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June 23, 2006

General Michael V. Hayden
Director
Central Intelligence Agency
Washington, D.C.

Dear General Hayden:

Today's New York Times reports that the Administration has initiated a secret program to gain access to financial records from a vast international database and examine banking transactions involving thousands of Americans and others in the United States (see, Eric Lichtblau and James Risen, "Bank Data is Sifted by U.S. in Secret to Block Terror," New York Times, June 23, 2006, at A1). According to the Times report, the Administration has obtained broad access to financial data from the Brussels-based Society for Worldwide Financial Telecommunications ("SWIFT").

According to the Times article, the program in question was run out of the Central Intelligence Agency and overseen by the Treasury Department. The Times article reports that the program "is a significant departure from typical practice in how the government acquires Americans' financial records" in that "Treasury officials did not seek individual court-approved warrants or subpoenas to examine specific transactions, instead relying on broad administrative subpoenas for millions of records from the cooperative, known as Swift." According to the Times, some of the nearly 20 current and foreign government officials and industry executives interviewed "expressed reservations about the program, saying that what they viewed as an urgent, temporary measure had become permanent nearly five years later without specific Congressional approval or formal authorization."

The Times report, coming on the heels of earlier revelations of government surveillance of domestic telephone records, raises disturbing questions about whether the Administration is complying with the Constitutional and legal protections established to protect the privacy of American citizens. In order to carry out my legislative and oversight responsibilities as both the Ranking Member of the Telecommunications and Internet Subcommittee, and as a Member of the Homeland Security Committee, I respectfully request your assistance and cooperation in providing responses to the following questions:

1. How and when was the financial records surveillance program described in the Times article established?

2. According to the Times article, "Treasury Department lawyers, consulting with the Justice Department, concluded that the privacy laws applied to banks, not to a banking cooperative like Swift. They also said the law protected individual customers and small companies, not the major institutions that route money through Swift on behalf of their customers."
 - a. Has the CIA concluded that privacy laws don't apply to SWIFT? If so, what is the legal basis for this conclusion?
 - b. Has the Agency concluded that privacy laws do not prevent the government from gaining access to financial transaction data involving the routing of money through swift by various financial institutions? If so, what is the legal basis for this conclusion?
 - c. The CIA's website reports that:

"By law, the CIA is specifically prohibited from collecting foreign intelligence concerning the domestic activities of US citizens. Its mission is to collect information related to foreign intelligence and foreign counterintelligence. By direction of the President in Executive Order 12333 of 1981 and in accordance with procedures approved by the Attorney General, the CIA is restricted in the collection of intelligence information directed against US citizens. Collection is allowed only for an authorized intelligence purpose; for example, if there is a reason to believe that an individual is involved in espionage or international terrorist activities. The CIA's procedures require senior approval for any such collection that is allowed, and, depending on the collection technique employed, the sanction of the Director of National Intelligence and Attorney General may be required. These restrictions on the CIA have been in effect since the 1970s."
 - d. The Times article indicates that some of the SWIFT data may have involved domestic financial transactions. In light of the legal restrictions on CIA spying on Americans, how can the Agency carry out this program?
 - e. Were all the procedures referred to on the CIA's website with respect to collection of information pertaining to U.S. citizens followed with respect to this program?
3. Please provide an analysis of the applicability of domestic U.S. privacy laws, including the Right to Financial Privacy Act, and the Privacy Act, and the Gramm-Leach-Bliley Act to the financial records surveillance program described in the Times article.
4. What type of financial information has been gathered under this program?
5. Since SWIFT is based overseas and also has offices in the U.S., it is subject to both U.S. and European privacy laws. Is the Administration's financial records surveillance program consistent with the requirements of the European Union's Privacy Directive, and with the implementing legislation adopted by the various European Union nation's to implement that directive?
6. How many American citizens' financial records have been scrutinized by the government as part of this program?
7. The Times article reports that the government engaged "an outside auditing firm that verifies that the data searches are based on intelligence leads about suspected

- terrorists.” Is this true? Why does the Administration apparently believe that a judge should not be informed of the government’s basis for obtaining private financial records, but it is acceptable to inform an outside auditor?
8. Please identify the outside auditor engaged by the government to review this program. Who did this auditor report to? What were the terms of this auditor’s engagement? From what government accounts (if any) was this auditor paid? How much were they paid for their services?
 9. The Times article quotes Treasury Undersecretary Levy as stating that “people do not have a privacy interest in their international wire transactions.”
 - a. Does the CIA agree with this statement?
 - b. If so, does that mean that the Administration would not object if foreign governments asked the Brussels based SWIFT organization to provide them with records of international wire transactions carried out by American citizens? For example, if the Chinese, the Russian, the Iranian, or the North Korean governments were to request such information from SWIFT, would the Administration see any problem with SWIFT’s compliance with that request?
 - c. To the Administration’s knowledge, are any foreign governments carrying out the same type of review of SWIFT financial transaction records as that being carried out by the Administration?
 - d. Is the CIA concerned that the precedent established by this program could be followed by hostile foreign intelligence agencies to gather information about U.S. citizens, including U.S. government officials?
 10. Did the outside auditor engaged by the government to review this program review all government requests for financial records, or just some of them.
 11. Did the outside auditor provide the CIA with any reports or memoranda on its work? If so, please provide copies of all such reports or memoranda issued by this audit firm.
 12. The Times article further reports that “one person had been removed from the operation for conducting a search considered inappropriate.” Is this true? If so, please describe the facts and circumstances of this case.
 13. The Times article reports that following a 2003 meeting between SWIFT and U.S. government officials to respond to concerns raised by SWIFT about the surveillance program, the U.S. government pledged to impose tighter controls on the program, including the stationing of SWIFT officials “alongside intelligence officials” who could “block any searches considered inappropriate.”
 - a. Is this report accurate?
 - b. What controls were put into place following this 2003 meeting?
 - c. The Times reports that the CIA objected to these changes. Is this true? If so, why?
 - d. At any time did SWIFT officials exercise the “veto” authority referred to in the Times article?
 - e. Why is the Administration apparently able and willing to allow officials of a private financial consortium review and veto government requests for

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financial records, but not obtain a review or approval of the same data request from a judge or a grand jury?

Thank you for your assistance and cooperation in responding to these questions. Should you have any questions about this request, please have your staff contact Mr. Jeffrey Duncan of my staff at 202-225-2836.

Sincerely,


Edward J. Markey