight controls and oversight. The data is more secure and the American people's privacy better protected if NSA holds it under existing statutory limitations and oversight, rather than some third party. That is especially the case, given that the phone companies do not want the responsibility and liabilities associated with serving as a metadata repository. In addition, alternative arrangements would almost certainly impinge upon the speed and efficiency with which such data needs to be utilized in support of national security requirements.

**Security:** We need to: return to the time-tested "need to know" standard: develop more effective clearances procedures (including better training for investigators) and metrics and make sure that the people holding clearances really need to have them.

In addition, massive external storage capabilities (e.g., Bradley Manning's thumb drive and Edward Snowden's cloud) warrant a major rethinking of how we secure IT systems and the sensitive data they hold.

The most compelling question is the one not yet answered: In the wake of these devastating compromises, how do we repair the damage to American intelligence and the cause of freedom?

**Congress:** The legislative branch should demand a full scope damage assessment of the harm caused by Snowden, mitigating steps to protect from further harm that adversaries will cause by exploiting these egregious compromises, and a set of programmatic recommendations to recover and advance vital intelligence capabilities lost.

Mr. President, we encourage you to root the decisions you will be announcing shortly concerning reforms of U.S. intelligence in these principles and recommendations and we urge the legislative branch to do the same as it responds to your initiatives.

Sincerely,

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