

UNITED STATES FOREIGN
INTELLIGENCE SURVEILLANCE COURT
Washington, D.C.



Honorable Rosemary M. Collyer
Presiding Judge

August 23, 2017

Honorable Ron Wyden
United States Senate
Washington, D.C. 20510

Dear Senator Wyden:

Thanks to you and your colleagues for your letter of July 25, 2017 regarding the potential benefits of technical advice for the Foreign Intelligence Surveillance Court (FISC). We appreciate your interest in the FISC and its effective operation.

We agree that technical experts may be of assistance to the FISC. Indeed, when the USA FREEDOM Act was being drafted, Congress initially sought only to provide the court with explicit authority to obtain outside legal advice from amici curiae. The Judiciary specifically asked Congress to broaden the Court's authority so that we could also obtain non-legal, technical expertise. (See, e.g., H.R. Rep. No. 113-452, pt. 1, at 30-31 (Letter from John. D. Bates, Director, Administrative Office of the United States Courts to Honorable Bob Goodlatte, Chairman, United States House of Representatives, Committee on the Judiciary, at 1-2 (2014)).) Congress agreed with our recommendation and, as you point out in your letter, the USA FREEDOM Act does give the FISC the ability to seek technical advice from outside experts.

We are continuing to implement the amicus curiae provisions of the USA FREEDOM Act. Nearly as soon as the Act became law – even before there was time to designate the standing pool of amici – the FISC began to appoint amici curiae under an additional discretionary amicus appointment authority we had worked with Congress to obtain. Then, in consultation with the Foreign Intelligence Surveillance Court of Review, we turned to designating and then expanding the required (under 50 U.S.C. sec. 1803(i)(1)) pool of expert lawyers, from which we have subsequently drawn our amici. The process of vetting, designating, and then developing administrative support for the standing pool of lawyers took us many months.

We are now actively seeking technical experts who can also act as amici curiae. However, it has not proved to be a simple matter to find appropriate technical expertise. In considering technical advisors we must assess their abilities and qualifications, including their eligibility for security clearances and willingness to abide by attendant obligations

regarding reporting of foreign contacts and pre-publication review (which is concerning to some potential candidates). As a result, we expect the process of finding a pool of appropriate technical amici to take some time to complete. Nonetheless, please be assured that this matter is very much on our minds and the court is engaged in continuing outreach.

We also appreciate your suggestion that we allow an appointed lawyer amicus to consult with a technical amicus with relevant expertise. This proposal was raised by our lawyer amici at a meeting with the Presiding Judges of the FISC and FISCR this Spring and we agreed to consider doing so in an appropriate case. You also suggested that the FISC hire a full time technical adviser. We're happy to consider your suggestion if we cannot convene a pool of technical advisors but, frankly, it is not clear to us that the volume of work would merit a full-time position, given the infrequency with which new technologies or new applications of technologies are presented to the FISC in its day-to-day work, and the difficulties facing a person so employed to maintain the necessary level of expertise over time.

I hope this response is helpful and provides further assurance of our continuing commitment to making fully-informed decisions.

Sincerely,



Rosemary M. Collyer

Presiding Judge

Cc: Honorable Chuck Grassley
Honorable Dianne Feinstein
Honorable Richard Burr
Honorable Mark Warner

IDENTICAL LETTER SENT TO:

Honorable Richard Blumenthal
Honorable Patrick Leahy
Honorable Mike Lee
Honorable Martin Heinrich
Honorable Al Franken