

January 18, 2017

Senator Richard Burr, Chairman
Senator Mark Warner, Vice Chairman
U.S. Senate Select Committee on Intelligence
211 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Burr and Vice Chairman Warner:

Thank you for the Committee's letter dated January 18, 2016. As you requested, I have completed the Committee's Questions for the Record, which are enclosed.

I look forward to receiving and answering your classified questions.

Sincerely,

Mike Pompeo

Enclosure

**QUESTIONS FOR THE RECORD
REPRESENTATIVE MIKE POMPEO**

QUESTION FOR THE RECORD FROM SENATOR FEINSTEIN

During his campaign, President-elect Trump publicly called for U.S. forces to use torture in the War on Terror. He said he'd reinstitute waterboarding, which he called a minor form of torture, and bring back "a hell of a lot worse than waterboarding."

- 1. Do you believe that waterboarding and the other 'Enhanced Interrogation Techniques' previously utilized by CIA personnel in the Rendition, Detention, and Interrogation (RDI) program, such as stress positions, forced nudity, slamming individuals into walls, slapping or hitting detainees, constitute torture?**

In the past decade, the law has changed significantly concerning interrogation techniques. Section 1045 of the National Defense Authorization Act for FY2016 provides that no individual in U.S. custody may be subjected to any interrogation technique or approach that is not authorized by and listed in the Army Field Manual. Executive Order 13491 contains a similar requirement. Other statutes, including the Detainee Treatment Act of 2005, the Torture Statute, and the War Crimes Act, would prohibit certain interrogation techniques, alone or in combination. I understand the interrogation techniques mentioned in your question are currently prohibited. I have not sought legal counsel to address the hypothetical as to whether any prohibited techniques meet the legal definition of torture.

- 2. Do you believe that waterboarding is effective? If so, based on what?**

I understand the disagreement over the past use of waterboarding and whether information could have been obtained through other less coercive methods. The current Administration has submitted to the Committee written documents detailing results of the Agency's interrogation program. I would refer you to those publicly available documents from the current Administration. See, for example, https://www.cia.gov/library/reports/CIAs_June2013_Response_to_the_SSCI_Study_on_the_Former_Detention_and_Interrogation_Program.pdf and <https://www.cia.gov/news-information/press-releases-statements/2014-press-releases-statements/cia-fact-sheet-ssci-study-on-detention-interrogation-program.html>. Those documents also note that an exact scientific study has not been performed as to whether less coercive methods could have produced the same results.

- 3. Do you agree that waterboarding and other former CIA "Enhanced Interrogation Techniques," are unlawful and will you commit to upholding and executing all applicable law that prohibits them?**

Yes. Section 1045 of the National Defense Authorization Act for FY2016 provides that no individual in U.S. custody may be subjected to any interrogation technique or approach that is not authorized by and listed in the Army Field Manual. Executive Order

13491 contains a similar requirement. Other statutes, including the Detainee Treatment Act of 2005, the Torture Statute, and the War Crimes Act, would prohibit certain interrogation techniques, alone or in combination.

- 4. Will you provide this committee notice if the Justice Department concludes that a statute is an unconstitutional infringement on Executive Power, or narrowly interprets a statute to avoid such an alleged infringement?**

I am committed to keeping the Committee fully and currently informed of any changes to detention and interrogation policy in accordance with applicable law. I cannot speak for the Department of Justice, but will honor requests for information from the Committee, including providing relevant legal analysis underlying or supporting CIA's intelligence activities, as required by law.

- 5. In your prehearing questionnaires you've stated a desire to consult with intelligence professionals to understand the current operational need as of 2017 for any changes to current interrogation or detention programs involving CIA.**

- a) Will you commit to refraining from taking any steps to authorize or implement any plan that would bring back waterboarding or any other enhanced interrogation techniques?**

As noted in my response to the Committee's pre-hearing questions, if confirmed, I will consult with experts at the Agency and at other organizations in the U.S. government on whether the Army Field Manual uniform application is an impediment to gathering vital intelligence to protect the country or whether any rewrite of the Army Field Manual is needed. If any differences are justified, a fundamental requirement is that such differences fully comply with law, including laws governing the treatment and interrogation of individuals. And any such differences would need to be based on a clear, justified need and carefully implemented by appropriate experts and with full oversight. I note that other organizations, including the Department of Defense and FBI, have extensive experience with detention and interrogation and would want to understand any unique reasons for the involvement of the CIA in detention and interrogation. I would expect to consult with the full Congressional Intelligence Committees on any differences that are appropriate, including any changes to law that would be required.

- b) What would prompt you to review current law regarding interrogations?**

If experts believed current law was an impediment to gathering vital intelligence to protect the country, I would want to understand such impediments and whether any recommendations were appropriate for changing current law.

- c) Do you believe there are any circumstances in which a reinterpretation of current law (rather than a change in statutes) could justify departing from public Army Field Manual techniques?**

I am not aware of authorizations for departures from the Army Field Manual by the CIA. I have not consulted legal experts on any hypothetical circumstance that would impact existing legal interpretations, but I intend to fully comply with the law.

QUESTIONS FOR THE RECORD FROM SENATOR WYDEN

Surveillance

Your January 16, 2016, op-ed in the *Wall Street Journal* stated: “Congress should pass a law re-establishing collection of all metadata, and combining it with publicly available financial and lifestyle information in a comprehensive, searchable database.” If confirmed, you will participate in policy discussions in which your views, and those of the CIA, will be solicited with regard to the necessary and appropriate scope of U.S. government surveillance activities.

- 6. In your responses to pre-hearing questions about the op-ed, you wrote: “I was referring to metadata of the type collected under the then-existing program that was available for review under procedures and conditions reviewed and approved by federal judges.” In addition to the bulk telephony metadata program conducted pursuant to Section 215 of FISA, there was also a bulk electronic communications metadata program conducted pursuant to Section 402 of FISA. Do you support the resumption of that program as well and, if so, would you combine it with bulk telephony metadata into a single database?**

As I indicated at my confirmation hearing, I voted for the USA Freedom Act that effectively ended the bulk metadata program conducted pursuant to Section 215. If I am confirmed, and Agency officials inform me they believe the current programs and legal framework are insufficient to protect the country, I would make appropriate recommendations for any needed changes to laws and regulations.

- 7. During the hearing, you stated that “the American people demand that if there is publicly available information, someone has out there on a publicly available site, I think we have an obligation to use that information to keep Americans safe.”**
- a) Do you believe the U.S. government should collect and retain this information when it pertains to Americans who are not connected to an investigation?**
- b) If so, are there boundaries to the appropriate scope of such collection and retention?**

I made the statement that you quote in the context of if “someone’s out there on their Facebook page talking about an attack or plotting an attack against America.” In such cases, publicly available information can provide relevant information and generally involves fewer privacy concerns than other collection techniques. Of

course there are boundaries; any collection and retention must be conducted in accordance with the Constitution, statutes, and applicable presidential directives.

- 8. During the hearing, you were asked whether there were boundaries to the kind of “financial and lifestyle information” you would include in this database. You responded that the boundaries would be legal. Do you believe that, if information on U.S. persons is legally available to the U.S. government on an individualized or limited basis, it is always legal or appropriate to collect and retain it in bulk and include it in a comprehensive database? If not, please elaborate.**

I have not consulted legal experts on a hypothetical database and whether information that is legally available on an individualized basis could, in every case, be collected and retained in bulk. Such a compilation of information would require examining the specific types of information and ensuring that any collection and retention of information was in accordance with the Constitution, statutes, and regulations. Of course there are boundaries; any collection and retention must be conducted in accordance with the Constitution, statutes, and applicable presidential directives.

- 9. In your responses to pre-hearing questions, you wrote that “I did not set forth a specific list of items, but in general was referring to publicly available information, not information purchased by third parties.” (emphasis added.)**
- a) Are there any examples of information that could be purchased or otherwise obtained from third parties, such as data brokers, that could, or should be collected with regard to Americans who are not connected to an investigation?**
- b) Are there any such examples of information that could, or should be included in a comprehensive database?**

I have not studied what information is available from third parties and the applicable legal restrictions on obtaining any such information.

Information from foreign partners

In your responses to the Committee’s pre-hearing questions, you wrote “If the CIA requests a foreign partner collect communications of a U.S. person, I understand that collection and dissemination should be done pursuant to the same level of approvals that would be required if the CIA itself were to collect those communications.” During the hearing, you reiterated this, stating “It is not lawful to outsource that which we cannot do, the Agency cannot do under its laws.” However, your responses to pre-hearing questions also stated that, if a foreign partner collects the communications of U.S. persons independently and not at the request of the CIA, “It is appropriate for the CIA to receive such information from foreign partners without the same requirements that would apply if the CIA itself were to collect the information or to request that the foreign partner collect the information.” Furthermore, you wrote that “it may be appropriate for CIA to collect [that] information in bulk.”

Absent a specific request from the CIA, a foreign partner, company, organization or individual may nonetheless provide the CIA with the results of extensive cyber operations or other surveillance, including targeted collection against, or bulk collection that includes the communications of U.S. persons. That information could include the communications of U.S. political figures and political activists, leaders of nonprofit organizations, journalists, religious leaders, businesspeople whose interests conflict with those of President Trump, and countless innocent Americans. Moreover, Donald Trump already encouraged the Russian Government to conduct hacking operations against his opponent, thereby raising the prospect that the Russians could share with the U.S. government the results of their cyber-operations against Americans, absent a formal CIA request.

You wrote in response to pre-hearing questions, “In very limited circumstances, however, the manner in which a foreign partner collected the information could be so improper that it would not be appropriate for the CIA to receive, use, or further disseminate the information.”

10. Please detail what those “very limited circumstances” might be.

In my response, I was indicating that I could not rule out a circumstance in which the conduct of a foreign partner is so egregious that CIA would not receive the information. This would be a highly fact-specific determination, but information obtained through such egregious conduct may be inappropriate for the CIA to use or disseminate.

11. Besides the manner in which the information was collected, would the CIA’s receipt, use or dissemination of the information be in any way restricted by any of the following:

- a) **The source of the information, i.e., from an adversary rather than an ally or established partner;**
- b) **The intent of the foreign partner, i.e., to disrupt U.S. democracy or support illegal or undemocratic actions on the part of the U.S. government rather than support U.S. national security;**
- c) **The nature of the information, i.e., communications of U.S. persons engaged in First Amendment-protected political activity rather than terrorist suspects; or**
- d) **The scope of the information, i.e., bulk collection on thousands or millions of U.S. persons rather than a more limited set of communications.**

All of these considerations, and others, factor into decisions regarding CIA’s receipt, use, or dissemination of information received from a foreign partner. Importantly, if an activity furthers no legitimate U.S. governmental interest, CIA would not use the information. In addition, to the extent that the information implicates the privacy rights of Americans, the CIA’s use and dissemination of that information must remain reasonable and further U.S. governmental interests of sufficient importance to justify the privacy intrusion. The listed considerations could all be relevant to either the

nature or degree of a privacy intrusion, or to the importance of the U.S. governmental interests at stake.

During the hearing, you stated: “My understanding is that the same set of rules that surround the information if it were collected by the U.S. government apply to information that becomes available as a result of collection from non-U.S. sources as well.” The CIA’s collection of such information would presumably be governed by its authorities under Executive Order 12333. In your responses to pre-hearing questions, you wrote: “Because CIA activities under Executive Order 12333 are strictly focused on collection activities abroad, with very limited exceptions, there is a smaller risk that these activities could implicate U.S. person communications compared with collection under Section 702 [of FISA].” You cited this as among the reasons why “the CIA’s access to, queries of, use, dissemination, and retention of U.S. person communications under Executive Order 12333 are appropriately governed by broader and more flexible guidelines, compared with those required under Section 702 [of FISA].” (emphasis added.)

12. If the CIA received from a foreign power information known to include U.S. communications, should that necessitate the use of minimization guidelines more stringent than those applied to other information collected pursuant to Executive Order 12333 in which, as you stated, there is a “smaller risk” that they implicate U.S. person communications?

If there were a circumstance involving significant volumes of known U.S. person communication contents, I could foresee circumstances where more stringent minimization guidelines generally would be appropriate, but I would need to consult with experts on the applicable laws, including Attorney General approved guidelines that may apply.

13. In your responses to pre-hearing questions, you described as appropriate CIA queries of U.S. persons’ communications collected under Section 702 of FISA, so long as “the query term is reasonably likely to return foreign intelligence information, as defined in FISA.” Given your statement that CIA’s access to, queries of, use, dissemination, and retention of U.S. person communications under Executive Order 12333 should be “governed by broader and more flexible guidelines,” what do you believe the standard should be for CIA queries of information obtained pursuant to Executive Order 12333 known to include U.S. persons’ communications?

The requirements applicable to collection conducted under Executive Order 12333 should be flexible enough so that they remain feasible and practicable in the range of circumstances in which queries might be made, while also protecting the privacy rights of Americans. Because the categories of information outlined at Section 2.3 of Executive Order 12333 regarding the collection, retention and dissemination of U.S. person information largely fall within the definition of “foreign intelligence information” under the FISA, I understand the standards for querying are similar in some cases. I understand that in a number of circumstances, for information obtained under Executive Order 12333, the standard for conducting queries is whether the query is reasonably designed to

retrieve information related to a duly authorized activity of the CIA. I understand this is a complex area governed by detailed laws and rules and I would consult legal experts on specific standards for CIA queries of collected information.

14. In your responses to pre-hearing questions, you described as a priority “expanding intelligence cooperation, collaboration, and models of intelligence sharing with state and non-state partners globally.” In your Statement for the Record, you stated “We will need to rely on liaison services and new relationships, which are critical to gathering information around the world.”

- a) Please elaborate on which new partners and relationships you anticipate. Do they include Russia? Do they include companies, organizations or individuals that may conduct cyber operations against U.S. persons?**
- b) For what purposes do you anticipate establishing new relationships with state and non-state partners?**
- c) How do you anticipate mitigating counterintelligence risks?**
- d) Will you ensure that all new or expanded relationships have the approval of the country Chief of Mission, are fully coordinated with the Office of the Director of National Intelligence, and are fully and currently notified to the Committee?**

I was not referring to any specific partners or relationships that need to be developed, nor did I highlight this with a specific collection priority in mind. Since our national security threats are becoming more complex each day, the CIA needs to improve its collection operations—through both unilateral and cooperative means. As your question highlights, increased cooperation brings increased risk. The CIA already has a strong counterintelligence program and, if confirmed, I intend to look closely at our counterintelligence capabilities and operations to ensure they are up to the task. I will ensure that all foreign intelligence relationships are coordinated and approved in accordance with policy and law and that the Committee is notified in accordance with the law and standard practices. As we discussed in our personal meeting and during the hearing last week, I would welcome any specific recommendations or concerns you have regarding the CIA’s Congressional notification practices.

15. Is it legal or appropriate for the White House to obtain from a foreign partner, or a company, organization or individual information that includes the communications of U.S. persons? Is it legal or appropriate for the White House to retain such information? This question does not pertain to finished products provided by the Intelligence Community to the White House.

I am not an expert on legal guidance that may apply to the White House on receiving information. I am not aware of a role for the DCIA in providing legal counsel to the

White House on its activities. However, I understand that the White House is not an operational agency that pursues intelligence collection, but instead relies on the Intelligence Community to pursue lawful intelligence gathering, pursuant to rules and regulations governing such activities, including rules and regulations governing the collection and retention of information concerning U.S. persons.

16. If you were to learn that the White House had obtained or was retaining the information described above, do you commit to informing Congress?

See my response to the above question. I am not aware of a DCIA role in supervising White House activities or providing legal counsel to the White House on its activities. I understand the White House has legal expertise available to it from across the government, including the Office of Counsel to the President in the Executive Office of the President and the Department of Justice. If confirmed, I will comply with legal requirements to keep Congress informed.

Chief of Mission authority

Questions previously submitted to you included the following:

“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...’ Do you believe that, absent direction from the President, the CIA is obligated to cease intelligence activities, including but not limited to liaison relationships that do not have the approval of the chief of mission?”

17. In your response, you stated that you would “seek to resolve the disagreement with the Secretary of State or, in the extremely rare circumstance in which the disagreement could not be resolved, seek further guidance from the President.” If the disagreement has not yet been resolved with the Secretary of State and further guidance from the President has not yet been received, is the CIA obligated to cease the intelligence activities at issue? Please respond yes or no. If the answer is no, please provide supporting analysis of the meaning of the statutory language provided above.

As I mentioned in my answers to the pre-hearing question, I would seek to resolve the disagreement with the Secretary of State, or in the extremely rare circumstance in which the disagreement could not be resolved, seek further guidance from the President. In that hypothetical and extremely rare circumstance, if confirmed, I will seek, and expect, an expeditious decision from the President. This would ensure the decision to cease or continue intelligence activities reflected guidance from the President.

Lethal operations against U.S. persons

In your responses to pre-hearing questions, you wrote that:

“[W]hen the United States knows in advance that the specific object of its attack is an individual U.S. citizen, it proceeds on the assumption that constitutional rights – in particular, the Fifth Amendment’s Due Process Clause and the Fourth Amendment’s prohibition on unreasonable searches and seizures – attach to the U.S. citizen even while the individual is abroad. Those rights are considered in assessing whether it is lawful to target the individual.”

The May 22, 2013, Procedures for Approving Direct Action Against Terrorist Targets Located Outside the United States and Areas of Active Hostilities (PPG) includes the following:

“[W]hen considering potential direct action against a U.S. person under this PPG, there are additional questions that must be answered. The Department of Justice (DOJ), for example, must conduct a legal analysis to ensure that such action may be conducted against the individual consistent with the laws and Constitution of the United States.”

18. Do you agree with this requirement? If so, what form should the Department of Justice’s legal analysis take and should it be provided to Congress?

As I referenced in my response to pre-hearing questions, the U.S. must consider an American citizen’s constitutional rights prior to targeting him or her for lethal action. I have not studied the PPG implementation and its impact, if any, on intelligence operations. Without referencing the existence of any specific activity or operations, I understand that CIA attorneys frequently consult with, and seek guidance from, the Department of Justice. If confirmed, I would expect that practice to continue. I do not have a view on the form of the legal analysis, whether that is a formal legal opinion taking many weeks or months, or a shorter analysis based on operational needs, if any. I cannot speak for the Department of Justice in terms of providing its legal advice to Congress, although I am always inclined to ensure the Committee is fully informed of the CIA activities and their legal basis.

19. Do you believe there should be any additional checks with regard to lethal actions against U.S. persons?

As I currently understand, there are a range of other checks and requirements that must be met prior to conducting direct action against a U.S. person. As with other critically important responsibilities, I would welcome the Committee’s thoughts on this matter.

Public statements

- 20. If, for any reason, you or a CIA official makes a public statement that is inaccurate, do you commit to making a public statement correcting the record?**

I understand the importance of accuracy in public statements. While I cannot envision every circumstance or reason that a statement could be inaccurate, I do understand that in some instances, making additional public statements in the nature of corrections may be complicated by the need to protect American lives or sources and methods. Especially with respect to my own statements, my bias would be to correct publicly made statements that are materially inaccurate with public statements that correct that material inaccuracy.

Declassification

- 21. 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 disagree with the prohibitions in these Executive Orders?**

No.

- 22. The Executive Summary of the Committee’s Study of the CIA’s Detention and Interrogation Program was released after the CIA had redacted sources and methods, as well as names, pseudonyms and, in some cases, titles. Do you believe that, in redacting the Executive Summary, the CIA failed to protect Americans?**

I have not reviewed any assessments about the impact of redacting the Executive Summary on protecting Americans.

- 23. If you have responded to the previous two questions in the negative, would you support declassification and public release of the full Committee Study, assuming it is subject to a CIA redaction process similar to that applied to the Executive Summary? If not, why?**

I understand the status and release of the Committee Study is the subject of litigation. Beyond this high-level understanding of the current status, I have not studied this issue and it would not be appropriate for me to comment on a matter in litigation at this point.

CIA and congressional staff

- 24. The CIA's Inspector General determined that Agency employees improperly accessed Committee shared drives the Committee used in preparation of its Study of the CIA's Detention and Interrogation Program. The Inspector-General also determined that a crimes report submitted by the CIA to the Department of Justice related to Committee staff was "unfounded" and was based on "inaccurate information." Do you have any reason to disagree with the CIA IG's determinations?**

I have not studied the CIA IG's determinations. Nor have I studied the CIA Accountability Review Board's report on this issue. I do not intend to revisit this matter. If confirmed, I would hope to work closely with the Committee to enable oversight activities and ensure that the CIA and the Committees never find themselves in such a place during my tenure.

QUESTION FOR THE RECORD FROM SENATOR KING

- 25. During your open confirmation hearing, I asked you about a message you sent to your Twitter followers on July 24, 2016, which referred to information from Wikileaks as "proof." During the open hearing, you said that you do not view Wikileaks as a credible source. For the record, please expand on your answer about your use of Wikileaks, your understanding of that organization, and the message you sent last July.**

The January 6, 2017 report from the Intelligence Community provides details on how Russia has actively collaborated with Wikileaks in releasing information. The tweet I sent in July 2016 was not meant as an endorsement of Wikileaks or its practices, but rather remarked on the content of the material now in the public domain. I understand the concern over the tweet's reference to Wikileaks, given how disclosures by Wikileaks have targeted American institutions and democracy. The tweet was sent in reference to political issues in the middle of a hard-fought campaign. Based on additional briefings and information, including the reports released by the Intelligence Community, I now have a much deeper understanding of Wikileaks and its harmful activities.