

June 26, 2014

David Medine, Chair,
Rachel Brand, Member
Elisebeth Collins Cook, Member
James Dempsey, Member
Patricia Wald, Member
Privacy and Civil Liberties Oversight Board

Dear Members of the Privacy and Civil Liberties Oversight Board,

We respectfully bring to your attention the recent vote in the U.S. House of Representatives that bars the funding of “backdoor” searches of information collected under section 702 of FISA. By a bipartisan vote of 293- 121, the House voted to amend the DoD appropriations bill to prohibit warrantless searches of such information “using an identifier of a United States person.”

We urge the Privacy and Civil Liberties Oversight Board to follow the House’s lead and to recommend that backdoor searches under section 702 be prohibited. Such access should be granted only when the government has obtained an order from the FISA Court upon a showing of probable cause that the U.S. person whose communications are sought is an agent of a foreign power.

The NSA should not have warrantless access to massive amounts of information about U.S. persons simply because the government has arguably collected that information legally. We note that President Obama has required that the NSA obtain court orders to query data that he deems was legally collected under the bulk telephone metadata collection program. In addition, the Department of Justice manual on searching and seizing computers already advises prosecutors to seek a new warrant to search computer information they have already obtained lawfully with a warrant issued for a different crime.^[1] The Privacy and Civil Liberties Oversight Board should play a leadership role in moving the law in this direction.

^[1] *Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations*, Department of Justice Office of Legal Education, Executive Office for United States Attorneys, by H. Marshall Jarrett, Michael W. Bailie, Ed Hagan, and Nathan Judish, OLE Litigation Series, 2009, at 91, <http://info.publicintelligence.net/electronic evidencemanual2009.pdf>.

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