

February 8, 2018

The Honorable Paul Ryan
H-232, The Capitol
Washington, DC 20515

The Honorable Nancy Pelosi
H-204, The Capitol
Washington, DC 20515

Re: Increasing Transparency and Oversight of the Intelligence Community

Dear Speaker Ryan and Minority Leader Pelosi:

Last week, members of the House Permanent Select Committee on Intelligence voted to release a memo documenting alleged abuse of surveillance authority by the Justice Department and FBI in order to spy on former Trump campaign advisor, Carter Page. Setting aside the debate over the memo's allegations or whether its release was appropriate, the undersigned organizations committed to government openness and accountability, civil liberties, human rights, and civil rights believe the memo's release and the scrutiny surrounding it offer an opportunity for Congress to enact meaningful reforms addressing transparency and oversight of the intelligence community while protecting classified information and the nation's security.

We urge HPSCI and Congress to immediately undertake measures that will reduce secrecy around government surveillance activities; improve HPSCI transparency and oversight; and take steps to reform Section 702 of the Foreign Intelligence Surveillance Act (FISA) - the part of the FISA that is most susceptible to abuse.

Reduce Secrecy around Government Surveillance

- **Release all other relevant Committee documents regarding the Carter Page surveillance.** In order for the public to have a more complete understanding of the FBI's surveillance activities of Carter Page, all other relevant documents prepared by HPSCI majority and minority staff must be released as comprehensively as possible.
- **Declassify all significant pre-2015 FISC Opinions.** The USA Freedom Act required the government to declassify significant interpretations of law or statutory language by the Foreign Intelligence Surveillance Court (FISC). The Justice Department, however, has interpreted that requirement to only apply to decisions of the court issued *after* the enactment of the 2015 reforms. Congress must clarify that the government must declassify all significant pre-2015 FISC decisions in addition to those opinions already disclosed to the public.
- **Secret Law.** Require the Justice Department's Office of Legal Counsel (OLC) to submit all final legal opinions and any other relevant secret surveillance authorities to Congress,

and declassify and make public the opinions to ensure that government surveillance programs are not guided by secret law.

Improve HPSCI Transparency and Oversight

- **Ensure members of HPSCI Receive Requested Information from the Executive Branch.** Regularly review whether HPSCI receives all requested information and reports from the executive branch. Retain an information specialist to track all requests made by and reports received by HPSCI from the intelligence community.
- **Inform the House of Representatives of HPSCI's Work.** HPSCI should abide by the same requirements placed on standing committees with respect to providing notice to Congress and the general public. In order for Congress to and the public to be informed, and to enable Congress to exercise its oversight duties, HPSCI must provide appropriate notice to all members about HPSCI's work.
- **Inform the general public.** Establish a process to declassify, review and process intelligence information.
- **Make available annual unclassified intelligence reports.** Make public the annual, unclassified intelligence reports that HPSCI receives with minimal delay.

Read more about these recommendations [here](#).¹

Strengthen Transparency Requirements for Section 702

Before releasing the memo, Chairman Nunes voted to reauthorize Section 702 of the FISA, codifying warrantless surveillance, and warrantless queries of Americans' communications swept up under Section 702 by the FBI. HPSCI Republicans fought meaningful reforms to Section 702, including opposing warrants for FBI queries of Americans data. Congress can still [demand transparency and accountability](#)² requirements relating to Section 702, including:

- **FBI statistics.** Require the FBI to report on the number of its queries of U.S. persons that return Section 702 communications, a requirement that already applies to the CIA and NSA. This would close the loophole that has allowed the FBI to avoid reporting the number of times it accesses the communications obtained without a warrant as part of its investigations.
- **Statistics on Americans Swept Up by Section 702.** Require the Office of the Director of National Intelligence (ODNI) to uphold its promise to the House Judiciary Committee and publish an estimate of the number of Americans whose communications are swept up under Section 702, or an estimate of the number of communications collected to which a person inside the U.S. is a party.
- **Use notice transparency.** Require notice for defendants in every instance where Section 702 data is used – either directly or as the means to derive subsequently used evidence

¹ Demand Progress, R Street Institute, et al., *Strengthening Congressional Oversight of the Intelligence Community*, September 13, 2016: <http://bit.ly/2nFR4IV>

² Open The Government, *Coalition voices support for strong bipartisan Senate surveillance reform legislation*, October 23, 2017: <http://bit.ly/2GU07b8>

– as part of an investigation that leads to a prosecution, in order to uphold the constitutional rights of defendants in a court of law.

Thank you for your attention to our request. We welcome the opportunity to discuss this with you further. Please contact Lisa Rosenberg at Open the Government, rosenberg@openthegovernment.org or 202-332-6736.

Sincerely,

American-Arab Anti-Discrimination Committee
American Society of Journalists and Authors
Campaign for Liberty
Constitutional Alliance
Defending Rights and Dissent
Demand Progress Action
Electronic Frontier Foundation
Electronic Privacy Information Center (EPIC)
First Amendment Coalition
FreedomWorks
Government Accountability Project
Government Information Watch
National Security Archive
Open the Government
People for the American Way
Project On Government Oversight and The Constitution Project
Public Citizen
Sunlight Foundation
Tully Center for Free Speech
Woodhull Freedom Foundation

cc: Representative Devin Nunes, Chairman, House Permanent Select Committee on Intelligence
Representative Adam Schiff, Ranking Member, House Permanent Select Committee on Intelligence