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# United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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July 18, 2013

The Honorable Reggie B. Walton  
Presiding Judge  
United States Foreign Intelligence Surveillance Court  
333 Constitution Avenue, N.W.  
Washington, D.C. 20001

Dear Judge Walton:

Recent disclosures about U.S. government surveillance activities have generated considerable public discourse about the laws that govern these activities and the institutions that oversee them. Many in Congress as well as many members of the public have questions about the operations of the Foreign Intelligence Surveillance Court, which is a unique entity in our judicial system. As established by the Foreign Intelligence Surveillance Act of 1978 (FISA), the Court conducts its business largely behind closed doors and without an adversarial process. However, particularly as technology has evolved, the Court's decisions can have significant legal and policy implications.

On July 31, 2013, the Senate Committee on the Judiciary will hold a hearing on the implementation of FISA authorities. We fully understand that you cannot discuss publicly much of the substance of the Court's work due to its classified nature. However, as we prepare for the hearing, it would be helpful to members of the Committee to learn more about the process and procedures used by the Court in its work. While the Court has made public its Rules of Procedure, questions remain about the practical application of those Rules and the Court's day-to-day practices.

In advance of the hearing later this month, we would greatly appreciate unclassified answers to the following questions:

1. Describe the typical process that the Court follows when it considers the following: (1) an application for an order for electronic surveillance under Title I of FISA; (2) an application for an order for access to business records under Title V of FISA; and (3) submissions from the government under Section 702 of FISA. As to applications for orders for access to business records under Title V of FISA, please describe whether the process for the Court's consideration of such applications is different when considering requests for bulk collection of phone call metadata records, as recently declassified by the Director of National Intelligence.

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2. When considering such applications and submissions, please describe the interaction between the government and the Court (including both judges and court staff), including any hearings, meetings, or other means through which the Court has the opportunity to ask questions or seek additional information from the government. Please describe how frequently such exchanges occur, and generally what types of additional information that the Court might request of the government, if any. Please also describe how frequently the Court asks the government to make changes to its applications and submissions before ruling.
3. Public FISA Court opinions and orders make clear that the Court has considered the views of non-governmental parties in certain cases, including a provider challenge to the Protect America Act of 2007. Describe instances where non-governmental parties have appeared before the Court. Has the Court invited or heard views from a non-governmental party regarding applications or submissions under Title I, Title V, or Title VII of FISA? If so, how did this come about, and what was the process or mechanism that the Court used to enable such views to be considered?
4. Please describe the process used by the Court to consider and resolve any instances where the government notifies the Court of compliance concerns with any of the FISA authorities.

As members of the Committee may have additional questions after receiving your response, we would also appreciate it if you would agree to respond to written questions for the record after the Committee's hearing on July 31. We are grateful for your cooperation in this matter. Thank you for considering these requests.

Sincerely,

  
PATRICK LEAHY  
Chairman

  
CHARLES E. GRASSLEY  
Ranking Member