

**Nomination of Travis LeBlanc to be a  
Member of the Privacy and Civil Liberties Oversight Board  
Questions for the Record  
February 6, 2019**

**QUESTIONS FROM SENATOR FEINSTEIN**

1. One of the most contentious issues in the recent debate over reauthorization of Section 702 was the issue of U.S. person queries. Please respond with your views on U.S. person queries under Section 702.

- a. **What can the Board do to better inform the public's understanding of U.S. person queries under Section 702?**

In 2014, the Board's report on Section 702 examined this issue in detail and made two recommendations to enhance protection of privacy and civil liberties with respect to U.S. person queries. In its February 2016 Recommendations Assessment Report, the Board found that those recommendations were "being implemented" and "substantially implemented," respectively. The Board could provide an update on whether these recommendations have been fully implemented.

Additionally, the Board could educate the public more effectively regarding U.S. person queries under Section 702 as well as provide more education on Section 702 overall. Much of the Board's prior work has been tailored for a government audience and drafted with a presumption of familiarity with Intelligence Community practices. The Board could develop a presentation of unclassified material that would explain Section 702 to the American public in a straightforward and user-friendly format.

Given the importance of this issue and the Board's past work on it, encouraging responsible transparency about U.S. person queries of data collected under Section 702 should remain an appropriate and important subject for continued Board oversight.

- b. **Can the Board, in your view, help determine the total number of U.S. persons' information collected under 702?**

Encouraging responsible statistical transparency about the effects of programs within the Board's jurisdiction on U.S. persons' privacy, including Section 702, has been, and should remain, an important element of the Board's work.

Given this issue's importance, the Board's past work on it, and the National Security Agency's expression of interest, described in the Board's February 2016 Recommendations Assessment Report, in "work[ing] with Board staff to develop ... measures" for U.S. person communications collected under Section 702, this would be an appropriate and important subject for continued Board oversight.

- c. **Can the Board, in your view, help determine the number of U.S. person queries conducted by the FBI on an annual basis?**

I do not currently have access to classified information about how the FBI conducts U.S. person queries in Section 702 data, so I have not formed an opinion about the barriers to producing an annual estimate. The DOJ Inspector General report recently

mandated by the passage of the FISA Amendments Reauthorization Act of 2017 should provide additional information about potential approaches and identify “any impediments, including operational, technical, or policy impediments” to count the number of such queries the FBI conducts each year. Given this issue’s importance, and the Board’s past work on it, encouraging responsible transparency about U.S. person queries of data collected under Section 702 should remain an appropriate and important subject for continued Board oversight.

2. In 2016, the Foreign Intelligence Surveillance Court (FISC) rejected the NSA’s 702 certification because of “ongoing compliance problems” in the “abouts collection” program. The issues reported to the FISC regarding “abouts collection” were so significant that the court would not certify that 702 was operating consistent with the Fourth Amendment. (FISC’s Order Extending the 2016 Certification dated October 26, 2016, Pg.2)

The recent 702 reauthorization bill that was signed into law included a provision that will require Congress to review any proposal by the NSA to restart “abouts collection” in the future. (S. 139, FISA Amendments Act of 2017) **What could the Board do to help the public and the Congress better understand both the benefits and “compliance problems” associated with “abouts collection?”**

In response to a serious compliance problem reported to the Foreign Intelligence Surveillance Court in late 2016, and after unsuccessful attempts to remedy that problem, NSA announced in April 2017 that it would cease “abouts” collection. Resuming this practice would require FISC approval, followed by a congressional review procedure recently mandated by Congress.

In the past, the Board’s work has enhanced public understanding of the implications of this type of collection for Americans’ privacy and civil liberties. If NSA seeks to resume such collection by requesting approval from the FISC and Congress, and should that request, in turn, be granted and the collection resume, the attendant privacy and civil liberties concerns would once again become an appropriate and important focus for the Board’s independent expertise and continued oversight.