

Keeping the Intelligence Committee Fully and Currently Informed

QUESTION 1: Section 502 of the National Security Act of 1947 provides that the obligation to keep the congressional intelligence committees fully and currently informed of all intelligence activities applies to the Director of National Intelligence and to the heads of all departments, agencies, and other entities of the U.S. Government involved in intelligence activities. What is your understanding of the standard for meaningful compliance with this obligation by the Office of the Director of National Intelligence and the heads of all departments, agencies and other entities of the U.S. Government involved in intelligence activities to keep the congressional intelligence committees, including all their Members, fully and currently informed of intelligence activities? Under what circumstances do you believe it is appropriate to brief the Chairman and Vice Chairman and not the full committee membership?

ANSWER: Section 502 of the National Security Act requires the Director of National Intelligence to keep the two intelligence committees "fully and currently informed" of all U.S. intelligence activities, including any "significant anticipated intelligence activity" and "significant intelligence failure." I understand the standard for meaningful compliance with this obligation to mean that congressional notifications must be timely, accurate, and complete to be effective. Director Coats has committed that he will comply not only with the letter of the law, but also its spirit. Like Director Coats, I believe that when the Intelligence Community works together to inform Congress, and proper oversight can be conducted, both the Intelligence Community and the American people will benefit.

As the chief legal officer for the Office of the Director of National Intelligence, the General Counsel assists the Director in carrying out his legal obligations, and, if confirmed, I will expect all Intelligence Community elements to follow both laws and policies that are in place within the Intelligence Community concerning congressional notification. I will further expect the General Counsels of the Intelligence Community elements to fulfill their congressional notification obligation regarding significant legal interpretations affecting the intelligence activities of their elements. If confirmed, I expect to assist the Director in ensuring that the Intelligence Community works cooperatively with Congress and the intelligence committees and provides the intelligence committees with timely notices under Section 502 subject only to limitations necessary to protect specific

operational details about sources, tradecraft, and other exceptionally sensitive information.

Section 502 also provides that congressional notification must be made “[t]o the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters.” Section 503 states that a presidential finding or notification about a covert action “may be reported to the chairmen and ranking minority members of the congressional intelligence committees, the Speaker and minority leader of the House of Representatives, the majority and minority leaders of the Senate, and such other member or members of the congressional leadership as may be included by the President,” “[i]f the President determines that it is essential to limit access” to the finding or notification in order “to meet extraordinary circumstances affecting vital interests of the United States.”

Although I believe that these terms do not limit the obligation to keep the intelligence committees fully informed, I take these provisions to mean that the Director of National Intelligence has a degree of latitude in deciding how he will bring extremely sensitive matters to the committees’ attention. As Director Coats told this committee during his confirmation hearing, limiting access for non-covert actions would be rare and often a matter of timing, and, in his experience, the committee leadership has worked in concert with the Executive Branch to determine when to expand access to the information in question. If confirmed, I expect to assist the Director in pursuing this process when it is required.

Priorities of the Director of National Intelligence

QUESTION 2: Have you discussed with the Director of National Intelligence his specific expectations of you, if confirmed as General Counsel, and his expectations of the Office of the General Counsel as a whole? If so, please describe those expectations.

ANSWER: I have met with Director Coats and he expressed his expectations for me, if I am confirmed as General Counsel, and for the Office of General Counsel as a whole. Director Coats expressed the value he places on having a strong legal team and stated that he expects me, and the office as a whole, to provide him

with sound legal advice and policy counsel on the full range of issues that both he and the ODNI face. Beyond that, though, he stressed to me the absolute importance of integrity, and that he expects integrity to be the guiding principle in my work and the work of the Office of General Counsel.

The Office of the General Counsel

QUESTION 3: The Office of the General Counsel of the Office of the Director of National Intelligence has a myriad of roles and responsibilities. What are your expectations for the Office?

ANSWER: Fundamentally, the Office of General Counsel must ensure that the ODNI conducts its activities in accordance with the Constitution and laws of the United States. To do that, I expect the lawyers in the office to identify legal issues proactively and to provide timely, sound advice on the law related to those issues. I also expect the office to provide helpful policy counsel on ODNI's activities and to be able to distinguish that counsel from legal advice.

More broadly, I expect lawyers in the office to be experts in their particular areas of responsibility and to engage cooperatively with their counterparts in the Intelligence Community and interagency and, where appropriate, to lead efforts to resolve cross-cutting legal issues that may arise. I see this as an important part of ODNI's community management role. Finally, just as the DNI expects absolute integrity from me, if confirmed, I will expect the same of every attorney in the Office of General Counsel.

- a. Do you have any preliminary observations on its responsibilities, performance, and effectiveness?

ANSWER: My observations on the Office of General Counsel to date have been limited to several unclassified briefings by lawyers in the office and several discussions with the office's current management and others who have worked for, or interacted with, the office. My impression is that the office is staffed by capable lawyers tasked with addressing a broad range of legal and policy questions. It appears that in many cases lawyers in the office lead or coordinate the resolution of legal issues affecting the entire Intelligence Community and not just the ODNI.

- b. If confirmed, will you seek to make changes in the numbers or qualifications of the attorneys in the office, or the operations of the office?

ANSWER: At this point, I cannot say whether I will seek to make such changes if confirmed. I will, however, seek to gain a more in-depth understanding of the office's operations, organization, and people to determine whether any changes are necessary. If confirmed, I look forward to leading the office and ensuring that it provides valuable legal services to the ODNI.

QUESTION 4: Describe your understanding of the responsibilities of the Director of National Intelligence and the General Counsel of the Office of the Director of National Intelligence (GC/ODNI) in reviewing, and providing legal advice on, the work of the Central Intelligence Agency, including covert action undertaken by the Central Intelligence Agency.

ANSWER: The Director of National Intelligence is the head of the Intelligence Community and is responsible for the provision of intelligence to the executive and legislative branches of government. As the head of the Intelligence Community, the Director has significant authority to oversee the work of all Intelligence Community elements, including the Central Intelligence Agency. This includes responsibilities over budget requests and appropriations for the National Intelligence Program, oversight of intelligence priorities and taskings, governance of national intelligence activities, and a specific mandate to ensure that all Intelligence Community elements conducts activities in compliance with the Constitution and the laws of the United States, including covert action.

The Central Intelligence Agency is a critical component of the Intelligence Community. The Director of National Intelligence's role in overseeing the activities of the agency requires that the ODNI General Counsel work closely with the General Counsel of the Central Intelligence Agency to ensure that its national intelligence activities are carried out in a legal and ethical manner. I believe that direct and open collaboration between the two General Counsel's offices is critical to support the Director of National Intelligence's role as the head of the Intelligence Community and overseer of the Central Intelligence Agency.

QUESTION 5: Explain your understanding of the role of the GC/ODNI in resolving conflicting legal interpretations within the Intelligence Community.

ANSWER: Section 102A(f)(4) of the National Security Act provides that the Director of National Intelligence shall ensure compliance with the Constitution and laws of the United States by the Central Intelligence Agency and by other elements of the Intelligence Community “through the host executive departments” of those elements. It is my understanding that the ODNI General Counsel plays a significant role in helping the Director carry out this requirement. Although the ODNI General Counsel lacks the authority to make the final decision over the legal position that governs a particular element of the Intelligence Community, it is my understanding that the General Counsel often plays a lead role in identifying cross-cutting legal issues or conflicting legal positions among the Intelligence Community elements and working to resolve those issues. It is also my understanding that the General Counsel often presents the consensus views of the Intelligence Community legal community to the broader Federal Government. If confirmed, I will work actively and cooperatively with my counterparts across the Intelligence Community to identify and resolve conflicting legal interpretations within the Intelligence Community and to advocate for those positions with other federal government departments and agencies.

Guidelines under Executive Order 12333

QUESTION 6: One of the fundamental documents governing the activities of the Intelligence Community is Executive Order 12333. Under Executive Order 12333, as amended in July 2008, there are requirements for Attorney General-approved guidelines. For each of the following requirements, describe the principal matters to be addressed by each of the required Attorney General-approved guidelines or procedures, the main issues you believe need to be resolved in addressing these guidelines or procedures, and your understanding of the schedule and priorities for completing them (or indicate whether the existing named guidelines or procedures are deemed sufficient).

- a. Guidelines under section 1.3(a)(2) for how information or intelligence is provided to, or accessed by, and used or shared by the Intelligence Community, except for information excluded by law, by the President,

or by the Attorney General acting under presidential order in accordance with section 1.5(a).

ANSWER: It is my understanding that section 1.3(a)(2) addresses the Intelligence Community's access to, or use of, information collected by Federal Government departments and agencies outside the Intelligence Community and that these guidelines should implement the provision of section 1.5(a) directing the heads of executive branch departments and agencies to "provide the Director access to all information and intelligence relevant to the national security or that otherwise is required for the performance of the Director's duties, to include administrative and other appropriate management information, except such information excluded by law, by the President, or by the Attorney General acting under this order at the direction of the President[.]"

Section 1.5(a) of the executive order is intended to ensure that the Director, and by extension the Intelligence Community, has access to relevant information possessed by the Federal Government. The sharing of such information, however, presents a number of legal and policy issues that, in many cases, are specific to a particular type of information based on the laws and policies that govern it. It is my understanding that the Intelligence Community has addressed these issues on a case-by-case basis relying on a combination of guiding documents, including, most notably, the Attorney General-approved guidelines that govern particular elements' collection, retention, and dissemination of information concerning U.S. persons. If confirmed, I intend to review this approach and whether additional Attorney General-approved guidelines are necessary.

- b.** Procedures under section 1.3(b)(18) for implementing and monitoring responsiveness to the advisory tasking authority of the Director of National Intelligence for the collection and analysis directed to departments and other U.S. entities that are not elements of the Intelligence Community.

ANSWER: The Director of National Intelligence, under section 1.3(b)(18), may provide advisory tasking, in essence asking a federal government agency that is not part of the Intelligence Community to collect information that is relevant to the national intelligence mission. Section 1.5(d) provides that the heads of

executive branch departments and agencies shall provide such support to the Director as he may request, to the maximum extent permitted by law and to the extent consistent with that department's or agency's mission. This would include responding to any advisory tasking by the Director. It is my understanding that the ODNI has not prioritized the issuance of Attorney General-approved guidelines for implementing and monitoring responsiveness to advisory taskings because relevant information may be effectively obtained through existing interagency processes. If confirmed, I will review whether these guidelines are necessary and, if so, prioritize them accordingly.

- c. Procedures under section 1.6(g) governing production and dissemination of information or intelligence resulting from criminal drug intelligence activities abroad if the elements of the IC involved have intelligence responsibilities for foreign or domestic criminal drug production and trafficking.

ANSWER: Section 1.6(g) directs the heads of Intelligence Community elements to participate in the development of guidelines approved by the Attorney General to govern the production and dissemination of intelligence resulting from criminal drug intelligence activities abroad. It is my understanding that these activities are governed by Intelligence Community elements' Attorney General-approved guidelines for the collection, retention, and dissemination of information concerning U.S. persons required by section 2.3 of Executive Order 12333 and discussed in more detail in my response to question 7.e, below.

- d. Regulations under section 1.7(g)(1) for collection, analysis, production, and intelligence by intelligence elements of the FBI of foreign intelligence and counterintelligence to support national and departmental missions.

ANSWER: It is my understanding that the Federal Bureau of Investigation issued the procedures called for by section 1.7(g)(1) with the approval of the Attorney General, in coordination with the Director of National Intelligence, on September 29, 2008.

- e. Procedures under section 2.3 on the collection, retention, and dissemination of United States person information and on the dissemination of information derived from signals intelligence to enable an Intelligence Community element to determine where the information is relevant to its responsibilities.

ANSWER: Intelligence Community elements' Attorney General-approved U.S. person procedures establish the parameters under which elements' may lawfully collect, retain, and disseminate information concerning U.S. persons in a manner that protects privacy and civil liberties. It is my understanding that, since the 2008 amendment to Executive Order 12333, a number of elements have engaged in a process to update their procedures, which in some cases were decades old, and other, newer Intelligence Community elements have similarly engaged in a process to issue new procedures. This process has resulted in the Intelligence Community elements of the Department of Defense, the Central Intelligence Agency, the Office of Intelligence and Analysis in the Department of Homeland Security, and the Office of Intelligence and Counterintelligence in the Department of Energy issuing new or updated procedures within the last two years. The National Counterterrorism Center also issued procedures in 2012. It is my understanding that the ODNI Office of General Counsel has been substantially involved in developing these procedures and has primarily sought to ensure that their requirements are consistent with each other to the greatest extent possible, accounting for elements' unique missions and authorities. Other elements continue to work on new or updated procedures and, if confirmed, I will continue to make engagement in this process a priority for the ODNI Office of General Counsel.

With regard to the signals intelligence procedures called for by section 2.3, the former Director of National Intelligence issued these procedures on January 3, 2017, with the approval of former Attorney General Lynch. Before the 2008 amendment to the executive order, section 2.3 had provided that the National Security Agency could not disseminate raw signals intelligence to other Intelligence Community elements. The 2008 amendment enabled the National Security Agency to disseminate raw signals intelligence to other Intelligence Community elements, but only subject to procedures issued by the Director of National Intelligence and approved by the Attorney General. These procedures identify the circumstances under which such disseminations may occur and

require that recipient Intelligence Community elements apply protections to the raw signals intelligence that are comparable to those applied by the National Security Agency to the same information. It is my understanding that these procedures were the product of several years of interagency coordination led by the ODNI Office of General Counsel. If confirmed, I intend to ensure that the office remains closely involved in their implementation and use.

- f. Procedures under section 2.4 on the use of intelligence collection techniques to ensure that the Intelligence Community uses the least intrusive techniques feasible within the U.S. or directed at U.S. persons abroad.

ANSWER: Section 2.4 of Executive Order 12333 limits the use of certain collection techniques, such as physical surveillance, and establishes the governing principle that Intelligence Community elements shall use the least intrusive collection techniques feasible when conducting collection activities within the United States or when collection activities are directed at U.S. persons abroad. This provision recognizes that certain collection techniques are inherently more intrusive than others and thus require specific rules governing their use. Most elements have addressed the requirements of this section within their Attorney General-approved procedures under section 2.3, which, among other things, provide guidance on the collection of information concerning U.S. persons. It is my understanding that, like the process for developing procedures required by section 2.3, the ODNI Office of General Counsel has been closely involved in the development of procedures under section 2.4 since the 2008 amendment and, if confirmed, I will ensure that the office remains closely involved in the development of any future procedures under this section.

- g. Procedures under section 2.9 on undisclosed participation in any organization in the United States by anyone acting on behalf of an IC element.

ANSWER: Section 2.9 of Executive Order 12333 is intended to regulate undisclosed participation in any organization in the United States by anyone acting on behalf of an Intelligence Community element and is one of the key privacy and civil liberties protections found in the executive order. Like the procedures required by section 2.4, most Intelligence Community elements have

incorporated the section 2.9 procedures into their Attorney General-approved procedures established under section 2.3. My understanding is that, like the procedures discussed in subsections e. and f. of my response to this question, the ODNI Office of General Counsel has been closely involved in developing these procedures and, if confirmed, I will ensure that the office continues to prioritize these issues.

Implementation of the FISA Amendments Act of 2012

QUESTION 7: Under section 702 of the Foreign Intelligence Surveillance Act, as added by the FISA Amendments Act of 2008 (FISA Amendments Act), the Attorney General and the DNI may authorize jointly, for a period of up to one year from the effective date of the authorization, the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information. The FISA Amendments Act was signed into law in July 2008 and reauthorized for five years in December 2012. The FISA Amendments Act also provide for semiannual or annual assessments and reviews as described in section 702(l) of FISA.

- a. Describe your understanding of the matters that the Attorney General and DNI, with the assistance of the GC/ODNI, should evaluate in order to determine, on the basis of your experience with the FISA Amendments Act (and annually thereafter), whether there should be revisions in the substance or implementation of (1) targeting procedures, (2) minimization procedures, and (3) guidelines required by the FISA Amendments Act, in order to ensure both their effectiveness and their compliance with any applicable constitutional or statutory requirements.

ANSWER: Under Section 702, the Attorney General and the Director of National Intelligence make annual certifications that authorize Intelligence Community elements to target non-U.S. persons reasonably believed to located outside the United States to acquire specific categories of foreign intelligence information. As part of that annual certification, by statute, the Attorney General and the Director of National Intelligence must make a number of attestations, including:

- That the targeting procedures “are reasonably designed to . . . ensure that an acquisition authorized under . . . [Section 702] . . . is limited to targeting persons reasonably believed to be located outside the United States” and “prevent the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States.” See 50 U.S.C. 1881a(g)(2)(A).
- That the minimization procedures “are reasonably designed in light of the purpose and technique of the particular surveillance to minimize the acquisition and retention, and prohibit the dissemination, of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information” and also “require that nonpublicly available information, which is not foreign intelligence information . . . shall not be disseminated in a manner that identifies any United States person, without that person’s consent, unless such person’s identity is necessary to understand foreign intelligence information or assess its importance.” See 50 U.S.C. 1881a(g)(2)(A)(ii) (citing to 50 U.S.C. 1801(h)).
- That both sets of procedures are consistent with the requirements of the Fourth Amendment. See 50 U.S.C. 1881a(g)(2)(A).

In making these attestations, it is my understanding that the Attorney General and the Director of National Intelligence rely on the information they have learned over the course of the year in their roles as overseers of the program. The Department of Justice and the ODNI, including attorneys within the ODNI Office of General Counsel, are engaged in comprehensive and rigorous oversight of the elements’ implementation of the Section 702 program, which involves regular oversight reviews of targeting decisions, querying activities, and minimization practices of each element that participates in the program. The Department of Justice and the ODNI also play a central role in identifying, reporting, and ensuring remediation of any instances of non-compliance. I understand that this extensive oversight informs both the Attorney General’s and the Director of National Intelligence’s attestations in the Section 702 certifications and their recommendations on whether the relevant certifications, including

underlying targeting and minimization procedures, should be revised to ensure the effective implementation of this authority in a manner that comports with all constitutional and statutory requirements.

- b. Describe how the semiannual or annual assessments and reviews required by the FISA Amendments Act should be integrated, both in substance and timing, into the process by which the Attorney General and DNI consider whether there should be revisions for the next annual authorization or authorizations under the FISA Amendments Act, including in applicable targeting and minimization procedures and guidelines.

ANSWER: Section 702(l) requires the Attorney General and the Director of National Intelligence to assess compliance with the targeting and minimization procedures and identify any compliance trends. The Attorney General and the Director of National Intelligence must submit these assessments to the Foreign Intelligence Surveillance Court and the relevant congressional committees at least once every six months. I understand that the statutory requirement to identify and assess the Intelligence Community's implementation of the targeting and minimization procedures, identify compliance trends, and make recommendations on the program, also informs the Attorney General's and the Director of National Intelligence's attestations in the Section 702 certifications to the Foreign Intelligence Surveillance Court and their conclusion regarding whether revisions are necessary to ensure the effective implementation of this authority to ensure compliance with the Constitution and the statute. If confirmed, I look forward to learning more about how the ODNI and Department of Justice conduct their oversight of this program and assess these compliance trends.

- c. In addition to the matters described in the FISA Amendments Act for semiannual or annual assessment or review, are there additional matters that should be evaluated periodically by the Attorney General or the DNI to improve and ensure the lawful and effective administration of the FISA Amendments Act?

ANSWER: Although I have not yet had the opportunity to work on issues arising under Section 702, if confirmed I look forward to engaging with both ODNI and

Department of Justice staff to assess whether there are additional topics or issues that we should consider in conducting oversight. If confirmed, I will be committed to working to ensure that the Intelligence Committee fully and faithfully complies with the Constitution and U.S. law, including through its implementation of the Section 702 program.

QUESTION 8: In 2015, the Department of Justice issued a memorandum entitled "Restriction Regarding the Use of FISA Section 702 Information in Criminal Proceedings Against United States Persons." The current Administration has confirmed that the memorandum remains in effect.

- a. Do you believe there should be any restrictions on the use of information from Section 702 other than as evidence in criminal proceedings, i.e. as part of criminal investigations or as part of administrative or civil investigations or proceedings?

ANSWER: I was not involved in the drafting of the 2015 policy and, therefore, I am not personally aware of what factors the government may have considered when deciding its scope and applicability. As such, I am not currently in a position to meaningfully assess whether the scope of the 2015 policy should be changed. If confirmed, I fully expect to be briefed further on Section 702, including on the development and implementation of this policy.

- b. The limitations in the 2015 policy include an exception for "transnational crime." Do you support this exception and, if so, what do you believe should be considered a "transnational crime"?

ANSWER: Although I was not involved in the drafting of the 2015 policy referenced above, I understand that, to date, the only criminal cases in which information obtained or derived from Section 702 has been used against an aggrieved person have been prosecutions for terrorism-related offenses. I understand that no such determination has yet been made regarding "transnational crime." In the event the government seeks to use such information in a prosecution for a transnational criminal offense, a determination will be made at that time regarding the types of specific offenses that fall within the listed category. If confirmed, I would expect to be part of these discussions.

QUESTION 9: In his responses to Questions for the Record, John Demers, the nominee to be Assistant Attorney General for the National Security Division at the U.S. Department of Justice, wrote that whether a U.S. person has been reverse targeted under Section 702 was a “fact specific inquiry that would involve consideration of a variety of factors.” As an example, Mr. Demers stated that “if a Section 702 tasking resulted in substantial reporting by the Intelligence Community regarding a U.S. person, but little reporting about the Section 702 target, that might be an indication that reverse targeting may have occurred.”

- a. Do you agree that substantial reporting regarding a U.S. person and little reporting about the foreign target could be an indication that reverse targeting may have occurred?

ANSWER: Section 702 prohibits reverse targeting. It is my understanding that the determination of whether a particular, known U.S. person has been reverse targeted is fact-specific and necessitates evaluation of a variety of factors. In its 2014 report regarding the government’s use and implementation of Section 702, the Privacy and Civil Liberties Oversight Board noted that if a Section 702 tasking resulted in substantial reporting by the Intelligence Community regarding a U.S. person, but little reporting about the Section 702 target, that might be an indication that reverse targeting may have occurred. I agree that one possible indication of reverse targeting of a U.S. person could be the existence of substantial reporting about that U.S. person, but little to no reporting about the foreign target.

- b. Are there other factors, such as the number or frequency of queries involving U.S. persons, that could be an indication of reverse targeting?

ANSWER: As indicated above, it is my understanding that a reverse targeting determination is a fact-specific inquiry that would involve consideration of a variety of factors. As the Privacy and Civil Liberties Oversight Board noted in its 2014 report, cited above, it found no instances of intentional misuse of Section 702 authority. That notwithstanding, if confirmed, if I become aware of instances of reverse targeting through ODNI’s Section 702 oversight function, I will work with the Department of Justice to determine the cause and implement solutions to ensure the problem does not recur.

Encryption

QUESTION 10: Under Section 702 of FISA, the government can direct an electronic communications service provider to provide “assistance necessary to accomplish the acquisition.” Under Section 702(h)(5), if a provider does not comply with a directive, the government may seek an order from the FISA Court to compel compliance. The government has stated that it has “not to date sought an order pursuant to Section 702(h)(5) seeking to compel an electronic communication service provider to alter the encryption afforded by a service or product it offers.”

- a. Do you believe that the government should inform the FISA Court when it issues a directive to a provider to alter the encryption afforded by a service or product, regardless of whether the government files a motion to compel compliance?

ANSWER: Section 702(h) permits the Attorney General and the Director of National Intelligence to “direct . . . an electronic communication service provider to . . . immediately provide the Government with all information, facilities, or assistance necessary to accomplish the acquisition in a manner that will protect the secrecy of the acquisition and produce a minimum of interference with the services that such electronic communication service provider is providing to the target of the acquisition.” 50 U.S.C. 1881a(h)(1). Under Section 702(h)(5), the Attorney General may file a petition for an order to compel the provider if the provider fails to comply with a directive. 50 U.S.C. 1881a(h)(5)(A). I am not familiar with whether Section 702(h) could be used to compel an electronic service provider in the situation you describe, but I imagine it would depend in large part upon the facts of the case, and would defer to the Department of Justice. It is my understanding that the Foreign Intelligence Surveillance Court would receive a Title VII directive only if a service provider challenged the lawfulness of the directive or if the Attorney General moved to compel a provider.

- b. Will you commit to notifying Congress of any such directive?

ANSWER: If confirmed, I commit to working with Director Coats, the Department of Justice, and all Intelligence Community elements, to ensure that the ODNI complies with the obligations both in the National Security Act and the Foreign

Intelligence Surveillance Act to keep the intelligence committees informed of intelligence activities.

Other Surveillance Matters

QUESTION 11: Section 4 of PPD-28 calls on each Intelligence Community element to update existing or issue policies and procedures to implement principles for safeguarding all personal information collected through SIGINT. Those policies and procedures are currently posted publicly. Will you ensure that the Intelligence Community continues to post these policies and procedures as well as any modifications, superseding policies and procedures, or significant interpretations?

ANSWER: If confirmed, I will ensure that the Intelligence Community continues to publicly post its PPD-28 implementation procedures, along with any superseding procedures, consistent with the need to protect sensitive intelligence sources and methods. I will likewise endeavor to ensure that any significant interpretations of these procedures are made public, consistent with the need to protect sensitive intelligence sources and methods.

QUESTION 12: Are there any circumstances in which an element of the Intelligence Community may not conduct a warrantless search for a U.S. person of communications that have been collected pursuant to Section 12333? If so, please describe.

ANSWER: Executive Order 12333 sets forth the goals, directions, duties, and responsibilities for United States intelligence efforts, including describing the structure and authorities of the Intelligence Community, and sets certain rules for the conduct of intelligence activities. Section 2 of the order addresses the collection of information concerning U.S. persons, including a delineation of particular collection techniques, and also requires that Intelligence Community elements collect, retain, or disseminate information concerning United States persons only in accordance with procedures established by the head of the Intelligence Community element concerned (or by the head of a department containing such element) and approved by the Attorney General after consultation with the Director of National Intelligence. Because I have not yet had the opportunity to see how these Attorney General-approved procedures

would apply in practice, particularly with regard to the collection of communications, I am not in a position to comment on Intelligence Community elements' particular practices regarding queries of already-collected data for information concerning U.S. persons.

Detention and Interrogation

QUESTION 13: Have you read the declassified, redacted Executive Summary of the Study?

ANSWER: Yes.

QUESTION 14: If confirmed, will you commit to reading portions of the full, classified Study relevant to the legal analysis of the program and the ODNI?

ANSWER: My understanding is that, at the present time, the ODNI does not possess a copy of the full, classified Study or any portion of it. If confirmed, I do commit to reading any portions of the full, classified Study made available to me.

Transparency

QUESTION 15: Executive Order 13526 (December 29, 2009) provides that: "In no case shall information be classified, continue to be maintained as classified, or fail to be declassified in order to: (1) conceal violations of law, inefficiency, or administrative error; (2) prevent embarrassment to a person, organization, or agency; (3) restrain competition; or (4) prevent or delay the release of information that does not require protection in the interest of national security." Executive Order 13292 (March 25, 2003) and Executive Order 12958 (April 17, 1995) prohibited classification based on the same factors. Do you agree with the prohibitions in these Executive Orders?

ANSWER: Yes, I agree with the prohibitions and limitations set forth in section 1.7 of Executive Order 13526.

QUESTION 16: Should the reports of the Privacy and Civil Liberties Board be made public?

ANSWER: I believe that the Privacy and Civil Liberties Oversight Board's reports should be made public consistent with the Board's enabling statute that provides that its reports should be "made available to the public to the greatest extent that is consistent with the protection of classified information and applicable law."

The Privacy and Civil Liberties Oversight Board is an independent agency within the executive branch and it performs important advice and oversight functions. I understand that the Board worked very closely with the Intelligence Community to ensure that its report on Section 702 could be released in a wholly unclassified manner. The report performed a public service by providing an extensively detailed and readily understandable description of the Section 702 program. If confirmed, I intend to support this close working relationship.

QUESTION 17: If, for any reason, you make a public statement that is inaccurate, do you commit to making a public statement correcting the record?

ANSWER: If confirmed, I intend to ensure that any public statements that I make are entirely accurate. However, if for some reason I inadvertently make a public statement that is inaccurate, I will – consistent with the requirement to protect classified information and sensitive intelligence sources and methods – publicly correct that statement. If I am not able to make a public correction because of a requirement to protect such information, I will inform the Committee of the inaccuracy in a classified setting.

Chiefs of Mission

QUESTION 18: If a U.S. Ambassador directs the Intelligence Community to cease a particular program or operation in the country where the ambassador is serving, is the Intelligence Community obligated to do so, absent or pending intervention from the president?

ANSWER: 22 U.S.C. 3927 states that: "Under the direction of the President, the chief of mission to a foreign country . . . shall have full responsibility for the direction, coordination, and supervision of all Government executive branch

employees in that country” In practice, I believe that it is important for the Intelligence Community to work collaboratively with the State Department to proactively anticipate and resolve disagreements and, if confirmed, I will work with the Legal Adviser to the State Department to do that.

Media Policies

QUESTION 19: On July 12, 2013, the Department of Justice released a Report on Review of News Media Policies. Which aspects of that Review do you agree with, and which would you advise be modified?

ANSWER: I have reviewed the report and the regulation promulgated thereto at 28 CFR 50.10. My understanding is that it primarily involves internal Department of Justice policies and practices governing how law enforcement conducts criminal and civil investigations involving members of the news media. Sections (c)(4)(vi) and (c)(5)(v) of the regulation require certain certifications from the Director of National Intelligence in investigations or prosecutions of unauthorized disclosures. I am not aware of whether the Director has ever issued such certifications or, more generally, how the policy has been applied in practice and, therefore, it would be premature for me to assess whether those sections should be modified. If confirmed, I will review the report and policy in light of any information not available to me now.

Evaluation of the Office of the Director of National Intelligence

QUESTION 20: Members of the Committee have expressed concern that the ODNI does not have all of the legal authorities necessary to fulfill congressional expectations for the office. Do you have any preliminary observations on strengths or weaknesses of the authorities of the Office with respect to a successful mission of the ODNI? If so, please describe.

ANSWER: In my interactions with ODNI staff, I have observed that the ODNI has a wide-ranging set of responsibilities that frequently involve the equities of other federal government departments and agencies. I have not yet formed an opinion, however, on the relative strengths or weaknesses of ODNI’s current authorities as they apply to its mission. If confirmed, I intend to consider this question closely throughout my tenure as ODNI General Counsel and I will work with the

Committee to address any areas where the ODNl would require additional authorities.

Pending Legislation

QUESTION 21: The Senate and House of Representatives have considered legislation over the course of several Congresses on subjects such as providing conditions for the federally compelled disclosure of information by certain persons connected with the news media, the state secrets privilege, and whistleblower protections. In your view, what evidence and issues should be considered by the Administration and by Congress in the consideration of whether legislation on these subjects should be enacted? Please discuss each subject separately.

ANSWER: The subjects described in the question: the compelled disclosure of information by certain persons connected with the news media; the state secrets privilege; and whistleblower protections are overlapping to an extent in that they involve the sometimes competing, but important, interests of public transparency and the protection of information for national security purposes. In my view, the Administration and Congress should therefore consider evidence and issues tied to these two interests in considering legislation addressing these subjects. With regard to the news media, legislation requiring or limiting compelled disclosure in certain cases could raise constitutional issues both from the standpoint of the president's obligation to protect national security and the constitutionally protected freedom of the press. Legislation regarding the state secrets privilege would similarly require an assessment of the president's constitutional obligations and authorities and appropriate resolution of civil litigation matters. Consideration of these issues would also benefit from careful review of the implementation of laws and policies already in place. For example, it is my understanding that, with regard to whistleblower protections, the provisions of Intelligence Community Directive 120, Intelligence Community Whistleblower Protection, have already been incorporated into law.

Executive Branch Oversight of Intelligence Activities

QUESTION 22: Are there improvements, in terms of resources, methodology, and objectives that you believe should be considered concerning Executive Branch oversight of the intelligence activities of the United States Government?

ANSWER: All three branches of government conduct oversight over intelligence activities. In the Executive Branch, this oversight is conducted from entities inside Intelligence Community elements, such as offices of general counsel, agency civil liberties and privacy officials, and inspectors general. In addition, independent entities like the Privacy and Civil Liberties Oversight Board and Intelligence Oversight Board play a critical role in overseeing the Intelligence Community's activities. The Department of Justice also conducts oversight of activities under the Foreign Intelligence Surveillance Act.

I cannot say at this point whether improvements in the structure or function of Executive Branch oversight activities are needed. However, if confirmed I will carefully consider whether they are and work to make any such improvements accordingly. I view oversight to be a significant responsibility of the ODNI General Counsel given his or her role as the chief legal officer of the ODNI and the Director of National Intelligence's statutory obligation under section 102A(f)(4) of the National Security Act to "ensure compliance with the Constitution and laws of the United States."

Relationship with Other Officials in the Intelligence Community

QUESTION 23: What should be the relationship of the General Counsel of the Office of the Director of National Intelligence with respect to the following officers of the Intelligence Community:

- a. General Counsel, Central Intelligence Agency

ANSWER: As I stated in my response to question 4, above, the Director of National Intelligence exercises oversight of the Central Intelligence Agency and, as the chief legal officer of the ODNI, the ODNI General Counsel plays a significant role in helping the Director carry out this function. It is my understanding that, with regard to the relationship between the ODNI General Counsel and the

General Counsel of the Central Intelligence Agency, this has meant that, in practice, both general counsels work together closely on significant matters of legal interpretation or legal issues that otherwise have implications for the broader Intelligence Community. If confirmed, I will seek to maintain what I understand has been an open and collaborative working relationship between past general counsels for the two agencies.

b. Assistant Attorney General for National Security, Department of Justice

ANSWER: Although the National Security Division of the Department of Justice is not part of the Intelligence Community, it is my understanding that the ODNI General Counsel and the Assistant Attorney General for National Security have had a close working relationship, mirrored by close working relationships among members of their respective offices. This close relationship is necessary because of the number of areas where the Director of National Intelligence and Attorney General share responsibilities. For instance, many of the procedures and guidelines required by Executive Order 12333 must be approved by the Attorney General in consultation with the Director. Activities under the Section 702 of the Foreign Intelligence Surveillance Act must be jointly authorized and overseen by the Attorney General and the Director. If confirmed, I will seek to maintain this close, collaborative relationship.

c. Inspector General, Office of the DNI

ANSWER: The ODNI General Counsel must have a close relationship with the Inspector General because, along with the ODNI Civil Liberties Protection Officer, they form the core group of officials responsible for overseeing ODNI's activities. The Inspector General has his or her own legal counsel to help carry out the IG's statutory obligations under section 103H of the National Security Act and, if confirmed, I will seek to maintain what I understand to be a close working relationship with both the IG and IG's legal counsel.

d. Civil Liberties and Privacy Office, Office of the DNI

ANSWER: The ODNI's Civil Liberties Protection Officer, who heads the ODNI Civil Liberties, Privacy, and Transparency Office and whose duties are outlined in Section 103D of the National Security Act reports directly to the Director of

National Intelligence by statute. In addition, he serves as the Chief Transparency Officer for the ODNI, and in that capacity, coordinates the implementation across the Intelligence Community of the *Principles of Intelligence Transparency*. It is my understanding the Civil Liberties Protection Officer and ODNI General Counsel, and their respective offices, have had a very close working relationship and, if confirmed, I will seek to maintain that relationship.

Professional Experience

QUESTION 24: For each of the of the following, describe specifically how your experiences will enable you to serve effectively as the General Counsel for the Office of the Director of National Intelligence. Include within each response a description of issues relating to the position that you can identify based on those experiences.

a. Partner, Holland & Knight, LLP:

ANSWER: Since joining Holland & Knight as a partner in March 2010, my practice has focused on assisting clients to comply with U.S. laws designed to protect our nation's critical infrastructure against acts of terrorism, including customs enforcement and border security matters. In doing so, I have worked closely and cooperatively with U.S. government attorneys and other officials, including those from the U.S. Department of Homeland Security, Federal Bureau of Investigation, and State Department. I also advise clients on issues relating to government procurement and compliance with federal acquisition requirements.

b. Deputy General Counsel, U.S. Department of Homeland Security

ANSWER: From October 2003 to August 2005, I served as the first Deputy General Counsel of the U.S. Department of Homeland Security. During my tenure, I worked on a wide variety of matters, including counterterrorism, cybersecurity, data privacy, information sharing, incident response, government procurement, transportation security, classification issues, and infrastructure protection. During the course of my service at the department, I worked closely with my colleagues across both DHS component agencies and headquarters components offices.

While at the Department of Homeland Security, I regularly worked on a number of cross-cutting interagency matters and issues, and represented the agency at senior-level meetings held at the White House or other federal agencies. This experience provided me a strong understanding of the interagency process, which I believe will be valuable, if confirmed, as ODNI General Counsel, given the agency's significant coordinating role.

Finally, as the Deputy General Counsel and the agency's second-ranking legal officer, I had significant management responsibility for the nearly 1,500 DHS attorneys. In that supervisory role I gained deep day-to-day management and administrative experience attendant to helping oversee an office of that size. While I understand that the ODNI Office of General Counsel has significantly fewer attorneys, the management skills I obtained during my tenure at DHS will be helpful to my service at ODNI.

c. Deputy Associate Attorney General, U.S. Department of Justice

ANSWER: From January 2002 to October 2003, I was Deputy Associate Attorney General, where I reported to the Associate Attorney General – the department's third-ranking official. The Office of the Associate Attorney General oversaw matters arising throughout the various civil litigating divisions of the Justice Department. During my tenure, I worked on certain national security related matters, including civil litigation regarding terrorist financing, government sanctions, and immigration enforcement. I worked closely with attorneys from multiple DOJ components, Treasury, State, and the Intelligence Community. I also coordinated with staff of the National Commission on Terrorist Attacks Upon the United States (the "9/11 Commission") to provide access to requested information and other assistance as needed.

In addition to working on certain national security matters, I also oversaw cases involving government contracting, corporate fraud, environmental issues, and international treaties. During my tenure, I also served as a senior member of a DOJ strategic management task force responsible for reorganizing and streamlining agency resources consistent with post-9/11 priorities.

QUESTION 25: What, if any, conflicts might arise from your private practice if you are confirmed as General Counsel, and how would you address these conflicts.

ANSWER: In the course of the nomination process, I have consulted with ODNI's Designated Ethics Official, who in turn, consulted with the Office of Government Ethics to identify potential conflicts of interest. Any potential conflict of interest will be resolved consistent with the conflicts of interest statutes, standards of conduct, and the terms of the Ethics Agreement that I have executed and which has been provided to the Committee. Consistent with the Ethics Agreement and the ethics pledge set forth in Executive Order 13770, if confirmed, I will not personally and substantially participate in any particular matter in which I know I have a financial interest, in which I know a former client of mine is a party or represents a party, or in which I know that Holland & Knight LLP is or represents a party.

QUESTION 26: Please provide copies of the publications in your responses to the Committee's Questionnaire for Completion by Presidential Nominees.

ANSWER: I have provided herewith copies of the three documents that I identified under the heading of "Publications" in response to Question 13 of the Committee's Questionnaire for Completion by Presidential Nominees.