

Questions for the Record – Responses of James X. Dempsey

Question from Chairman Leahy

Data Retention

On March 22, the Director of National Intelligence and the Attorney General jointly released new guidelines governing the acquisition and retention of data by the National Counterterrorism Center (NCTC). Under these new guidelines, it is now conceivable that the NCTC could retain vast amounts of data regarding U.S. citizens for up to five years – well beyond the six months that was allowed under the previous guidelines. The new guidelines specifically state that the Privacy and Civil Liberties Oversight Board shall have “access” to all relevant NCTC records, reports, and other material relevant to its oversight of NCTC. However, the guidelines do not require any of the oversight and compliance reporting to go to the Privacy and Civil Liberties Oversight Board.

Mr. Dempsey, as a member of the Privacy and Civil Liberties Oversight Board, how would you view the Board’s role in reviewing this new policy and other emerging policy issues that involve the collection and retention of Americans’ personal data?

A: If confirmed, I would recommend to the Chairman of the Board and fellow Board members that the Board view this issue within the broader context of the role and activities of the NCTC. In particular, I believe that the new guidelines on retention should be examined within the context of the full range of data that agencies share with the NCTC and how the NCTC uses that data. If confirmed, I would want to explore what other checks and balances, in addition to any specified time limit on data retention, are in place, or would be appropriate, to protect civil liberties while ensuring that the NCTC is able to fulfill its mission. On these questions, I would want to consult closely with the responsible officials at DHS, at the NCTC, and at other agencies.