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January 23, 2006

The Honorable John D. Negroponte
Director of National Intelligence
Office of the Director of National
Intelligence
Washington, DC 20511

The Honorable Donald Rumsfeld
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301

Lieutenant General Keith B. Alexander
Director, National Security Agency
9800 Savage Road
Ft. George Meade, MD 20755

Dear Director Negroponte, Secretary Rumsfeld and Lieutenant General Alexander:

I have been greatly disturbed by acknowledgments that the President authorized the National Security Agency ("NSA") to engage in surveillance of Americans within the United States without obtaining court orders under the Foreign Intelligence Surveillance Act ("FISA"), despite FISA's express prohibition of this type of warrantless national security wiretaps. Many members of Congress have called for a comprehensive congressional investigation into this program, and asked the President to provide a detailed explanation of the surveillance program and of the Administration's view of its legal authority.

I am writing to ask about a specific issue that has arisen in recent press reports: the NSA's "data mining" of the communications of millions of Americans. In order to conduct comprehensive oversight, it is important that Congress understand your view of the NSA's legal authority to carry out broad-ranging surveillance inside the United States without targeting a specific person, and when the NSA can use automated data analysis, often called "data mining," of communications to draw inferences about individuals who were not previously suspected of wrongdoing. I raise these questions based on news stories indicating that the NSA is accessing the infrastructure of major U.S. communications companies and using data mining techniques to look for suspicious links or patterns in vast amounts of communications, including communications of Americans

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inside the United States.¹

While I agree that the government must continue to develop new technologies to combat terrorism, this revelation raises serious legal and policy questions about the NSA's activities over the past four years. If this type of potentially intrusive technology is being used against Americans inside the United States, Congress must be given an opportunity to consider both its effectiveness and the privacy implications for Americans – and, if appropriate, to enact proper safeguards. It should not be implemented in secret by the executive branch, without congressional authority or oversight.

Accordingly, please answer expeditiously the following questions about the NSA's program. I understand that some of the answers to these questions may need to be provided in classified form, but expect that you will respond publicly to the extent possible.

1. Please explain how and under what authority the NSA intercepts or analyzes communications or related transactional data that are either entirely within the United States or have at least one party inside the United States, when NSA is not targeting the communications of a specific person.
2. Please explain how and under what authority the NSA carries out surveillance with the cooperation of U.S. communications companies as opposed to situations where NSA operates domestically without such cooperation. When the NSA has the cooperation of U.S. communications companies, explain under what circumstances that cooperation is pursuant to court order and when it is not.
3. Has the NSA been employing automated data analysis, or data mining, techniques to analyze the communications of Americans within the United States, or working with other agencies within the Intelligence Community to do so? If so, does the analysis involve transactional information about those communications, the contents of those communications, or both? Has the results of this analysis served as the basis for warrantless wiretaps of Americans in the United States or for obtaining FISA warrants for surveillance? For what other purposes have these results been used?
4. Please provide any studies, reports, memos, or other analyses generated within the NSA, the Defense Department or the Office of the Director of National Intelligence, or provided to those entities by the Department of Justice or any other department or agency, discussing the NSA's legal authority to conduct

¹ "Spy Agency Mined Vast Data Trove, Officials Report," *New York Times*, December 24, 2005; "NSA Spying Inquiry May Be Expanded," *New York Times*, December 25, 2005; "Tinker, Tailor, Miner, Spy," *Slate.com*, January 3, 2006.

automated data analysis, or data mining, within the United States; the effectiveness of such technology; or any consideration of the privacy issues relating to implementing such a program within the United States.

As Congress moves forward with a full investigation and hearings on these extremely important matters, I take seriously our obligation as lawmakers to provide the executive branch with the tools that it needs to combat terrorism. Unfortunately, it appears the Administration has not taken seriously its obligation to keep Congress fully informed about its domestic surveillance programs and to proceed in accordance with the law. I hope that you will respond to my questions as soon as possible so that we can begin to work, together, on the serious threats facing our country, while ensuring that the constitutional and legal rights of Americans are respected.

Sincerely,



Russell D. Feingold
U.S. Senator