



**Computer & Communications
Industry Association**
Tech Advocacy Since 1972

February 28, 2014

U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530-0001
(202) 514-2000

Re: Request for Comment on Open Government Plan

The Computer and Communications Industry Association (CCIA) writes this letter in response to a request for comment from the Department of Justice (DOJ) on its Open Government Plan. CCIA is an international, nonprofit association representing a broad cross section of computer, communications and Internet industry firms. CCIA remains dedicated, as it has for over 40 years, to promoting innovation and preserving full, fair and open competition throughout our industry. Our members employ more than 600,000 workers and generate annual revenues in excess of \$200 billion.¹

Open and easy access to information relating to the Federal Government is central to effective democracy and good governance. CCIA welcomed President Obama's January 21, 2009 directive to federal agencies to "disclose information rapidly in forms that the public can readily find and use"² and to presume that, "[i]n the face of doubt, openness prevails."³

One area where openness is needed concerns foreign and domestic law enforcement requests made to U.S. Internet companies for electronic records pertaining to their users. The public has a heightened interest in comprehensive information related to these companies' cooperation with lawful requests from U.S and foreign law enforcement agencies. Yet, DOJ often provides incomplete or unusable aggregate data on those requests. This has led to even more confusion at the global level. U.S. companies are often asked questions by foreign governments that pertain to the efficiency and process by which DOJ aims to process such requests. Without having more robust and usable information provided publicly by DOJ, US industry cannot help diffuse global misperceptions. In view of DOJ's and the Administration's stated principles of transparency,

¹ For a full list of CCIA members, please see <http://www.cciagnet.org/about/members/>

² President Barack Obama, Memorandum on Transparency and Open Government, 74 Fed. Reg. 4685 (Jan. 21, 2009), http://www.whitehouse.gov/the_press_office/Transparency_and_Open_Government/ ("Transparency Memorandum").

³ President Barack Obama, Memorandum on Freedom of Information Act, (Jan. 21, 2009), *available at* http://www.justice.gov/oip/foia_guide09/presidential-foia.pdf.

participation, and collaboration,⁴ more comprehensive and accessible information is required.

Consistent with those principles, CCIA recommends that DOJ make an effort to provide additional information about requests under the Mutual Legal Assistance Treaties (MLAT), the Wiretap Act, National Security Letters (NSLs), and the Foreign Intelligence Surveillance Act (FISA). In addition, DOJ should make the aggregate data regarding those requests more readily available to the public by creating a graphical dashboard to make the information easier to understand and by making the underlying data available in a machine readable format to allow for more granular analysis by the public.

I. Open, Machine-Readable Data Formats Are Essential to The Administration's Principles of Transparency, Participation, and Collaboration

The President has been clear that openness requires information to be provided in a way that is “easy to find, accessible, and usable.”⁵ Consequently, agencies were instructed to “manage information as an asset throughout its life cycle to promote openness and interoperability”⁶ by making “the default state of new and modernized Government information resources . . . open and machine readable.”⁷ Consistent with the Administration’s policy of transparency and accessibility, the Attorney General has “directed agencies to provide more standardized reports, in a more accessible, ‘open’ format.”⁸ DOJ led by example with the FOIA Dashboard, which “transforms [information on FOIA requests] from static data in annual reports into readily visible, usable, and ‘mashable’ information that will provide key insights on agency FOIA activities, government-wide.”⁹

In implementing the President’s directive, the Office of Management and Budget (OMB) indicated that agencies should ensure that its data are “reasonably structured to allow automated process” and are made available “to the widest range of users for the widest range of purposes” including by providing the data in multiple, non-proprietary, publicly available formats that do not restrict the data’s use.”¹⁰ Certain formats fall short of long standing guidance to “[e]nsure

⁴ *Transparency Memorandum*, 74 Fed. Reg. at 4685 (“My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration.”).

⁵ Executive Order, Making Open and Machine Readable the New Default for Government Information, at 1 (May 9, 2013), *available at* <http://www.gpo.gov/fdsys/pkg/FR-2013-05-14/pdf/2013-11533.pdf> (“*Machine Readable Order*”).

⁶ OMB, Open Data Policy—Managing Information as an Asset, at 1 (May 9, 2013), *available at* <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-13.pdf> (“Open Data Policy”).

⁷ *Machine Readable Order* at 1.

⁸ U.S. Department of Justice, Open Government Plan Version 1.1 (June 25, 2011) at 4, *available at* http://www.justice.gov/open/doj-open-government-plan_1_1.pdf (“Open Government Plan”).

⁹ *Id.*

¹⁰ Open Data Policy at 5.

the ability to access records regardless of form or medium.”¹¹ For example, the proprietary PDF format can be useful for preserving the integrity of documents, but as OMB has explained elsewhere, it is “difficult for machines to interpret.”¹² The Wiretap Report data, made available through uscourts.gov, demonstrates the limits of this format.¹³ That report includes a number of potentially useful tables, text, and charts on orders authorizing or approving wiretap requests, broken down by offenses under investigation, nature and locations of intercept devices, costs and duration of the intercepts, and intercept extensions granted. However, the data is not readily machine readable, making it difficult to use and evaluate in any form other than the one in which it has been disclosed because it is only available in PDF format. Data from the annual FISA report suffers from similar limitations.

To promote greater access and more productive use of the information, DOJ should make a concerted effort to ensure that all data is provided in at least one of OMB’s recommended, machine-readable formats: extensible markup language (XML), JavaScript Object Notation (JSON), or spreadsheets with header columns that can be exported as comma separated values (CSV).¹⁴

Further, to the extent possible, aggregate data for each of these data sets should be made available graphically through a dashboard similar to the FOIA Dashboard used to track the backlog of FOIA requests. Building on that model, this comprehensive dashboard should include aggregate data for each avenue for foreign data requests or surveillance, including on MLAT treaties and related authorities, FISA, National Security Letters, and wiretaps. The DOJ Open Government Plan has created a “standardized data exchange” to support the FOIA Dashboard.¹⁵ One core benefit of open standards is scalability, making more expansive or integrated dashboards easier to implement.

II. DOJ’s Efforts to Provide Access to More Information Are Laudable, but Do Not Provide Sufficient Information

CCIA lauds DOJ’s efforts to implement the President’s directive, particularly through its work on launching FOIA.gov, FARA.gov, and associated projects. Those efforts represent a critical first step in opening the government and its actions up to the kinds of accountability and public oversight that are essential to democracy. But they are only a first step.

Government transparency, including more public DOJ-driven data, is even more important and timely today in light of the rapidly increasing domestic and foreign data requests and the public’s

¹¹ OMB Circular No. A-130, Management of Federal Information Resources, 61 Fed. Reg. 6432 (Feb. 20, 1996).

¹² OMB Circular No. A-11, at 200-15 (2013), http://www.whitehouse.gov/sites/default/files/omb/assets/a11_current_year/a11_2013.pdf.

¹³ Administrative Office of the U.S. Courts, Wiretap Report (2012), <http://www.uscourts.gov/Statistics/WiretapReports/wiretap-report-2012.aspx>.

¹⁴ *Id.*

¹⁵ Open Government Plan at 5.

concern over governmental electronic surveillance. As you know, the President has committed to providing “greater transparency to [U.S.] surveillance activities” and the release of associated information, such as declassified FISA court opinions.¹⁶ For its part, the Office of the Director of National Intelligence has committed to the release of an annual U.S. transparency report of aggregate requests for phone call logs and Internet conversations, including the “total number of orders issued during the prior twelve-month period, and the number of targets affected by these orders.”¹⁷ Yet, to date, only incomplete information and often unusable aggregate information on these requests is available to the public.

Requests from Foreign Governments. Currently, the federal government does not provide any information regarding requests for electronic evidence made by foreign governments through the MLAT and similar processes and U.S. court orders issued in response to those requests. In January of this year, however, the President committed to “implement[ing] new technology to increase the efficiency and transparency of the [MLAT] process.”¹⁸ In fulfillment of the President’s commitment and in keeping with the current Open Government Plan’s focus on opening up and publishing agency data, DOJ should provide information on aggregate foreign data requests processed annually, including the average processing time broken down by the year of the request and by the country requesting (from the date of initial contact as well as the date the request is deemed complete and ready for processing), the legal process used, and the total annual foreign data requests by requesting countries.

FISA Annual and Declassified Reports. DOJ provides only very limited data on Foreign Intelligence Surveillance Act (FISA) requests and only at a very high level. To provide more context for the public, DOJ should disclose a data set similar to that provided in the annual Wiretap Reports, including by breaking down the aggregate numbers by the type of request and statutory authority, the number of service providers affected, the number of user accounts affected, whether the request is related to a U.S. person, the offense being investigated, cost of the request, and number of requests or duration per suspect. In addition, DOJ should disclose the number of classified versus declassified requests. Some of this information is currently available through annual and case-specific declassified reports available in proprietary PDF formats but no open and machine readable data sets are currently provided to the public.

National Security Letter Declassification. Consistent with the President’s commitment in January to “ensure that non-disclosure [of NSLs] is not indefinite and will terminate within a fixed time unless the government demonstrates a need for further secrecy,”¹⁹ DOJ should commit to a timeline for when National Security Letter data will be released. In addition, DOJ should provide aggregate data on the number of National Security Letter disclosed versus undisclosed,

¹⁶ Transcript of President Obama’s Speech on NSA Reforms, NPR.org (Jan. 17, 2014), <http://www.npr.org/blogs/itsallpolitics/2014/01/17/263480199/transcript-of-president-obamas-speech-on-nsa-reforms>.

¹⁷ Press Release, Office of the Director of National Intelligence, DNI Clapper Directs Annual Release of Information Related to Orders Issued to Telecom Providers Under National Security Authorities (Aug. 29, 2013).

¹⁸ Press Release, FACT SHEET: Review of U.S. Signals Intelligence (Jan 17, 2014).

¹⁹ *Id.*

broken down by the year of issuance, the number of service providers affected and the number of user accounts affected.

III. Conclusion

CCIA believes that transparency and good governance go hand in hand. To that end, DOJ is to be commended for its efforts thus far to make an increasing amount of information available and usable by the public. CCIA believes that with DOJ's focus on this important area, the public will gain additional insight into the processes by which these sensitive information requests are made by governments to U.S. Internet companies.

Thank you in advance for your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Black", written in a cursive style.

Ed Black
President & CEO, CCIA

cc:
Tony West, Associate Attorney General
Mythili Raman, Acting Assistant Attorney General