

Close ties between White House, NSA spying review

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In this June 6, 2013, file photo, a woman talks on the phone outside the U.S. Courthouse in Washington, Thursday, June 6, 2013, where the secret Foreign Intelligence Surveillance Court resides. Stung by public unease about new details of spying by the National Security Agency, President Barack Obama selected a panel of advisers he described as independent experts to scrutinize the NSA's surveillance programs to be sure they weren't violating civil liberties and to restore Americans' trust. But with just weeks remaining before its first deadline to report back to the White House, the review panel has effectively been operating as an arm of the Office of the Director of National Intelligence, which oversees the NSA and all other U.S. spy efforts.(AP Photo/Cliff Owen, File)

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The panel's advisers work in offices on loan from the DNI. Interview requests and press statements from the review panel are carefully coordinated through the DNI's press office. James Clapper, the intelligence director, exempted the panel from U.S. rules that require federal committees to conduct their business and their meetings in ways the public can observe. Its final report, when it's issued, will be submitted for White House approval before the public can read it.

Even the panel's official name suggests it's run by Clapper's office: "Director of National Intelligence Review Group on Intelligence and Communications Technologies."

Its meetings in recent weeks with technology industry and [privacy groups](#) have been closed to the public even though no [classified information](#) was discussed, according to participants. Attendees told The Associated Press they raised concerns about the NSA's spying programs. During one session, two participants said, panel members said the group might hold a separate classified meeting soon with [technology executives](#) to discuss details of secret surveillance programs.

"No one can look at this group and say it's completely independent," said one attendee, Sascha Meinrath, director of the Open Technology

Institute and vice president at the New America Foundation. Meinrath said the closed meetings "leave the public out of the loop."

Obama described the panel in an Aug. 9 speech as an "independent group" and said its members would "consider how we can maintain the trust of the people, how we can make sure that there absolutely is no abuse in terms of how these surveillance technologies are used."

The formal White House memorandum days later—effectively the legal charter for the group—does not specify anything about its role being independent of the Obama administration. It directed the panel to emphasize in its review whether U.S. spying programs protect national security, advance foreign policy and are protected against the types of leaks that led to the national debate in the first place. The final consideration in the White House memo told the panel to examine "our need to maintain the public trust." There was no mention of the panel investigating surveillance abuses.

The review panel, in a statement released through the DNI's press office, confirmed to the AP that Clapper had exempted it from the U.S. Federal Advisory Committee Act, which requires such committees to conduct open meetings and notify the public about their activities. It said Clapper made the decision because of the "highly classified nature of their review," but added: "We are conducting this review as openly and transparently as possible." In private meetings so far, several attendees said their discussions did not mention any classified activities and that the panel members steered them away from doing so.

Four of the five review panel members previously worked for Democratic administrations: Peter Swire, former Office of Management and Budget privacy director under President Bill Clinton; Michael Morell, Obama's former deputy CIA director; Richard Clarke, former counterterrorism coordinator under Clinton and later for President

George W. Bush; and Cass Sunstein, Obama's former regulatory czar. A fifth panel member, Geoffrey Stone of the University of Chicago, leads a university committee looking to build Obama's presidential library in Chicago and was an informal adviser to Obama's 2008 presidential campaign.

Stone wrote in a July op-ed that the NSA surveillance program that collects the phone records of every American every day is constitutional.

"We would have liked a more diverse group," said Michelle Richardson, an American Civil Liberties Union legislative counsel who attended one meeting.

The review panel overlaps with a similar effort by a second advisory group. In July, Obama asked the independent Privacy and Civil Liberties Oversight Board to report on the NSA programs and their effects on civil liberties. While PCLOB's work is expected to take months and has no deadline, Obama ordered the review group to report interim findings within 60 days and provide a final report by Dec. 15.

PCLOB chairman David Medine said recently that his group's purview was different because it was not subject to review by the White House. PCLOB's hearings so far have been conducted in public, although the group has been given classified briefings by national security officials.

"We're proceeding regardless of other groups' timelines," Medine said.

A spokeswoman for the White House National Security Council, Caitlin Hayden, said the review group and civil liberties board have separate mandates. She said the review panel is looking at spy programs authorized under the U.S. Foreign Intelligence Surveillance Act and the USA Patriot Act, and references to the NSA collecting phone records and obtaining copies of Internet messages from U.S. technology

companies. The [civil liberties](#) board, however, is focusing on the same surveillance programs, according to a June 2013 Congressional authorization letter.

Obama has said in recent comments that he might be open to setting up public advocates who could oppose government lawyers at secret federal surveillance court proceedings—similar to a proposal by Swire in 2004. But the administration has otherwise backed the [surveillance programs](#) as essential for national security.

Participants in one session held for the technology industry included lawyers and other figures from Google, Microsoft, Yahoo, Facebook and Apple—firms that reportedly have worked with the NSA in surveillance operations. No phone company executives attended, participants said. Technology executives pressed for more authority to tell computer users their private data is not being abused by the government, said Robert Atkinson, president of the Information Technology and Innovation Foundation.

Neither session, according to participants, gave any hint of changes under consideration.

"Any time someone brought up what was at the heart of these issues," Meinrath said, "we were told to put that into record on the website, or else we were told it was classified."

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