

July 8, 2013

Attorney General Eric H. Holder, Jr.
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Michael E. Horowitz
Inspector General, U.S. Department of Justice
950 Pennsylvania Avenue, NW
Suite 4706
Washington, DC 20530-0001

Dear Sirs:

In view of President Obama's pledge that his administration will be as transparent as possible about the surveillance activities recently uncovered by The Guardian and The Washington Post, the undersigned organizations are writing to ask that the Department of Justice make public any findings by the Department's Office of the Inspector General (OIG) regarding the collection of Americans' telephone records under Section 215 of the Patriot Act. If the OIG has not previously conducted a full review of this program, we ask that it do so now.

Section 215, as you know, allows the FBI to apply to the Foreign Intelligence Surveillance Court (FISC) for an order requiring the production of any tangible thing that is relevant to an authorized investigation to collect foreign intelligence or to protect against international terrorism or clandestine intelligence activities. Serious questions have been raised by lawmakers and legal experts about whether the recently revealed program, under which telephone companies are ordered to produce all of the telephony metadata for all of their subscribers, is consistent with the purpose or even the letter of Section 215.

The Justice Department's OIG has previously examined the government's activities under Section 215. Senator Dianne Feinstein has stated that the telephone records collection program dates back seven years – i.e., to 2006. Accordingly, the OIG's 2008 report, "A Review of the FBI's Use of Section 215 Orders for Business Records in 2006," should have addressed this program. Presumably, that analysis is contained in one of the report's two classified appendices.

The Inspector General may also have reviewed the telephone records program in subsequent reports. The OIG provides Congress with semi-annual reports on civil rights or civil liberties complaints under Section 1001 of the Patriot Act. In several of these reports, the OIG promised that it would be reviewing the FBI's use of Section 215 orders. The results of those reviews, if they took place, have not been made public.

To the extent the OIG addressed the telephone records collection program in previous reports, those discussions presumably were withheld or redacted because the program was classified. Blanket withholding or redaction is no longer appropriate, however, because executive officials have declassified the existence of the program and many details of its operation. Moreover, the Inspector General's conclusions about the legitimacy and value of program would inject critical transparency and objectivity into the public debate. We therefore ask the Attorney General to promptly declassify and make public any portions of existing OIG reports that address declassified aspects of the telephony metadata program.

To the extent the OIG has not previously addressed, or has conducted only a limited review of, the telephony metadata program, we ask the Inspector General to undertake a full review now. Key questions that the review should encompass include: whether section 215 may appropriately be used to require the production of entire databases, even where "the vast majority of the data is not responsive to any terrorism-related query" (per the Director of National Intelligence's June 6, 2013 [statement](#)) and therefore does not meet the statute's "relevance" standard; whether section 215 orders are appropriately used to acquire data prospectively, rather than acquiring tangible things already in existence; whether the telephone records requested by the FBI under this program include information that may be used to determine a caller's physical location (whether exact or proximate); whether section 215 is also being used to collect entire databases held by credit card companies or other financial institutions; and whether the mass collection of Americans' metadata has allowed the government to obtain important information that could not have been obtained through narrower requests or series of requests.

To its credit, this administration has responded to the revelations about its surveillance programs with a highly unusual series of disclosures about those activities. Selective disclosures in the form of fact sheets and prepared congressional testimony, however, may ultimately be viewed as self-serving and thus undermine rather than bolster the public's confidence. A public accounting by the relatively independent OIG would be a more meaningful contribution, both to the substantive public debate and to the perception that the administration is being forthright about its actions. We urge you to act promptly to make public any portions of existing OIG reports that address declassified aspects of the telephone records collection program, and to conduct any further review that may be necessary to ensure that all relevant questions raised by this program are answered.

Sincerely,

Advocacy for Principled Action in Government
American Booksellers Foundation for Free Expression
American Library Association
Association of Research Libraries
Bill of Rights Defense Committee
Brennan Center for Justice
Center for Democracy and Technology
Center for Effective Government
Center for Media and Democracy
Citizens for Responsibility and Ethics in Washington

Constitution Project
Defending Dissent Foundation
DownsizeDC.org
Freedom of the Press Foundation
Government Accountability Project
National Association of Criminal Defense Lawyers
National Coalition Against Censorship
National Freedom of Information Coalition
National Security Counselors
Open Society Foundations
OpenTheGovernment.org
Project on Government Oversight
Tully Center for Free Speech