



September 2, 2014

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy:

Thank you for your letter of August 19, 2014, asking for the views of the Department of Justice and the Intelligence Community on S. 2685, the USA FREEDOM Act. We appreciate your extensive efforts to develop a bill in coordination with the Administration, privacy and civil liberties advocates, and representatives from the communications providers that builds upon the good work done by the House in its bill passed on May 22, 2014. As discussed below, the Intelligence Community believes that your bill preserves essential Intelligence Community capabilities; and the Department of Justice and the Office of the Director of National Intelligence support your bill and believe that it is a reasonable compromise that enhances privacy and civil liberties and increases transparency.

The USA FREEDOM Act bans bulk collection under a variety of authorities. In particular, the bill permits collection under Section 215 of the USA PATRIOT Act using a specific selection term that narrowly limits the scope of the tangible things sought to the greatest extent reasonably practicable, consistent with the purposes for seeking the tangible things. Recognizing that the terms enumerated in the statute may not always meet operational needs, the bill permits the use of other terms, provided there are court-approved minimization procedures that prohibit the dissemination and require the destruction within a reasonable period of time of any information that has not been determined to satisfy certain specific requirements. We believe that this approach will accommodate operational needs while providing appropriate privacy protections.

The bill also provides a mechanism to obtain telephone metadata records in order to identify potential contacts of suspected terrorists inside the United States. The Intelligence Community believes that, based on communications providers' existing practices in retaining metadata, the bill will retain the essential operational capabilities of the existing bulk telephone metadata program while eliminating bulk collection.

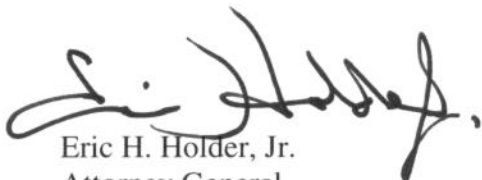
The bill also increases transparency by expanding the amount of information communications providers can disclose and increasing public reporting by the government. Although balancing national security and the public's legitimate interest in additional

transparency can be difficult, we are comfortable with the transparency provisions in this bill because, among other things, they recognize the technical limitations on our ability to report certain types of information.


We note that, consistent with the President's request, the bill establishes a process for the appointment of an amicus curiae to assist the FISA Court and FISA Court of Review in matters that present a novel or significant interpretation of the law. We believe that the appointment of an amicus in selected cases, as appropriate, need not interfere with important aspects of the FISA process, including the process of ex parte consultation between the Court and the government. We are also aware of the concerns that the Administrative Office of the U.S. Courts expressed in a recent letter, and we look forward to working with you and your colleagues to address those concerns.

The USA FREEDOM Act represents the result of extensive discussions and deliberations and has the support of a wide range of interests. Admittedly, it is possible that there are additional impacts that we will be able to identify only after we start to implement the new law. You have our commitment to notify Congress if we determine that the new law is impeding the Intelligence Community's ability to protect national security. Overall, the bill's significant reforms should provide the public greater confidence in our programs and the checks and balances in the system.

Sincerely,



Eric H. Holder, Jr.
Attorney General



James R. Clapper
Director of National Intelligence