
LIBERTY AND SECURITY IN A CHANGING WORLD

12 December 2013

**Report and Recommendations of
The President's Review Group on Intelligence
and Communications Technologies**

Transmittal Letter

Dear Mr. President:

We are honored to present you with the Final Report of the Review Group on Intelligence and Communications Technologies. Consistent with your memorandum of August 27, 2013, our recommendations are designed to protect our national security and advance our foreign policy while also respecting our longstanding commitment to privacy and civil liberties, recognizing our need to maintain the public trust (including the trust of our friends and allies abroad), and reducing the risk of unauthorized disclosures.

We have emphasized the need to develop principles designed to create strong foundations for the future. Although we have explored past and current practices, and while that exploration has informed our recommendations, this Report should not be taken as a general review of, or as an attempt to provide a detailed assessment of, those practices. Nor have we generally engaged budgetary questions (although some of our recommendations would have budgetary implications).

We recognize that our forty-six recommendations, developed over a relatively short period of time, will require careful assessment by a wide range of relevant officials, with close reference to the likely consequences. Our goal has been to establish broad understandings and principles that

can provide helpful orientation during the coming months, years, and decades.

We are hopeful that this Final Report might prove helpful to you, to Congress, to the American people, and to leaders and citizens of diverse nations during continuing explorations of these important questions.

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Preface

On August 27, 2013, the President announced the creation of the Review Group on Intelligence and Communications Technologies. The immediate backdrop for our work was a series of disclosures of classified information involving foreign intelligence collection by the National Security Agency. The disclosures revealed intercepted collections that occurred inside and outside of the United States and that included the communications of United States persons and legal permanent residents, as well as non-United States persons located outside the United States. Although these disclosures and the responses and concerns of many people in the United States and abroad have informed this Report, we have focused more broadly on the creation of sturdy foundations for the future, safeguarding (as our title suggests) liberty and security in a rapidly changing world.

Those rapid changes include unprecedented advances in information and communications technologies; increased globalization of trade, investment, and information flows; and fluid national security threats against which the American public rightly expects its government to provide protection. With this larger context in mind, we have been mindful of significant recent changes in the environment in which intelligence collection takes place.

For example, traditional distinctions between “foreign” and “domestic” are far less clear today than in the past, now that the same communications devices, software, and networks are used globally by

friends and foes alike. These changes, as well as changes in the nature of the threats we face, have implications for the right of privacy, our strategic relationships with other nations, and the levels of innovation and information-sharing that underpin key elements of the global economy.

In addressing these issues, the United States must pursue multiple and often competing goals at home and abroad. In facing these challenges, the United States must take into account the full range of interests and values that it is pursuing, and it must communicate these goals to the American public and to key international audiences. These goals include:

Protecting The Nation Against Threats to Our National Security.

The ability of the United States to combat threats from state rivals, terrorists, and weapons proliferators depends on the acquisition of foreign intelligence information from a broad range of sources and through a variety of methods. In an era increasingly dominated by technological advances in communications technologies, the United States must continue to collect signals intelligence globally in order to assure the safety of our citizens at home and abroad and to help protect the safety of our friends, our allies, and the many nations with whom we have cooperative relationships.

Promoting Other National Security and Foreign Policy Interests.

Intelligence is designed not only to protect against threats but also to safeguard a wide range of national security and foreign policy interests, including counterintelligence, counteracting the international elements of

organized crime, and preventing drug trafficking, human trafficking, and mass atrocities.

Protecting the Right to Privacy. The right to privacy is essential to a free and self-governing society. The rise of modern technologies makes it all the more important that democratic nations respect people's fundamental right to privacy, which is a defining part of individual security and personal liberty.

Protecting Democracy, Civil Liberties, and the Rule of Law. Free debate within the United States is essential to the long-term vitality of American democracy and helps bolster democracy globally. Excessive surveillance and unjustified secrecy can threaten civil liberties, public trust, and the core processes of democratic self-government. All parts of the government, including those that protect our national security, must be subject to the rule of law.

Promoting Prosperity, Security, and Openness in a Networked World. The United States must adopt and sustain policies that support technological innovation and collaboration both at home and abroad. Such policies are central to economic growth, which is promoted in turn by economic freedom and spurring entrepreneurship. For this reason, the United States must continue to establish and strengthen international norms of Internet freedom and security.

Protecting Strategic Alliances. The collection of intelligence must be undertaken in a way that preserves and strengthens our strategic relationships. We must be respectful of those relationships and of the

leaders and citizens of other nations, especially those with whom we share interests, values, or both. The collection of intelligence should be undertaken in a way that recognizes the importance of cooperative relationships with other nations and that respects the legitimate privacy interests and the dignity of those outside our borders.

The challenge of managing these often competing goals is daunting. But it is a challenge that the nation must meet if it is to live up to its promises to its citizens and to posterity.

Executive Summary

Overview

The national security threats facing the United States and our allies are numerous and significant, and they will remain so well into the future. These threats include international terrorism, the proliferation of weapons of mass destruction, and cyber espionage and warfare. A robust foreign intelligence collection capability is essential if we are to protect ourselves against such threats. Because our adversaries operate through the use of complex communications technologies, the National Security Agency, with its impressive capabilities and talented officers, is indispensable to keeping our country and our allies safe and secure.

At the same time, the United States is deeply committed to the protection of privacy and civil liberties—fundamental values that can be and at times have been eroded by excessive intelligence collection. After careful consideration, we recommend a number of changes to our intelligence collection activities that will protect these values without undermining what we need to do to keep our nation safe.

Principles

We suggest careful consideration of the following principles:

- 1. The United States Government must protect, at once, two different forms of security: national security and personal privacy.*

In the American tradition, the word “security” has had multiple meanings. In contemporary parlance, it often refers to *national security* or *homeland security*. One of the government’s most fundamental responsibilities is to protect this form of security, broadly understood. At the same time, the idea of security refers to a quite different and equally fundamental value, captured in the Fourth Amendment to the United States Constitution: “The right of the people to be *secure* in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . .” (emphasis added). Both forms of security must be protected.

2. The central task is one of risk management; multiple risks are involved, and all of them must be considered.

When public officials acquire foreign intelligence information, they seek to reduce risks, above all risks to national security. The challenge, of course, is that multiple risks are involved. Government must consider all of those risks, not a subset, when it is creating sensible safeguards. In addition to reducing risks to national security, public officials must consider four other risks:

- Risks to privacy;
- Risks to freedom and civil liberties, on the Internet and elsewhere;
- Risks to our relationships with other nations; and
- Risks to trade and commerce, including international commerce.

3. The idea of “balancing” has an important element of truth, but it is also inadequate and misleading.

It is tempting to suggest that the underlying goal is to achieve the right “balance” between the two forms of security. The suggestion has an important element of truth. But some safeguards are not subject to balancing at all. In a free society, public officials should never engage in surveillance in order to punish their political enemies; to restrict freedom of speech or religion; to suppress legitimate criticism and dissent; to help their preferred companies or industries; to provide domestic companies with an unfair competitive advantage; or to benefit or burden members of groups defined in terms of religion, ethnicity, race, and gender.

4. The government should base its decisions on a careful analysis of consequences, including both benefits and costs (to the extent feasible).

In many areas of public policy, officials are increasingly insistent on the need for careful analysis of the consequences of their decisions, and on the importance of relying not on intuitions and anecdotes, but on evidence and data. Before they are undertaken, surveillance decisions should depend (to the extent feasible) on a careful assessment of the anticipated consequences, including the full range of relevant risks. Such decisions should also be subject to continuing scrutiny, including retrospective analysis, to ensure that any errors are corrected.

Surveillance of US Persons

With respect to surveillance of US Persons, we recommend a series of significant reforms. Under section 215 of the Foreign Intelligence Surveillance Act (FISA), the government now stores bulk telephony meta-data, understood as information that includes the telephone numbers that both originate and receive calls, time of call, and date of call. (Meta-data does not include the content of calls.). We recommend that Congress should end such storage and transition to a system in which such meta-data is held privately for the government to query when necessary for national security purposes.

In our view, the current storage by the government of bulk meta-data creates potential risks to public trust, personal privacy, and civil liberty. We recognize that the government might need access to such meta-data, which should be held instead either by private providers or by a private third party. This approach would allow the government access to the relevant information when such access is justified, and thus protect national security without unnecessarily threatening privacy and liberty. Consistent with this recommendation, we endorse a broad principle for the future: as a general rule and without senior policy review, the government should not be permitted to collect and store mass, undigested, non-public personal information about US persons for the purpose of enabling future queries and data-mining for foreign intelligence purposes.

We also recommend specific reforms that will provide Americans with greater safeguards against intrusions into their personal domain. We

endorse new steps to protect American citizens engaged in communications with non-US persons. We recommend important restrictions on the ability of the Foreign Intelligence Surveillance Court (FISC) to compel third parties (such as telephone service providers) to disclose private information to the government. We endorse similar restrictions on the issuance of National Security Letters (by which the Federal Bureau of Investigation now compels individuals and organizations to turn over certain otherwise private records), recommending prior judicial review except in emergencies, where time is of the essence.

We recommend concrete steps to promote transparency and accountability, and thus to promote public trust, which is essential in this domain. Legislation should be enacted requiring information about surveillance programs to be made available to the Congress and to the American people to the greatest extent possible (subject only to the need to protect classified information). We also recommend that legislation should be enacted authorizing telephone, Internet, and other providers to disclose publicly general information about orders they receive directing them to provide information to the government. Such information might disclose the number of orders that providers have received, the broad categories of information produced, and the number of users whose information has been produced. In the same vein, we recommend that the government should publicly disclose, on a regular basis, general data about the orders it has issued in programs whose existence is unclassified.

Surveillance of Non-US Persons

Significant steps should be taken to protect the privacy of non-US persons. In particular, any programs that allow surveillance of such persons even outside the United States should satisfy six separate constraints. They:

- 1) must be authorized by duly enacted laws or properly authorized executive orders;
- 2) must be directed *exclusively* at protecting national security interests of the United States or our allies;
- 3) must *not* be directed at illicit or illegitimate ends, such as the theft of trade secrets or obtaining commercial gain for domestic industries;
- 4) must not target any non-United States person based solely on that person's political views or religious convictions;
- 5) must not disseminate information about non-United States persons if the information is not relevant to protecting the national security of the United States or our allies; and
- 6) must be subject to careful oversight and to the highest degree of transparency consistent with protecting the national security of the United States and our allies.

We recommend that, in the absence of a specific and compelling showing, the US Government should follow the model of the Department of Homeland Security and apply the Privacy Act of 1974 in the same way to both US persons and non-US persons.

Setting Priorities and Avoiding Unjustified or Unnecessary Surveillance

To reduce the risk of unjustified, unnecessary, or excessive surveillance in foreign nations, including collection on foreign leaders, we recommend that the President should create a new process, requiring highest-level approval of all sensitive intelligence requirements and the methods that the Intelligence Community will use to meet them. This process should identify both the uses and the limits of surveillance on foreign leaders and in foreign nations.

We recommend that those involved in the process should consider whether (1) surveillance is motivated by especially important national security concerns or by concerns that are less pressing and (2) surveillance would involve leaders of nations with whom we share fundamental values and interests or leaders of other nations. With close reference to (2), we recommend that with a small number of closely allied governments, meeting specific criteria, the US Government should explore understandings or arrangements regarding intelligence collection guidelines and practices with respect to each others' citizens (including, if and where appropriate, intentions, strictures, or limitations with respect to collections).

Organizational Reform

We recommend a series of organizational changes. With respect to the National Security Agency (NSA), we believe that the Director should be a Senate-confirmed position, with civilians eligible to hold that position; the President should give serious consideration to making the next Director of NSA a civilian. NSA should be clearly designated as a foreign intelligence organization. Other missions (including that of NSA's Information Assurance Directorate) should generally be assigned elsewhere. The head of the military unit, US Cyber Command, and the Director of NSA should not be a single official.

We favor a newly chartered, strengthened, independent Civil Liberties and Privacy Protection Board (CLPP Board) to replace the Privacy and Civil Liberties Oversight Board (PCLOB). The CLPP Board should have broad authority to review government activity relating to foreign intelligence and counterterrorism whenever that activity has implications for civil liberties and privacy. A Special Assistant to the President for Privacy should also be designated, serving in both the Office of Management and Budget and the National Security Staff. This Special Assistant should chair a Chief Privacy Officer Council to help coordinate privacy policy throughout the Executive branch.

With respect to the FISC, we recommend that Congress should create the position of Public Interest Advocate to represent the interests of privacy and civil liberties before the FISC. We also recommend that the government should take steps to increase the transparency of the FISC's

decisions and that Congress should change the process by which judges are appointed to the FISC.

Global Communications Technology

Substantial steps should be taken to protect prosperity, security, and openness in a networked world. A free and open Internet is critical to both self-government and economic growth. The United States Government should reaffirm the 2011 International Strategy for Cyberspace. It should stress that Internet governance must not be limited to governments, but should include all appropriate stakeholders, including businesses, civil society, and technology specialists.

The US Government should take additional steps to promote security, by (1) fully supporting and not undermining efforts to create encryption standards; (2) making clear that it will not in any way subvert, undermine, weaken, or make vulnerable generally available commercial encryption; and (3) supporting efforts to encourage the greater use of encryption technology for data in transit, at rest, in the cloud, and in storage. Among other measures relevant to the Internet, the US Government should also support international norms or agreements to increase confidence in the security of online communications.

For big data and data-mining programs directed at communications, the US Government should develop Privacy and Civil Liberties Impact Assessments to ensure that such efforts are statistically reliable, cost-effective, and protective of privacy and civil liberties.

Protecting What We Do Collect

We recommend a series of steps to reduce the risks associated with “insider threats.” A governing principle is plain: Classified information should be shared only with those who genuinely need to know. We recommend specific changes to improve the efficacy of the personnel vetting system. The use of “for-profit” corporations to conduct personnel investigations should be reduced or terminated. Security clearance levels should be further differentiated. Departments and agencies should institute a Work-Related Access approach to the dissemination of sensitive, classified information. Employees with high-level security clearances should be subject to a Personnel Continuous Monitoring Program. Ongoing security clearance vetting of individuals should use a risk-management approach and depend on the sensitivity and quantity of the programs and information to which individuals are given access.

The security of information technology networks carrying classified information should be a matter of ongoing concern by Principals, who should conduct an annual assessment with the assistance of a “second opinion” team. Classified networks should increase the use of physical and logical separation of data to restrict access, including through Information Rights Management software. Cyber-security software standards and practices on classified networks should be at least as good as those on the most secure private-sector enterprises.