



One Hundred Tenth Congress
U.S. House of Representatives
Committee on Homeland Security
Washington, DC 20515

August 22, 2007

The Honorable Michael Chertoff
Secretary
Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Chertoff:

Through media reports I learned of the Department's intent to create a National Applications Office (NAO) that will purportedly be tasked with facilitating the use of "spy" satellites for domestic homeland security and law enforcement purposes.

Unfortunately, I have had to rely on media reports to gain information about this endeavor because neither I nor my staff was briefed on the decision to create this new office prior to the public disclosure of this effort. Unfortunately this is not the first time that this Committee, a Committee responsible for the authorization of the Department of Homeland Security—has had to learn of the Department's decisions through media accounts. Let me state this clearly--the release of important information to the public without prior to notification to this Committee is unacceptable.

Turning to the matter at hand, I understand that the target date for NOA operation is October 1, 2007. With less than six weeks remaining until the anticipated "roll out" of this effort, I am concerned that several fundamental issues have not been adequately addressed. For instance, the Department's failure to include its own Chief Privacy Officer and the Officer for Civil Rights and Civil Liberties in the initial planning stages for the NAO raises serious concerns about the extent to which valid privacy and civil liberties concerns raised by the domestic use of this technology may have been considered and addressed prior to this projected roll out date.

As you know, the statute that created the Officer for Civil Rights and Civil Liberties, 6 U.S.C. § 345, specifically states that the Officer shall "assist the Secretary, directorates, and offices of the Department to develop, implement, and periodically review Department policies and procedures to ensure that the protection of civil rights and civil liberties is appropriately incorporated into Department programs and activities." Despite this strong mandate, the Office of Civil Rights and Civil Liberties was not involved in the development of the Concept of Operations for the NAO from the outset and in fact was not brought into the process until this spring.

Indeed, Congress' inclusion of these offices within the Department was designed precisely to create entities within the Department that would assess potential responses to

security concerns in light of privacy and civil rights issues. As you are no doubt aware, the enormity of the NAO's capabilities and the intended use of the imagery received through these satellites for domestic homeland security purposes, and the unintended consequences that may arise, have heightened concerns among the general public, including reputable civil rights and civil liberties organizations. In fact, Kate Martin with the Center for National Security Studies called the office "big brother in the sky." It does not help matters that neither the Department's Chief Privacy Officer nor the Officer for Civil Rights and Civil Liberties were included in the initial planning stages despite the fact that the potential for privacy, civil rights and civil liberties violations is enormous.

While I understand that both offices were consulted about the NAO efforts this spring – a year and a half after NAO preparations first got underway – the Department has essentially presented them with a "fait accompli." Bringing in relevant and important offices at the 11th hour of the process with the apparent expectation that they will rubberstamp a predominantly completed product does not engender true participatory action. On the contrary, such a practice merely creates the illusion of inclusion. In the creation of these offices, Congress expected actual inclusion, real participation and a meaningful voice in the process, not a mere illusion.

It would seem to me that one of the lessons that should have been learned from the Department's unfortunate experience with the CAPPS II and the Secure Flight programs, would have been to include the officials responsible for privacy, civil rights and civil liberties concerns early in the process. It appears that even after these unfortunate instances, the Department still has not embraced that lesson.

I am also concerned about the Department's failure to vet this program with the Privacy and Civil Liberties Oversight Board, which was specifically created to ensure that concerns with respect to privacy and civil liberties are appropriately considered in the implementation of executive branch policies related to protecting the Nation against terrorism. The failure to consult the Board on a matter as controversial as using spy satellites for domestic homeland security and law enforcement purposes is particularly worrisome.

At present, I am not certain that the proper privacy, civil rights and civil liberties issues have been fully addressed. I need you to provide me with an immediate assurance that upon its October 1st roll out, this program will be operating within the confines of the Constitution and all applicable laws and regulations. Additionally, because I have not been informed of the existence of this program for over a two year period, I am requesting that for the next six weeks, you provide me with bi-weekly briefings on the progress of the NOA working groups.

Sincerely,

A handwritten signature in black ink that reads "Bennie G. Thompson". The signature is written in a cursive, slightly slanted style.

Bennie G. Thompson
Chairman