

22 February 2017

The Honorable Ron Wyden
Select Committee on Intelligence
United States Senate
Washington, DC 20510

The Honorable Martin Heinrich
Select Committee on Intelligence
United States Senate
Washington, DC 20510

Dear Senators Wyden and Heinrich:

Thank you for your letter of 02 February 2017 in which you provided additional questions related to my nomination to be the Director of National Intelligence. Attached, please find unclassified responses to your questions.

Sincerely,

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Dan Coats

Enclosure

Responses to Sen. Ron Wyden and Sen. Martin Heinrich letter dated 02 February 2017

Pursuant to the Presidential Memorandum organization of the National Security Council and the Homeland Security Council (January 28, 2017) (“Presidential Memorandum”), the DNI attends meetings of the Principals Committee “where issues pertaining to [the DNI’s] responsibilities and expertise are to be discussed.” This represents a change from Presidential Policy Directive 1 (February 13, 2009), which established the DNI as a regular member of the Principals Committee.

- (1) Do you believe there is value in the DNI being a regular member of the Principals Committee and attending all meetings of the Principals Committee? If so, will you advocate for changes to the Presidential Memorandum?**

At the beginning of every administration, the President establishes the organization for the National Security Council. The DNI, as the principal intelligence advisor to the President, has a permanent role on the NSC. This is a recognition that the DNI will often be called on to provide timely, objective, and integrated intelligence information to senior policy makers. I have discussed the current organization of the National Security Council, including the Principals Committee, the Deputies Committee, and the Policy Coordination Committees, with senior White House officials and am confident that the DNI and ODNI staff will have a prominent role across all of the NSC committees. If confirmed, if I ever believe that the DNI or ODNI are not invited to participate in NSC meetings within the DNI’s areas of responsibilities, I will advocate for changes to the Presidential Memorandum.

- (2) If you do not support changes to the Presidential Memorandum, please explain how and by whom “issues pertaining to [the DNI’s] responsibilities and expertise” should be identified. What would be the proper response should a Principals Committee meeting to which the DNI was not invited begin to address topics pertaining to the DNI’s responsibilities and expertise?**

The NSC process starts with the Policy Coordination Committees and issues are raised to the Principals Committee thru the Deputies Committee. Because the ODNI has a permanent role on the Deputies Committee, I am confident that the ODNI will have full visibility into issues to be addressed by the Principals Committee. Accordingly, the ODNI will be in a position to advocate for its inclusion in Principals Committee meetings when matters pertaining to the DNI’s responsibilities and expertise are to be discussed, including matters relating to the Intelligence Community or matters that require ensuring policy makers are fully briefed on national intelligence.

- (3) On January 30, 2017, the White House spokesperson announced that the Presidential Memorandum would be amended “to add the CIA back into the NSC.” The**

Presidential Memorandum states that the DNI is a statutory advisor to the National Security Council. What do you believe should be the relative roles of the DNI and the Director of the CIA on the National Security Council and Principals Committee?

As reflected in statute, and discussed earlier, the DNI is the principal intelligence advisor to the President. In this role, the DNI is responsible in providing timely, objective, and integrated intelligence to the President and his senior advisors to best inform policy decisions. As part of the NSC and the Principals Committee, it is the role of the DNI, together with the Director of CIA and other IC element heads, to ensure that this intelligence is provided to each forum as part of larger policy discussions.

(4) In June 2015, you were quoted in the context of your opposition to the USA FREEDOM Act, saying the following: “Contrary to the irresponsible misrepresentations and false statements by some members of Congress, the federal government is not engaged in a massive surveillance program.” Which statements by members of Congress who opposed the bulk telephone record program did you consider “misrepresentations” or “false”?

Over the course of the debate on surveillance programs that were legally authorized and undertaken by the IC under Section 215 of the USA PATRIOT Act, I was regularly asked by my constituents in Indiana about the IC listening in on and collecting all their phone calls. This troubled me for a number of reasons, first and foremost that it was completely untrue. When I asked my constituents where they heard this, they cited media reporting about various Members of Congress who were repeating this misperception.

The program under discussion at the time was authorized in law, approved by the Foreign Intelligence Surveillance Court, and had layers of oversight from not only the legislative branch, but also the judiciary and internal executive branch entities.

(5) What is your current view of the USA FREEDOM Act? Do you believe that a resumption of bulk collection of Americans’ telephone records is necessary?

The USA FREEDOM Act overhauled NSA’s collection of telephone metadata that had been operated under Section 215 of USA PATRIOT Act. The earlier program was authorized by the Foreign Intelligence Surveillance Court, briefed to Congress, and was subject to vigorous oversight. I supported this program because it was operated responsibly and, in my opinion, provided valuable and timely intelligence. Although I voted against the changes to the program made as part of the USA FREEDOM Act, those adjustments are the law and if confirmed, I will ensure the IC abides by them. However, if I identify deficiencies in the program because, for example, telecommunication providers are not retaining data for a sufficient period of time, I will promptly notify Congress and will seek legislative changes.

(6) What differences, if any, do you believe should exist with regard to IC access to, queries of, and use, dissemination and retention of U.S. person communications collected pursuant to Executive Order 12333 as compared to communications collected pursuant to Section 702?

Protecting the privacy and civil liberties of U.S. persons is a foundational requirement for all intelligence collection. Under the Foreign Intelligence Surveillance Act, these protections are primarily executed through minimization procedures. For other collection activity authorized by Executive Order 12333, the protections are found in guidelines issued by the IC element head and approved by the Attorney General in consultation with the DNI. In order to ensure that the procedures comply with Constitutional and statutory requirements, these procedures are tailored to reflect the type of information collected, where the information is collected, and how the information is collected. It is my understanding that these procedures are either publicly available or otherwise available to the Committee in classified form.

(7) What do you see as the possible costs to bilateral relationships, including bilateral intelligence relationships, to eliminating or modifying PPD 28?

As discussed in my responses to the Committee's prehearing questions, the European Commission relied in significant part on the privacy protections of PPD-28 when it found the U.S.-E.U. Privacy Shield framework was adequate. For that reason, before any changes to the PPD are made, I believe it important to consider the consequence of any modifications.

In addition, it is possible that certain changes to PPD-28 could also impact our bilateral relationships with other countries. For example, foreign partners may seek bilateral agreements with respect to their citizens should they believe the U.S. is not adequately protecting the personal information of their citizens.

(8) Please describe what you believe to be the appropriate limitations on the IC's receipt of, use and dissemination of the communications of U.S. persons collected by a foreign partner. How should those limitations address instances in which the foreign partner specifically targeted U.S. persons who are not the subject of a warrant in the United States or instances in which the foreign partner has collected bulk communications known to include those of U.S. persons?

History has demonstrated that there are people around the world, including here in the United States, who seek to harm our citizens. To that end, information relating to U.S. persons can be highly relevant to IC analysts and operators. If a foreign partner lawfully collects and shares information relating to a U.S. person, that information would be subject to the Attorney General approved guidelines discussed in response to question 6.

(9) If confirmed, will you ensure that the Intelligence Community fully cooperates with the Privacy and Civil Liberties Oversight Board, both with regard to the Board's formal reviews and its informal exchanges with the Intelligence Community?

I understand that the IC has been cooperating with the PCLOB as it provides advice and oversight with respect to government programs that protect the nation from terrorism. I believe the PCLOB's oversight builds public trust that executive branch agencies are acting responsibly and lawfully as they execute their CT mission. If confirmed, I will ensure that the IC supports the PCLOB in fulfilling its statutorily-mandated role.

(10) In recent years, the DNI has declassified and posted information about the legal and policy bases for surveillance activities. Some declassifications are required by statute; others are not. What is your view of these declassifications and public releases? Do you commit to maintain or strengthening the ODNI's current policy with regard to the review, declassification and posting of legal and policy documents?

I believe that the IC must continue to provide appropriate transparency while also protecting intelligence sources and methods. Responsible transparency builds public trust in the vital work of the IC. If confirmed, I will review the IC's transparency efforts to see if any should be updated or strengthened, as appropriate.

(11) Will you support the declassification and public release of any interpretation of law that provides a basis for intelligence activities but is inconsistent with the public's understanding of the law?

It is important for the IC to provide transparency on how the IC implements and complies with legal requirements. If confirmed, I will ensure that the IC continues to prioritize such transparency, while also protecting intelligence sources and methods.

(12) In a 2010 Indiana Daily Student interview, you expressed opposition to the repeal of "Don't Ask, Don't Tell," calling the policy a "reasonable means of dealing with the issue." You stated, "People are not denied service, but their behavior lifestyle can't be such that it interrupts the morale of the fighting unit." In the same interview, you opposed marriage equality. Under the leadership of Director Clapper, the ODNI and the Intelligence Community made significant and critically important strides toward ensuring that the LGBT IC personnel have full protections and support from the community. Will you commit to maintain and supporting the policies put in place by Director Clapper?

ODNI and the wider IC comply with existing Executive Orders to protect LGBT individuals from discrimination in federal hiring policies, as well as federal government contractor hiring

practices. If confirmed, I will enforce these protections to ensure we hire and retain a highly qualified and diverse workforce committed to our national security.

The Report of the Congressional Committees Investigating the Iran-Contra Affair (November 1987) found that:

“The NSC staff was created to give the President policy advice on major national security and foreign policy issues. Here, however, it was used to gather intelligence and conduct covert operations. This departure from its proper functions contributed to policy failure.”

(13) Do you agree with the dangers of intelligence collection and covert operations conducted by the White House, as described in the Iran-Contra report? How, as DNI, would you seek to ensure that intelligence activities are conducted by the intelligence Community and notified to Congress?

The National Security Council is designed to give advice to the President and provide oversight and management for certain sensitive activities, not engage in operational activity. This responsibility is codified in law. The current structure of the IC places the DNI as the central integrator of critical intelligence products, including those requested or consumed by the President and senior administration officials. I am confident that the IC's structural processes, along with the integrated and collaborative approach built by the ODNI, will serve to ensure that all intelligence activities are lawfully conducted and reported to Congress as required by Title V of the National Security Act.

(14) If, for any reason, you or another IC official makes a public statement that is inaccurate, do you commit to making a public statement correcting the record?

Yes, if I were to mistakenly make a public statement that is inaccurate, I would correct the record.

(15) You voted against the 2015 legislation that prohibited interrogation techniques not authorized by the Army Field Manual. The legislation also prohibited revisions to the Army Field Manual that involve the use or threat of force, required that the Army Field Manual be public, and required ICRC notification of and prompt access to detainees. What is your current position with regard to these statutory requirements? Would you recommend any changes to either current law or the Army Field Manual?

When I cast my vote in 2015, I was serving in my role as a Senator from Indiana and representing my constituents. I have retired from that position and I have also retired my

policymaking role. Current law dictates that the Army Field Manual be the standard for conducting interrogations, and if confirmed, I will ensure that the IC complies with the law. It is too early for me to recommend whether changes are needed to the current requirements.

(16) In December 2014, you signed Minority Views to the Committee's Study of the CIA's Detention and Interrogation program ("Minority Views"). Those Views described the CIA's Detention and Interrogation Program as a "crucial pillar of U.S. counterterrorism efforts." The Views stated: "when asked about the value of detainee information and whether he missed the intelligence form it, one senior CIA operator [REDACTED] told members, 'I miss it every day.' We understand why." At the same time, however, you referred to the termination of the program as a "long-settled issue." What are your current views with regard to the resumption of a CIA detention and interrogation program?

The law is clear. The Army Field Manual is the statutory standard for national security interrogations across government, including the Intelligence Community. Any interrogations conducted by the CIA must comply with this standard. Similarly, Executive Order 13491, which is still in effect, required the CIA to close all detention facilities and prohibits CIA from operating detention facilities in the future.

(17) The Minority Views, which were not an independent report based on a separate investigation, included numerous inaccurate statements about the CIA's Detention and Interrogation program and the Committee Study, including some that have since been acknowledged by the CIA itself. Do you stand by each of the statements and assertions in the Minority Views?

In general, I support these statements in the Minority Views, as they represent the various concerns that the then-Minority membership of the SSCI had with the report's conclusions. Especially troubling were the stated concerns highlighting what I believed was a flawed process taken in the preparation and analysis of the report.

(18) In December 2014, you described the release of the Executive Summary of the Study as "irresponsible" and stated that "Americans are put at harm." The public version of the Executive summary was redacted by the CIA to remove sources and methods as well as names, pseudonyms, and in some cases, even titles. Do you believe that the CIA failed to protect the security of Americans?

I maintain the view that the release of the report was irresponsible, as it had the potential to raise the threat to Americans overseas, as detailed in non-partisan analysis conducted by the Intelligence Community. My top priority is keeping Americans safe, and any decision to

unnecessarily endanger our representatives overseas is one I don't take lightly. I believe that the CIA took necessary steps to protect the security of Americans as referenced in the report.

The Minority Views stated:

“The Study seems to fault the CIA for not briefing the Committee leadership until after the enhanced interrogation techniques had been approved and used. However, the use of DOJ-approved enhanced interrogation techniques began during the congressional recess period in August, and important fact that the Study conveniently omitted... Briefing Committee leadership in the month after beginning a new activity does not constitute actively avoiding or impeding congressional oversight.”

In April 2002, months prior to the Senate's August recess, the CIA was using coercive interrogation techniques 9the Minority Views describe them as “enhanced interrogation”). Throughout July 2002, the CIA and the Department of Justice reviewed the proposed use of “enhanced interrogation techniques.”

(19) Do you believe that the statutory obligation to keep the Committee fully and currently informed would have applied to the ongoing and planned activities of the CIA between April and July 2002?

Title V of the National Security Act, which codifies the requirement to keep Congress fully and currently informed, has been amended several times since the stand-up of the DNI in 2005. The DNI has also issued Intelligence Community Directive 112 to provide additional guidance on when and how to provide Congressional notifications. The congressional notification regime now in place is more robust than I have ever seen in my time on the Committee and includes timely notification—usually within 14 days—of significant intelligence activities, significant intelligence failures, and significant legal interpretations.

(20) Do you believe that the statutory obligation to keep the Committee fully and currently informed is diminished during Senate recesses?

The statutory obligation to keep the intelligence committees fully and currently informed remains in place during Senate recesses.

The Minority Views stated the following:

“It is within the President's discretion to determine which members of Congress beyond the ‘gang of eight,’ are briefed on sensitive covert action programs. There is no requirement for the White House to brief the full Committee as a prerequisite to the declassification or disclosure of information to the media.”

(21) Do you believe it is acceptable for the White House to disclose classified information (without formal declassification) without briefing the full congressional intelligence committees on that information?

It is my understanding that before classified information is publicly released, that information undergoes a classification review and, if necessary, a declassification analysis that weighs the public interest in disclosure and the need to continue to protect the information. I consider this a prudent practice. Current law requires that Congress be notified on a timely basis if there is an authorized disclosure of classified information to the media or to the public. If confirmed, I will ensure that we comply with current law.

(22) The Minority Views stated that, while the CIA took custody of its first detainee in April 2002 and began using “enhanced interrogation techniques” in August 2002, the CIA Inspector General did not have a clear “need to know” about the program until November 2002, after a detainee had died in CIA custody. What is your view of the timeliness of IG access to IC programs? Should Inspectors General have access to IC programs at the outset of those programs?

The ability of an IG to have timely access to agency people, documents and or records, is rightfully provided in various statutes. I also believe that in general it is the IG that should determine what information they need in order to perform their statutorily independent oversight mission. If confirmed, any IG that notifies my office of an impediment to such access would have my cooperation and assistance in resolving the issue. Lacking a reasonable suspicion of fraud, waste, abuse or violation of law, rule or regulation, I am not aware of any affirmative responsibility the agency had to proactively involve their IG in each on-going operation.

(23) In 2004, the CIA rendered and detained German citizen Khalid al-Masri. (The ICA Inspector General would later conclude that the CIA did not have sufficient basis to render and detain al-Masri and that his prolonged detention was unjustified.) Over opposition from some in the CIA, the National Security Council determined that al-Masri should be repatriated and that the German government should be told about al-Masri’s rendition. You were U.S. ambassador to Germany at the time. What did you take from this experience? Specifically, to what extent should the Department of State and relevant U.S. chiefs of mission be informed in advance of intelligence operations that may affect diplomatic relationships?

I think it absolutely critical that the Chief of Mission be informed of intelligence operations that may affect diplomatic relationships. Strong relationships and linkages improve information sharing, and this is especially critical between the Chief of Mission and those agencies operating within his or her area of responsibility; if the situation turns out poorly, then it is too late.

