



Nancy Pelosi  
Democratic Leader

July 11, 2013

Mr. David Medine  
Chairman  
Privacy and Civil Liberties Board  
Federal Register Office  
800 North Capitol Street, Northwest, Suite 700  
Washington, D.C. 20001

Dear Chairman Medine:

Congratulations on your confirmation as Chairman of the Privacy and Civil Liberties Oversight Board (Board). Those of us in Congress who insisted upon the creation of the Board following the passage of the Patriot Act in the wake of 9/11 take special interest in your success.

Civil liberties advocates in Congress believe that a strong Board was imperative to increase government oversight, accountability and transparency, and to ensure government actions were consistent with Americans' fundamental right to privacy and with our nation's commitment to civil liberties. At the time of the Board's 2004 creation, however, there were concerns that the Board lacked the independence and authorities needed to effectively fulfill its mission and purpose. When Democrats won the majority in the 110<sup>th</sup> Congress, we made the Board an independent agency and empowered it with enhanced authorities in *H.R. 1, Implementing the Recommendations of the 9/11 Commissions Act of 2007*.

Recent disclosures regarding intelligence collection activities have underscored the need for the Board to assess the impact of government actions and to ensure our national security policies are consistent with our privacy and civil liberties expectations.

As the Board conducts hearings and its review, I am writing to raise several matters of concern:

First, serious concerns have been raised about whether the interpretation of statutory standards by the executive and judicial branches is consistent with Congressional intent. The Patriot Act and subsequent legislation changed the collection standards for a wide array of laws related to national security. For instance, as a result of changes to the law, the government must now only show that various classes of records sought are "relevant to" an investigation. It is, therefore, important for Congress to know exactly how broadly this and other pertinent standards have been interpreted by the FISA Court, other federal courts, and the executive branch to ensure the interpretations are consistent with Congressional intent.

Second, questions have arisen regarding FISA Court operations. Greater transparency is critical to ensuring the public and Congress understand FISA Court procedures and the process for

allowing the FISA Court to consider filings and testimony by non-government parties to ensure FISA Court judges consider views other than those offered by the executive branch.

Third, it is crucial for the American public to better understand FISA Court decisions and the appropriateness of its interpretation of relevant case law. This is especially true in light of concerns about the FISA Court's interpretation of Fourth Amendment jurisprudence, including the Supreme Court's "special needs" and other applicable doctrines.

Fourth, given advances in technology, the government should consider employing new options and methods to protect our national security and preserve Americans' privacy and civil liberties. An independent assessment of those options by the Board would be useful as all three branches of government consider changes to authorities, guidelines, procedures, and practices.

As Congress continues its oversight and considers amendments to the laws governing national security collection activities, we look forward to the Board's contributions to this debate. The Board is encouraged to analyze current legislative proposals as it conducts its own review. Among these measures are:

- H.R. 2399, introduced by Congressman John Conyers would require unclassified summaries of FISA Court decisions, orders, and opinions. Further, it would modify the current "relevant to" collection standard to require the government to show there are "specific and articulable facts" that the records sought are material to an investigation and that the records "pertain only to individuals under investigation." Congressman Conyers and other Members of Congress have raised concerns regarding the need for increased transparency and the appropriateness of collection standards since the passage of the Patriot Act.
- H.R. 2475, introduced by Congressman Adam Schiff, similarly would require the declassification or unclassified summaries of significant FISA Court decisions, orders, and opinions.

In the coming days, we look forward to the Board's review, recommendations and response to these concerns. We also look forward to working with you on these and other critical national security matters. Thank you for your attention to these issues and for your service to our nation.

best regards,

A handwritten signature in dark ink that reads "Nancy Pelosi". The signature is written in a cursive, flowing style.

NANCY PELOSI  
Democratic Leader