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May 23, 2018

The Honorable Christopher A. Wray
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue Northwest
Washington, DC 20535

Dear Director Wray:

I write to you today to express my concern regarding recent reports that the FBI has repeatedly misled the public and elected officials both in Congress and in states with respect to the number of electronic devices rendered inaccessible by strong encryption.

The government has long held discredited views about encryption. Now we see that the FBI is struggling with basic arithmetic – clearly it should not be in the business of dictating the design of advanced cryptographic algorithms.

Experts have said repeatedly, for decades, that strong encryption is incompatible with backdoors. Strong encryption helps ensure both security and liberty, and Americans rely on this security to protect the location of their families and the intimate details of their communications from hackers and foreign criminals. It is foundational to American liberty that individuals feel free to express their deeply held, but controversial, beliefs without fear of prying eyes or ears. Knowing you're being watched - or that you may be overheard - leads to self-censoring that would have Ben Franklin rolling over in his grave.

Members of the Trump Administration, and the Obama Administration before it, have repeatedly expressed support for strong encryption. Most recently, National Counterintelligence & Security Center Director Nominee William Evanina testified in his confirmation hearing that members of Congress – and by extension all Americans – should encrypt their phone calls. Fear-mongering by the FBI about how only terrorists use encryption is deeply dangerous and contrary to the FBI's mission to protect the public.

Recently, the FBI exploited the terrorist attack and tragedy in San Bernardino tragedy to pursue a strategy in the Courts that they hoped would lead to requiring companies to build in

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“exceptional access,” also known as “backdoors.” According to the Department of Justice Inspector General, the FBI was more interested in establishing a powerful legal precedent than actually gaining access to the terrorist’s iPhone.

We see the same calculations today with the overstatement of inaccessible devices. When the FBI reportedly misstates the number of devices rendered inaccessible by encryption, it is either too sloppy in its work or pushing a legislative agenda.

It is now more important than ever that Congress and all Americans are operating with accurate information. Please reply to the following questions by June 13, 2018:

1. How many devices does the FBI have in its control a valid warrant to access that it currently cannot adequately access due to either a lack of expertise or tools at the FBI or the inability to purchase or use third party products (such as Cellebrite or Grayshift) to access the device?
2. How many investigations were affected - and how were they affected - by these devices being inaccessible over the last year?
3. In January 2018, I asked you which cryptographers you have consulted with who assert that it is not only technically feasible, but also a good public policy solution, to allow for “exceptional access” (sometimes referred to as a “backdoor”) to strong encryption. I repeat that request today.
4. Does the FBI concur with Mr. Evanina’s recommendation that government officials should encrypt their unclassified telephone conversations?
 - a. If yes, what steps, if any, has FBI taken to communicate these recommendations to federal agencies.
 - b. If not, why?

As an addendum, I am enclosing a letter from expert cryptographers Martin E. Hellman, Steven M. Bellovin, Paul C. Kocher, and Bruce Schneier for additional reference regarding your consultations with cryptographers.

Sincerely,



Ron Wyden
United States Senator