



One Hundred Fifteenth Congress
U.S. House of Representatives
Committee on Homeland Security
Washington, DC 20515

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The Honorable Elaine Duke
Acting Secretary
Department of Homeland Security

Dear Acting Secretary Duke:

Speaking at the George Washington University Center for Cyber and Homeland Security on April 18, 2017, former Homeland Security Secretary General John F. Kelly (Ret.) noted that widely available encrypted communications are being exploited by terrorists and criminals alike to avoid detection. During this speech former Secretary Kelly stated that “thanks to new and ever improving and proliferating encryption and secure communication techniques, it’ll be a lot harder to find you and stop you before you take innocent lives.” Indeed, the challenges to our law enforcement and intelligence communities posed by “going dark” are among the most pressing of any currently facing the Department of Homeland Security (DHS). At the same time, Americans increasingly rely on encrypted communications to keep their personal data and communications private, while government agencies—including DHS—and American corporations utilize encryption and other technology to secure valuable, sensitive data from unlawful or improper access.

Many have cast this issue in stark terms that promote a false choice between effective law enforcement and strong privacy protections. This is an unhelpful and inaccurate characterization. I am convinced there can be a balance of these interests. Additionally, I recognize the sincerity of all stakeholders involved in this discussion. I know the technology community is concerned with terrorism and public safety—as evidenced by numerous social media companies’ efforts to restrict hateful violent conduct in their terms of service—just as I know the law enforcement community respects privacy and data protection—as shown by the government’s widespread use of encryption technologies.

An often overlooked, but equally important, aspect of this equation are the significant challenges “going dark” poses to state and local law enforcement agencies. The technology, resources, and training required to effectively investigate crimes involving encrypted data and other advanced technological challenges often exceed the means available to many of these investigative agencies.

DHS is well positioned to help drive solutions to these problems for state and local law enforcement agencies given the existing relationship between them. Helping build

partnerships between DHS and the private sector to work together to best support local law enforcement agencies is another critical collaboration in developing solutions to these challenging technological issues.

I am writing to request that you to use your authority as Secretary to convene experts from the public and private sectors—either within the existing Homeland Security Advisory Council (HSAC) or in a new advisory council—to study the following issues:

1. Over time how has encrypted data impacted DHS component agencies law enforcement investigations and operations; and
2. The challenges that encryption, as well as other advanced technologies, pose on the ability of state and local law enforcement agencies to conduct investigations and operations.

Additionally, I request that these experts provide recommendations on the best practices that can be adopted by DHS to encourage technology companies and law enforcement agencies to work together to maximize the resources and tools currently available to investigators. These recommendations will help state, local, and federal law enforcement agencies to detect and disrupt criminals and terrorists at home and abroad. Lastly, I am requesting that an assessment and supporting data on how the issues listed above currently affect DHS be submitted to this Committee within 180 days.

I am confident that in order to strike a balance between effective law enforcement and strong privacy protections DHS must play an integral role by collaborating with both the public and private sectors.

Thank you for your continued service and I look forward to working with you on this important topic.

Sincerely,



Michael T. McCaul
Chairman