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13  
 14 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
 15 **OAKLAND DIVISION**

16 CAROLYN JEWEL, *et al.*,  
 17 Plaintiffs,  
 18 v.  
 19 NATIONAL SECURITY AGENCY, *et al.*,  
 20 Defendants.

Case No. 4:08-cv-4373-JSW  
 Case No. 4:07-cv-00693-JSW

**DECLARATION OF JAMES J.  
 GILLIGAN IN SUPPORT OF  
 GOVERNMENT DEFENDANTS’  
 REPLY BRIEF REGARDING  
 COMPLIANCE WITH  
 PRESERVATION ORDERS**

21 CAROLYN JEWEL, *et al.*,  
 22 Plaintiffs,  
 23 v.  
 24 NATIONAL SECURITY AGENCY, *et al.*,  
 25 Defendants.  
 26

No hearing scheduled  
 Oakland Courthouse  
 Courtroom 5, 2nd Floor  
 The Honorable Jeffrey S. White

27 I, James J. Gilligan, hereby declare:  
28

1 1. I am the Special Litigation Counsel for the United States Department of Justice, Civil  
2 Division, Federal Programs Branch, and attorney of record for the official capacity Government  
3 Defendants in the above-captioned cases. The statements made herein are based on my personal  
4 knowledge, and on information made available to me in the course of my duties and  
5 responsibilities as counsel for the official capacity Government Defendants in these cases.

6 2. Filed with this declaration, as Exhibits A through F in support of the Government  
7 Defendants' Reply Brief Regarding Compliance with Preservation Orders, are true and correct  
8 copies of the following documents:

- 9 a. Exhibit A, NSA Director of Civil Liberties and Privacy Office Report, NSA's  
10 Implementation of Foreign Intelligence Surveillance Act Section 702 ("Civil  
11 Liberties and Privacy Office Report"), dated Apr. 16, 2014;
- 12 b. Exhibit B, Intelligence Community's Collection Programs under Title VII of the  
13 Foreign Intelligence Surveillance Act ("IC's Collection Programs");
- 14 c. Exhibit C, Office of the Director of National Intelligence, Statistical Transparency  
15 Report Regarding use of National Security Authorities, dated June 26, 2014;
- 16 d. Exhibit D, Facts on the Collection of Intelligence Pursuant to Section 702 of the  
17 Foreign Intelligence Surveillance Act ("ODNI Fact Sheet"), dated June 8, 2013;
- 18 e. Exhibit E, The National Security Agency: Missions, Authorities, Oversight and  
19 Partnerships, dated Aug. 9, 2013; and
- 20 f. Exhibit F, Minimization Procedures Used by the National Security Agency in  
21 Connection with Acquisitions of Foreign Intelligence Information Pursuant to  
22 Section 702 of the Foreign Intelligence Surveillance Act of 1978, as Amended,  
23 dated Oct. 31, 2011 ("Minimization Procedures").

1 I declare under penalty of perjury under the laws of the United States of America that the  
2 foregoing is true and correct. Executed on June 27, 2014, at Washington, D.C.

3 /s/ James J. Gilligan  
4 JAMES J. GILLIGAN  
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**EXHIBIT A**



NSA Director of Civil Liberties and Privacy Office  
Report

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NSA's Implementation of  
Foreign Intelligence Surveillance Act  
Section 702

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April 16, 2014



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**National Security Agency, Civil Liberties and Privacy Office**  
**Report**  
**NSA's Implementation of Foreign Intelligence Surveillance Act Section 702**

April 16, 2014

**INTRODUCTION**

This report was prepared by the National Security Agency (NSA) Civil Liberties and Privacy Office as part of its responsibilities to enhance communications and transparency with the public and stakeholders. Its Director is the primary advisor to the Director of NSA when it comes to matters of civil liberties and privacy. Created in January 2014, the Office is also charged with ensuring that civil liberties and privacy protection are integrated into NSA activities. The intent of this paper is to help build a common understanding that can serve as a foundation for future discussions about the existing civil liberties and privacy protections.

The mission of NSA is to make the nation safer by providing policy makers and military commanders with timely foreign intelligence and by protecting national security information networks. NSA collects foreign intelligence based on requirements from the President, his national security team, and their staffs through the National Intelligence Priorities Framework. NSA fulfills these national foreign intelligence requirements through the collection, processing, and analysis of communications or other data, passed or accessible by radio, wire or other electronic means.

NSA's authority to conduct signals intelligence collection for foreign intelligence and counterintelligence purposes is provided primarily by Section 1.7(c)(1) of Executive Order 12333, as amended. The execution of NSA's signals intelligence mission must be conducted in conformity with the Fourth Amendment. This includes NSA's acquisition of communications to which a U.S. person is a party under circumstances in which the U.S. person has a reasonable expectation of privacy. The Foreign Intelligence Surveillance Act of 1978 (FISA) further regulates certain types of foreign intelligence collection, including that which occurs with compelled assistance from U.S. communications providers.

This Report describes one way in which NSA meets these responsibilities while using Section 702 of FISA, as amended by the FISA Amendments Act of 2008. Although multiple federal agencies participate in Section 702 collection, this paper describes the process by which NSA obtains, uses, shares, and retains communications of foreign intelligence value pursuant to Section 702. It also describes existing privacy and civil liberties protections built into the process.





The NSA Civil Liberties and Privacy Office (CLPO) used the Fair Information Practice Principles (FIPP)<sup>1</sup> as an initial tool to describe the existing civil liberties and privacy protections in place for collection done under Section 702 authority.<sup>2</sup>

## SECTION 702 OF FISA

Section 702 of FISA was widely and publicly debated in Congress both during the initial passage in 2008 and the subsequent re-authorization in 2012. It provides a statutory basis for NSA, with the compelled assistance of electronic communication service providers, to target non-U.S. persons reasonably believed to be located outside the U.S. in order to acquire foreign intelligence information. Given that Section 702 only allows for the targeting of non-U.S. persons outside the U.S., it differs from most other sections of FISA. It does not require an individual determination by the U.S. Foreign Intelligence Surveillance Court (FISC) that there is probable cause to believe the target is a foreign power or an agent of a foreign power. Instead, the FISC reviews annual topical certifications executed by the Attorney General (AG) and the Director of National Intelligence (DNI) to determine if these certifications meet the statutory requirements. The FISC also determines whether the statutorily required targeting and minimization procedures used in connection with the certifications are consistent with the statute and the Fourth Amendment. The targeting procedures are designed to ensure that Section 702 is only used to target non-U.S. persons reasonably believed to be located outside the U.S.

The minimization procedures are designed to minimize the impact on the privacy on U.S. persons by minimizing the acquisition, retention, and dissemination of non-publicly available U.S. person information that was lawfully, but incidentally acquired under Section 702 by the targeting of non-U.S. persons reasonably believed to be located outside the U.S. Under these certifications the AG and the DNI issue directives to electronic communication service providers (service providers) that require these service providers to “immediately provide the Government with all information ... or assistance necessary to accomplish the acquisition [of foreign intelligence information] in a manner that will protect the secrecy of the acquisition....” The Government’s acquisition of communications under its Section 702 authority thus takes place pursuant to judicial review and with the knowledge of the service providers.

NSA cannot intentionally use Section 702 authority to target any U.S. citizen, any other U.S. person, or anyone known at the time of acquisition to be located within the U.S. The statute also prohibits the use of Section 702 to intentionally acquire any communication as to which the

<sup>1</sup> The FIPPs are the recognized principles for assessing privacy impacts. They have been incorporated into EO13636, *Improving Critical Infrastructure Cybersecurity* and the National Strategy for Trusted Identities in Cyberspace. These principles are rooted in the U.S. Department of Health, Education and Welfare’s seminal 1973 report, “Records, Computers and the Rights of Citizens.” The FIPPs have been implemented in the Privacy Act of 1974, with certain exemptions, including ones that apply to certain national security and law enforcement activities.

<sup>2</sup> NSA CLPO will continue to refine its assessment tools to best suit the mission of NSA, as a member of the Intelligence Community, and to protect civil liberties and privacy.





sender and all intended recipients are known at the time of acquisition to be located inside the U.S. Similarly, the statute prohibits the use of Section 702 to conduct “reverse targeting” (i.e., NSA may not intentionally target a person reasonably believed to be located outside of the U.S. if the purpose of such acquisition is to target a person reasonably believed to be located inside the U.S.). All acquisitions conducted pursuant to Section 702 must be conducted in a manner consistent with the Fourth Amendment. NSA’s FISC-approved targeting procedures permit NSA to target a non-U.S. person reasonably believed to be located outside the U.S. if the intended target possesses, is expected to receive, and/or is likely to communicate foreign intelligence information concerning one of the certifications executed by the AG and DNI. Although the purpose of Section 702 is to authorize targeting of non-U.S. persons outside the U.S., the statute’s requirement for minimization procedures recognizes that such targeted individuals or entities may communicate about U.S. persons or with U.S. persons. For this reason, NSA also must follow FISC-approved minimization procedures that govern the handling of any such communications.

NSA must report to the Office of the Director of National Intelligence (ODNI) and the Department of Justice (DOJ) any and all instances where it has failed to comply with the targeting and/or minimization procedures. In addition, ODNI and DOJ have access to documentation concerning each of NSA’s Section 702 targeting decisions and conduct regular reviews in order to provide independent oversight of NSA’s use of the authority. The FISC Rules of Procedure require the Government to notify the Court of all incidents of non-compliance with applicable law or with an authorization granted by the Court. The Government reports Section 702 compliance incidents to the Court via individual notices and quarterly reports. In addition, the Government reports all Section 702 compliance incidents to Congress in the Attorney General’s Semiannual Report. Depending on the type or severity of compliance incident, NSA may also promptly notify the Congressional Intelligence Committees, as well as the President’s Intelligence Oversight Board of an individual compliance matter.

***Existing Privacy and Civil Liberties Protections:*** Each of the three branches of federal government oversees NSA’s use of the Section 702 authorities. NSA provides transparency to its oversight bodies (Congress, DOJ, ODNI, DoD, the President’s Intelligence Oversight Board and the FISC) through regular briefings, court filings, and incident reporting. In addition, DOJ and ODNI conduct periodic reviews of NSA’s use of the authority and report on those reviews. More recently, at the direction of the President, the Government has provided additional transparency to the public regarding the program by declassifying FISC opinions and related documents. Although FISA surveillance is normally kept secret from the targets of the surveillance, there are exceptions. For example, if the Government intends to use the results of FISA surveillance, to include Section 702 surveillance, in a trial or other proceeding against a person whose communications were collected, the Government must notify the person so the person can challenge whether the communications were acquired lawfully. These protections implement the general Fair Information Practice Principle (FIPP) of transparency.





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## HOW NSA IMPLEMENTS SECTION 702 of FISA

### TRAINING

Before an analyst gains access to any NSA signals intelligence data, the analyst must complete specialized training on the legal and policy guidelines that govern the handling and use of the data. Additional training is required for access to Section 702 data. These annual mandatory training requirements include scenario-based training, required reading, and a final competency test. The analyst must pass this test before being granted access. Furthermore, if a compliance incident involves a mistake or misunderstanding of relevant policies, the analyst is re-trained in order to continue to have access to the data acquired pursuant to Section 702.

### IDENTIFYING AND TASKING A SELECTOR

Next in the Section 702 process is for an NSA analyst to identify a non-U.S. person located outside the U.S. who has and/or is likely to communicate foreign intelligence information as designated in a certification. For example, such a person might be an individual who belongs to a foreign terrorist organization or facilitates the activities of that organization's members. Non-U.S. persons are not targeted unless NSA has reason to believe that they have and/or are likely to communicate foreign intelligence information as designated in a certification; U.S. persons are never targeted.

Once the NSA analyst has identified a person of foreign intelligence interest who is an appropriate target under one of the FISC-approved Section 702 certifications, that person is considered the target. The NSA analyst attempts to determine how, when, with whom, and where the target communicates. Then the analyst identifies specific communications modes used by the target and obtains a unique identifier associated with the target – for example, a telephone number or an email address. This unique identifier is referred to as a selector. The selector is not a “keyword” or particular term (e.g., “nuclear” or “bomb”), but must be a specific communications identifier (e.g., e-mail address).

Next the NSA analyst must verify that there is a connection between the target and the selector and that the target is reasonably believed to be (a) a non-U.S. person and (b) located outside the U.S. This is not a 51% to 49% “foreignness” test. Rather the NSA analyst will check multiple sources and make a decision based on the totality of the information available. If the analyst discovers any information indicating the targeted person may be located in the U.S. or that the target may be a U.S. person, such information must be considered. In other words, if there is conflicting information about the location of the person or the status of the person as a non-U.S. person, that conflict must be resolved before targeting can occur.

For each selector, the NSA analyst must document the following information: (1) the foreign intelligence information expected to be acquired, as authorized by a certification, (2) the information that would lead a reasonable person to conclude the selector is associated with a





non-U.S. person, and (3) the information that would similarly lead a reasonable person to conclude that this non-U.S. person is located outside the U.S. This documentation must be reviewed and approved or denied by two senior NSA analysts who have satisfied additional training requirements. The senior NSA analysts may ask for more documentation or clarification, but regardless must verify that all requirements have been met in full. NSA tracks the submission, review, and approval process through the documentation and the senior NSA analysts' determinations are retained for further review by NSA's compliance elements, as well as external oversight reviewers from DOJ and ODNI. Upon approval, the selector may be used as the basis for compelling a service provider to forward communications associated with the given selector. This is generally referred to as "tasking" the selector.

***Existing Privacy and Civil Liberties Protections:*** NSA trains its analysts extensively through a variety of means to ensure that analysts fully understand their responsibilities and the specific scope of this authority. If the analyst fails to meet the training standards, the analyst will not have the ability to use the Section 702 authority for collection purposes. If the analyst fails to maintain ongoing training standards, the analyst will lose the ability to use the Section 702 authority for collection purposes and all ability to retrieve any data previously collected under the authority. NSA requires any authorized and trained analyst seeking to task a selector using Section 702 to document the three requirements for use of the authority – that the target is connected sufficiently to the selector for an approved foreign intelligence purpose, that the target is a non-U.S. person, and that the target is reasonably believed to be located outside the U.S. This documentation must be reviewed, validated, and approved by the senior analysts who have received additional training. These protections implement the general FIPPs of purpose specification, accountability and auditing, and minimization.

## **ACCESSING AND ASSESSING COMMUNICATIONS OBTAINED UNDER SECTION 702 AUTHORITY**

Once senior analysts have approved a selector as compliant, the service providers are legally compelled to assist the government by providing the relevant communications. Therefore, tasking under this authority takes place with the knowledge of the service providers. NSA receives information concerning a tasked selector through two different methods.

In the first, the Government provides selectors to service providers through the FBI. The service providers are compelled to provide NSA with communications to or from these selectors. This has been generally referred to as the PRISM program.

In the second, service providers are compelled to assist NSA in the lawful interception of electronic communications to, from, or about tasked selectors. This type of compelled service provider assistance has generally been referred to as Upstream collection. NSA's FISC-approved targeting procedures include additional requirements for such collection designed to prevent acquisitions of wholly domestic communications. For example, in certain circumstances NSA's procedures require that it employ an Internet Protocol filter to ensure that the target is





located overseas. The process for approving the selectors for tasking is the same for both PRISM and Upstream collection.

Once NSA has received communications of the tasked selector, NSA must follow additional FISC-approved procedures known as the minimization procedures. These procedures require NSA analysts to review at least a sample of communications acquired from all selectors tasked under Section 702, which occurs on a regular basis to verify that the reasonable belief determination used for tasking remains valid.

The NSA analyst must review a sample of communications received from the selectors to ensure that they are in fact associated with the foreign intelligence target and that the targeted individual or entity is not a U.S. person and is not currently located in the U.S. If the NSA analyst discovers that NSA is receiving communications that are not in fact associated with the intended target or that the user of a tasked selector is determined to be a U.S. person or is located in the U.S., the selector must be promptly "detasked." As a general rule, in the event that the target is a U.S. person or in the U.S., all other selectors associated with the target also must be detasked.

***Existing Privacy and Civil Liberties Protections:*** In addition to extensive training, the analyst is required to review the collection to determine that it is associated with the targeted selector and is providing the expected foreign intelligence shortly after the tasking starts and at least annually thereafter. This review allows NSA to identify possible problems with the collection and provides an additional layer of accountability. In addition, NSA has technical measures that alert the NSA analysts if it appears a selector is being used from the U.S. These protections implement the general FIPPs of purpose specification, minimization, accountability and auditing, data quality, and security.

#### **NSA PROCESSING AND ANALYSIS OF COMMUNICATIONS OBTAINED UNDER SECTION 702 AUTHORITY**

Communications provided to NSA under Section 702 are processed and retained in multiple NSA systems and data repositories. One data repository, for example, might hold the contents of communications such as the texts of emails and recordings of conversations, while another, may only include metadata, i.e., basic information about the communication, such as the time and duration of a telephone call, or sending and receiving email addresses.

NSA analysts may access communications obtained under Section 702 authority for the purpose of identifying and reporting foreign intelligence. They access the information via "queries," which may be date-bound, and may include alphanumeric strings such as telephone numbers, email addresses, or terms that can be used individually or in combination with one another. FISC-approved minimization procedures govern any queries done on Section 702-derived information. NSA analysts with access to Section 702-derived information are trained in the proper construction of a query so that the query is reasonably likely to return valid foreign





intelligence and minimizes the likelihood of returning non-pertinent U.S. person information. Access by NSA analysts to each repository is controlled, monitored, and audited. There are, for example, automated checks to determine if an analyst has completed all required training prior to returning information responsive to a query. Further, periodic spot checks on queries by NSA analysts are conducted.

Since October 2011 and consistent with other agencies' Section 702 minimization procedures, NSA's Section 702 minimization procedures have permitted NSA personnel to use U.S. person identifiers to query Section 702 collection when such a query is reasonably likely to return foreign intelligence information. NSA distinguishes between queries of communications content and communications metadata. NSA analysts must provide justification and receive additional approval before a content query using a U.S. person identifier can occur. To date, NSA analysts have queried Section 702 content with U.S. person identifiers less frequently than Section 702 metadata. For example, NSA may seek to query a U.S. person identifier when there is an imminent threat to life, such as a hostage situation. NSA is required to maintain records of U.S. person queries and the records are available for review by both DOJ and ODNI as part of the external oversight process for this authority. Additionally, NSA's procedures prohibit NSA from querying Upstream data with U.S. person identifiers.

***Existing Privacy and Civil Liberties Protections:*** In addition to the training and access controls, NSA maintains audit trails for all queries of the Section 702 data. NSA's Signals Intelligence Directorate's compliance staff routinely reviews a portion of all queries that include U.S. person identifiers to ensure that all such queries are only conducted when appropriate. Personnel from DOJ and ODNI provide an additional layer of oversight to ensure that NSA is querying the data appropriately. These protections implement the general FIPPs of security, accountability and auditing, and data quality.

#### **NSA DISSEMINATION OF INTELLIGENCE DERIVED FROM COMMUNICATIONS OBTAINED UNDER SECTION 702 AUTHORITY**

NSA only generates signals intelligence reports when the information meets a specific intelligence requirement, regardless of whether the proposed report contains U.S. person information. Dissemination of information about U.S. persons in any NSA foreign intelligence report is expressly prohibited unless that information is necessary to understand foreign intelligence information or assess its importance, contains evidence of a crime, or indicates a threat of death or serious bodily injury. Even if one or more of these conditions apply, NSA may include no more than the minimum amount of U.S. person information necessary to understand the foreign intelligence or to describe the crime or threat. For example, NSA typically "masks" the true identities of U.S. persons through use of such phrases as "a U.S. person" and the suppression of details that could lead to him or her being successfully identified by the context. Recipients of NSA reporting can request that NSA provide the true identity of a masked U.S. person referenced in an intelligence report if the recipient has a legitimate need to know the identity. Under NSA policy, NSA is allowed to unmask the identity only under certain





conditions and where specific additional controls are in place to preclude its further dissemination, and additional approval has been provided by one of seven designated positions at NSA. Additionally, together DOJ and ODNI review the vast majority of disseminations of information about U.S. persons obtained pursuant to Section 702 as part of their oversight process.

***Existing Privacy and Civil Liberties Protections:*** As noted above, NSA only generates signals intelligence reports when the information meets a specific intelligence requirement, regardless of whether the proposed report contains U.S. person information or not. Additionally, NSA's Section 702 minimization procedures require any U.S. person information to be minimized prior to dissemination, thereby reducing the impact on privacy for U.S. persons. The information may only be unmasked in specific instances consistent with the minimization procedures and NSA policy. These protections implement the general FIPPs of minimization and purpose specification.

#### **RETENTION OF UNEVALUATED COMMUNICATIONS OBTAINED UNDER SECTION 702 AUTHORITY**

The maximum time that specific communications' content or metadata may be retained by NSA is established in the FISC-approved minimization procedures. The unevaluated content and metadata for PRISM or telephony data collected under Section 702 is retained for no more than five years. Upstream data collected from Internet activity is retained for no more than two years. NSA complies with these retention limits through an automated process.

NSA's procedures also specify several instances in which NSA must destroy U.S. person collection promptly upon recognition. In general, these include any instance where NSA analysts recognize that such collection is clearly not relevant to the authorized purpose of the acquisition nor includes evidence of a crime. Additionally, absent limited exceptions, NSA must destroy any communications acquired when any user of a tasked account is found to have been located in the U.S. at the time of acquisition.

***Existing Privacy and Civil Liberties Protections:*** NSA has policies, technical controls, and staff in place to ensure the data is retained in accordance with the FISC-approved procedures. The automated process to delete the collection at the end of the retention period applies to both U.S. person and non U.S. person the information. There is an additional manual process for the destroying information related to U.S. Persons where NSA analysts have recognized the collection is clearly not relevant to the authorized purpose of the acquisition nor includes evidence of a crime. These protections implement the general FIPPs of minimization and security.





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## ORGANIZATIONAL MANAGEMENT, COMPLIANCE, AND OVERSIGHT

NSA is subject to rigorous internal compliance and external oversight. Like many other regulated entities, NSA has an enterprise-wide compliance program, led by NSA's Director of Compliance, a position required by statute. NSA's compliance program is designed to provide precision in NSA's activities to ensure that they are consistently conducted in accordance with law and procedure, including in this case the Section 702 certifications and accompanying Section 702 targeting and minimization procedures and additional FISC requirements. As part of the enterprise-wide compliance structure, NSA has compliance elements throughout its various organizations. NSA also seeks to detect incidents of non-compliance at the earliest point possible. When issues of non-compliance arise regarding the way in which NSA carries out the FISC-approved collection, NSA takes corrective action and, in parallel, NSA must report incidents of non-compliance to ODNI and DOJ for further reporting to the FISC and Congress, as appropriate or required.

These organizations, along with the NSA General Counsel, the NSA Inspector General, and most recently the Director of Civil Liberties and Privacy have critical roles in ensuring all NSA operations proceed in accordance with the laws, policies, and procedures governing intelligence activities. Additionally, each individual NSA analyst has a responsibility for ensuring that his or her personal activities are similarly compliant. Specifically, this responsibility includes recognizing and reporting all situations in which he or she may have exceeded his or her authority to obtain, analyze, or report intelligence information under Section 702 authority.

*Compliance:* NSA reports all incidents in which, for example, it has or may have inappropriately queried the Section 702 data, or in which an analyst may have made typographical errors or dissemination errors. NSA personnel are obligated to report when they believe NSA is not, or may not be, acting consistently with law, policy, or procedure. If NSA is not acting in accordance with law, policy, or procedure, NSA will report through its internal and external intelligence oversight channels, conduct reviews to understand the root cause, and make appropriate adjustments to its procedures.

If NSA discovers that it has tasked a selector that is used by a person in the U.S. or by a U.S. person, then NSA must cease collection immediately and, in most cases must also delete the relevant collected data and cancel or revise any disseminated reporting based on this data. NSA encourages self-reporting by its personnel and seeks to remedy any errors with additional training or other measures as necessary. Following an incident, a range of remedies may occur: admonishment, written explanation of the offense, request to acknowledge a training point that the analyst might have missed during training, and/or required retesting. In addition to reporting described above, any intentional violation of law would be referred to the NSA Office of Inspector General. To date there have been no such instances, as most recently confirmed by the President's Review Group on Intelligence and Communications Technology.





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*External Oversight:* As required by the Section 702 targeting procedures, both DOJ and ODNI conduct routine oversight reviews. Representatives from both agencies visit NSA on a bi-monthly basis. They examine all tasking datasheets that NSA provides to DOJ and ODNI to determine whether the tasking sheets meet the documentation standards required by NSA's targeting procedures and provide sufficient information for the reviewers to ascertain the basis for NSA's foreignness determinations. For those records that satisfy the standards, no additional documentation is requested. For those records that warrant further review, NSA provides additional information to DOJ and ODNI during or following the onsite review. NSA receives feedback from the DOJ and ODNI team and incorporates this information into formal and informal training to analysts. DOJ and ODNI also review the vast majority of disseminated reporting that includes U.S. person information.

*Existing Privacy and Civil Liberties Protections:* The compliance and oversight processes allow NSA to identify any concerns or problems early in the process so as to minimize the impact on privacy and civil liberties. These protections implement the general FIPPs of transparency to oversight organizations and accountability and auditing.

## **CONCLUSION**

This Report, prepared by NSA's Office of Civil Liberties and Privacy, provides a comprehensive description of NSA's Section 702 activities. The report also documents current privacy and civil liberties protections.

**EXHIBIT B**

~~TOP SECRET//SI//ORCON/NOFORN~~

**(U) The Intelligence Community's Collection Programs  
Under Title VII of the Foreign Intelligence Surveillance Act**

(U) THE INFORMATION CONTAINED IN THIS REPORT DESCRIBES SOME OF THE MOST SENSITIVE FOREIGN INTELLIGENCE COLLECTION PROGRAMS CONDUCTED BY THE UNITED STATES GOVERNMENT. THIS INFORMATION IS HIGHLY CLASSIFIED. PUBLICLY DISCLOSING ANY OF THIS INFORMATION WOULD BE EXPECTED TO CAUSE EXCEPTIONALLY GRAVE DAMAGE TO OUR NATION'S INTELLIGENCE CAPABILITIES AND TO NATIONAL SECURITY. THEREFORE IT IS IMPERATIVE THAT THOSE WHO ACCESS THIS DOCUMENT ABIDE BY THEIR OBLIGATION NOT TO DISCLOSE THIS INFORMATION TO ANY PERSON UNAUTHORIZED TO RECEIVE IT.

**(U) Introduction**

~~(S//NF)~~ Section 702 of the Foreign Intelligence Surveillance Act (FISA), added by the FISA Amendments Act (FAA) of 2008, has proven to be a critical tool in the Government's efforts to acquire foreign intelligence necessary to protect the Nation's security, while at the same time establishing rigorous safeguards to protect the privacy interests of U.S. persons. The FAA has significantly enhanced the capability of the Intelligence Community to collect information about

[REDACTED]. Section 702, along with other important provisions of the FAA, will expire at the end of this year unless reauthorized by Congress. Reauthorization is the top legislative priority of the Intelligence Community. This paper provides an overview of all of the expiring provisions of the FAA, including section 704, which provides greater protection for collection activities directed against U.S. persons overseas than existed before passage of the FAA. The principal focus of the paper is section 702, including the extensive oversight of its use and the importance of this authority to our national security. An attachment contains examples of the valuable intelligence section 702 collection has provided.

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**(U) I. Overview of Section 702**

**(U) Legal Requirements**


~~(S//NF)~~ Many terrorists and other foreign intelligence targets abroad use communications services based in this country, [REDACTED]

Classified By: 2381928  
Declassify On: 20320108  
Derived From: NSA/CSSM 1-52

~~TOP SECRET//SI//ORCON/NOFORN~~



~~TOP SECRET//SI//ORCON//NOFORN~~

 These provisions require a finding of probable cause that the overseas target is a foreign power or an agent of a foreign power, such as an international terrorist organization, and that the target is using or about to use the targeted facility, such as a telephone number or e-mail account. The Attorney General, and subsequently the Foreign Intelligence Surveillance Court (FISC), must approve each application. In effect, the Intelligence Community had to treat the overseas foreign target the same way as a U.S. person or person in the United States and obtain an individual order, based on a finding of probable cause by a neutral magistrate, even though the target was neither a U.S. person nor a person in the United States. Non-U.S. persons outside the United States generally are not entitled to the protections of the Fourth Amendment. Accordingly, the Constitution does not require this burdensome practice.

~~(S//NF)~~ Section 702 remedies these shortcomings and permits the Government to acquire, safely and efficiently from providers in the United States, communications where non-U.S. persons located abroad are targeted for the purpose of acquiring foreign intelligence information. At the same time, it provides a comprehensive regime of oversight by all three branches of Government to protect the constitutional and privacy interests of Americans.

~~(U//FOUO)~~ Under section 702, instead of issuing individual orders, the FISC, which is comprised of federal judges from around the country appointed by the Chief Justice of the Supreme Court, approves annual certifications submitted by the Attorney General and the Director of National Intelligence (DNI) that identify broad categories of foreign intelligence which may be collected. The statute stipulates several criteria for collection. First, the Attorney General and the DNI must certify that a significant purpose of an acquisition is to obtain foreign intelligence information. Second, an acquisition may intentionally target only non-U.S. persons. Third, an acquisition may not intentionally target any person known at the time of the acquisition to be in the United States. Fourth, an acquisition may not target a person outside the United States for the purpose of targeting a particular, known person in this country. Fifth, section 702 protects domestic communications by prohibiting the intentional acquisition of "any communication as to which the sender and all intended recipients are known at the time of the acquisition" to be in the United States. Finally, any acquisition must be consistent with the Fourth Amendment. The certifications are the legal basis for targeting specific individuals overseas and, based on the certifications, the Attorney General and the DNI can direct communications providers in this country to assist the Government in acquiring these targets' communications.

(U) Because when originally passed Congress understood that U.S.-person communications would incidentally be acquired when targeting foreign communications, to ensure compliance with these provisions, section 702 requires the Attorney General, in consultation with the DNI, to adopt targeting and minimization procedures. Under the statute, the targeting procedures must be reasonably designed to ensure that an acquisition is limited to targeting persons reasonably believed to be located outside the United States, and to prevent the intentional acquisition of purely domestic communications. The minimization procedures govern how the Intelligence Community treats the identities of any U.S. persons whose communications might be incidentally intercepted and regulate the handling of any nonpublic information concerning U.S.

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persons that is acquired. These minimization procedures must meet the same standard as the minimization procedures required by other provisions of FISA. The FISC reviews the targeting and minimization procedures for compliance with the requirements of both the statute and the Fourth Amendment, and the appropriate congressional committees receive copies of them. By approving the certifications submitted by the Attorney General and the DNI as well as the targeting and minimization procedures, the FISC plays a vital role in ensuring that acquisitions under section 702 are conducted in a lawful and appropriate manner.

#### (U) Implementation

~~(S//NF)~~ Currently, the Attorney General and the DNI have authorized the acquisition of foreign intelligence information under section 702 [REDACTED]

[REDACTED] The Attorney General and the DNI must resubmit these certifications to the FISC for review and renewal at least once a year. Using these certifications, Intelligence Community elements participate in the tasking of selectors for telephony, as well as electronic communications accounts, such as e-mail addresses.

~~(S//NF)~~ NSA takes the lead in targeting and tasks both telephone and electronic communications selectors to acquire communications [REDACTED]. NSA's targeting procedures require that there be an appropriate foreign intelligence purpose for the acquisition and that the selector be used by a non-U.S. person reasonably believed to be located outside the United States. To determine the location of a user, an analyst must, as appropriate, examine the lead information about the potential target or selector; [REDACTED]

~~(S//NF)~~ [REDACTED]. Because NSA has already made a "foreignness" determination for these selectors in accordance with its FISC-approved targeting procedures, FBI's targeting role differs from that of NSA. FBI is not required to second-guess NSA's targeting determinations. It must, however, review and understand NSA's targeting determinations, [REDACTED]

~~(TS//SI//NF)~~ Once a target has been approved, NSA uses two means to acquire [REDACTED] electronic communications. First, [REDACTED], it acquires such communications directly from U.S.-based ISPs. This is known as PRISM collection. Using PRISM, NSA currently collects against approximately [REDACTED] selectors at any given time.

~~(TS//SI//NF)~~ Second, in addition to collection directly from ISPs, NSA collects telephone and electronic communications as they transit the Internet "backbone" within the United States. This

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is known as "upstream" collection [REDACTED]

[REDACTED], the volume of communications acquired upstream is much smaller than that obtained through PRISM. In June 2011, for example, it made up only about 11% of the overall section 702 volume. [REDACTED]

~~(TS//SI//NF)~~ Upstream collection enables NSA to target terrorists [REDACTED]. It also lets NSA collect electronic communications that contain the targeted e-mail address in the body of a communication between two third parties. Finally, NSA obtains certain international or foreign telephone communications from this collection.

~~(TS//SI//NF)~~ Once acquired, all communications are routed to NSA. NSA also can designate the communications from specified selectors acquired through PRISM collection to be "dual-routed" to other Intelligence Community elements. Each agency that receives the collection has its own minimization procedures that have been approved by the FISC and may retain and disseminate communications acquired under section 702 only in accordance with those procedures. In general, before an agency may disseminate information identifying a U.S. person, the information must reasonably appear to be foreign intelligence or evidence of a crime, or necessary to understand or assess foreign intelligence information.

#### **(U) Compliance and Oversight**

(U) The Executive Branch is committed to ensuring that the Intelligence Community's use of section 702 is consistent with the law, the FISC's orders, and the protection of the privacy and civil liberties of Americans. The Intelligence Community, the Department of Justice, and the FISC all play a critical role in overseeing the use of this provision. In addition, the Intelligence and Judiciary Committees carry out essential oversight, which is discussed separately in section IV below.

~~(S//NF)~~ First, components in each agency, including operational components and agency Inspectors General, conduct extensive oversight. Agencies using section 702 authority must report promptly to the Department of Justice and to the Office of the Director of National Intelligence (ODNI) incidents of noncompliance with the targeting or minimization procedures. Members of the joint oversight team from the National Security Division (NSD) of the Department of Justice and ODNI routinely review the agencies' targeting decisions. Currently, at least once every 60 days, NSD and ODNI conduct oversight of activities under section 702. The joint oversight team evaluates and where appropriate investigates each potential incident of noncompliance, and conducts a detailed review of agencies' targeting and minimization decisions.

~~(S//NF)~~ Using the reviews by NSD and ODNI personnel, the Attorney General and the DNI assess semi-annually, as required by section 702, compliance with the targeting and minimization procedures. These assessments are provided twice yearly to Congress. In general,

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the assessments have found that agencies have “continued to implement the procedures . . . in a manner that reflects a focused and concerted effort by agency personnel to comply with the requirements of Section 702.” The number of compliance incidents has been small, with no indication of “any intentional attempt to circumvent or violate” legal requirements. Rather, agency personnel “are appropriately focused on directing their efforts at non-United States persons reasonably believed to be located outside the United States.” *Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of the Foreign Intelligence Surveillance Act, Submitted by the Attorney General and the Director of National Intelligence, Reporting Period: December 1, 2010 – May 31, 2011* at 2-3, 5. 21-22 (December 2011).

(U) The Intelligence Community and the Department of Justice use the reviews and oversight to evaluate whether changes to the procedures are needed, and what other steps may be appropriate under section 702 to protect the privacy of Americans. The Government also provides the joint assessments, the major portions of the semi-annual reports, and a separate quarterly report to the FISC. Taken together, these measures provide robust oversight of the Government’s use of this authority.

~~(TS//SI//NF)~~ One recent event demonstrates both how this oversight regime works and how challenging collection can be in the complex and rapidly evolving Internet environment. On October 3, 2011, the FISC issued an opinion addressing the Government’s submission of replacement certifications under section 702. Although the FISC upheld the bulk of the Government’s submission, it denied in part the Government’s requests to reauthorize the certifications because of its concerns about the rules governing the retention of certain non-targeted Internet communications -- so called multi-communication transactions or MCTs -- acquired through NSA’s upstream collection. The FISC recognized, however, that the Government may be able to “tailor the scope of NSA’s upstream collection, or adopt more stringent post-acquisition safeguards” in a manner that would satisfy its concerns, and suggested a number of possibilities as to how this might be done. In response to this opinion, the NSA, Department of Justice, and ODNI worked to correct the deficiencies identified by the Court. On November 30, the FISC granted the Government’s request for approval of the amended procedures, stating that, with regard to information acquired pursuant to the 2011 certifications, “the government has adequately corrected the deficiencies identified in the October 3 Opinion,” and that the amended procedures, when “viewed as a whole, meet the applicable statutory and constitutional requirements.” These amended procedures continue to allow for the upstream collection of MCTs; however, they also create more rigorous rules governing the retention of MCTs as well as NSA analysts’ exposure to, and use of, non-targeted communications. The Government’s extensive efforts over several months to address this matter, and the FISC’s exhaustive analysis of it, demonstrates how well the existing oversight regime works in ensuring that collection is undertaken in conformity with the statute and Court-approved procedures. This issue was also fully briefed to the appropriate congressional committees, again highlighting the important role that Congress plays in overseeing these vital intelligence activities.

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(U) II. The Importance of Section 702 Collection

~~(S//NF)~~ The Administration believes that a failure to renew this authority would result in a loss of critical foreign intelligence that cannot practicably be obtained through other methods.

~~(S//NF)~~ To require an individualized court order, based on a finding of probable cause, before acquiring the communications of a non-U.S. person overseas who is believed to be involved in international terrorist activities or who is otherwise of foreign intelligence interest would have serious adverse consequences. Where the Intelligence Community has reason to believe that a non-U.S. person located overseas is connected to international terrorist activities, but does not have enough facts to establish probable cause to conclude that the target is acting as an agent of a foreign power, such a requirement could prevent the United States from acquiring significant intelligence. Even where the United States could, over time, amass additional information from other sources to establish probable cause, a requirement that such additional information be obtained and submitted to the FISC would result in delays in collection that could prove harmful. Second, even where the Intelligence Community has facts that establish probable cause that foreign targets are acting as foreign powers or agents of foreign powers, eliminating section 702's more flexible targeting system would significantly slow the Intelligence Community's ability to acquire important foreign intelligence information. This flexibility is critical in fast-moving threat scenarios. Significant additional resources would have to be devoted to preparing and processing the FISC applications and even then, given the number of selectors tasked, it is simply not feasible to obtain individualized orders on a routine basis for the thousands of foreign persons targeted under section 702. Intelligence would be lost. Moreover, failure to renew section 702 would require redirection of a substantial portion of the oversight resources of the Intelligence Community, the Department of Justice, and the FISC from their other important national security related work to the processing of FISA applications targeting non-U.S. persons overseas who are not entitled to Fourth Amendment protections under our Constitution. In contrast, section 702 increases the Government's ability to acquire important foreign intelligence information and to act quickly against appropriate foreign targets, without sacrificing constitutional protections for Americans.

~~(TS//SI//NF)~~ Another major benefit of section 702 is that it has made collection against foreign targets located outside the United States possible from the relative safety of collection points in the United States. [REDACTED]

~~(TS//SI//NF)~~ In sum, section 702 collection is a major contributor to the Intelligence Community's reporting on counterterrorism, [REDACTED] and other topics. Attached to this paper are several examples that demonstrate the broad range of important information that the Intelligence Community has obtained from section 702 collection.

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~~TOP SECRET//SI//ORCON/NOFORN~~**(U) III. Other Provisions of the FAA**

(U) In contrast to section 702, which focuses on foreign targets, section 704 addresses collection activities directed against U.S. persons overseas. Section 704 requires an individual order from the FISC in circumstances in which a U.S. person overseas has "a reasonable expectation of privacy and a warrant would be required if the acquisition were conducted inside the United States for law enforcement purposes." It also requires probable cause to believe that the targeted U.S. person is "a foreign power, an agent of a foreign power, or an officer or employee of a foreign power." Previously, these activities were outside the scope of FISA and governed exclusively by section 2.5 of Executive Order 12333.<sup>1</sup> By requiring the approval of the FISC, section 704 provides additional protection for civil liberties.

(U) In addition to sections 702 and 704, the FAA added several other provisions to FISA. Section 701 provides definitions for the Act. Section 703 allows the FISC to authorize an application targeting a U.S. person outside the United States where the acquisition is conducted in this country. Like section 704, section 703 requires probable cause to believe that the target is a foreign power, an agent of a foreign power, or an officer or employee of a foreign power. Section 705 allows the Government to obtain various authorities simultaneously. Section 709 clarifies that nothing in the FAA is intended to limit the Government's ability to obtain authorizations under other parts of FISA. The Government supports the reauthorization of these provisions.

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**(U) IV. Congressional Oversight**

(U) The Executive Branch appreciates the need for regular and meaningful Congressional oversight of the use of section 702 and the other provisions of the FAA. Twice a year, the Attorney General must "fully inform, in a manner consistent with national security," the Intelligence and Judiciary Committees about the implementation of the FAA. Additionally, with respect to section 702, the report must include copies of certifications and directives and copies of significant pleadings and FISC opinions and orders. It also must describe compliance matters, any use of emergency authorities, and the FISC's review of the Government's pleadings. With respect to sections 703 and 704, the report must include the number of applications made, and the number granted, modified, or denied by the FISC.

(U) Section 702 also requires the Attorney General and the DNI to provide to the Intelligence and Judiciary Committees their assessment of compliance with the targeting and minimization procedures, described above. In addition, the Government has substantial reporting requirements imposed by FISA under which it has provided Congress information to ensure effective congressional oversight. The Government has informed the Intelligence and Judiciary Committees of acquisitions authorized under section 702; reported, in detail, on the results of the

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<sup>1</sup> (U) Since before the enactment of the FAA, section 2.5 of Executive Order 12333 has required the Attorney General to approve the use by the Intelligence Community against U.S. persons abroad of "any technique for which a warrant would be required if undertaken for law enforcement purposes." The Attorney General must find that there is probable cause to believe that the U.S. person is a foreign power or an agent of a foreign power. The provisions of section 2.5 continue to apply to these activities, in addition to the requirements of section 704.

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reviews and on compliance incidents and remedial efforts; made all written reports on these reviews available to the Committees; and provided summaries of significant interpretations of FISA, as well as copies of relevant judicial opinions and pleadings.

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**(U) V. The Need for Reauthorization**

(U) The Administration strongly supports the reauthorization of Title VII of FISA. The FAA was the product of bipartisan effort, and its enactment was preceded by extensive public debate. There is now a lengthy factual record on the Government's need for the FAA to acquire foreign intelligence information critical to the national security. There is also a lengthy record documenting the effectiveness of the oversight process in protecting the privacy and civil liberties of Americans. This extensive record demonstrates the proven value of these authorities, and the commitment of the Government to their lawful and responsible use.

(U) Reauthorization will ensure continued certainty for the rules used by agency employees and our private partners. The Intelligence Community has invested significant human and financial resources to enable its personnel and technological systems to acquire and review vital data quickly and lawfully. Our adversaries, of course, seek to hide the most important information from us. It is at best inefficient and at worst unworkable for agencies to develop new technologies and procedures and train employees, only to have a statutory framework subject to wholesale revision. This is particularly true at a time of limited resources. We are always considering whether there are changes that could be made to improve the law in a manner consistent with the privacy and civil liberties interests of Americans. Our first priority, however, is reauthorization of these authorities in their current form. It is essential that these authorities remain in place without interruption—and without the threat of interruption—so that those who have been entrusted with their use can continue to protect our nation from its enemies.

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**Attachment  
Value of Section 702 Collection**

(U) Section 702 is a critical intelligence collection tool that has helped to protect national security. The following are "real-life" examples that demonstrate the broad range of important information that the Intelligence Community has obtained.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



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[REDACTED]

[REDACTED]

[REDACTED]

~~(S//NF)~~ **Example 4: Najibullah Zazi**

~~(S//NF)~~ The FBI's arrest in 2009 of Najibullah Zazi in Colorado, the disruption of his planned attack on the New York subway system, and his eventual guilty plea to terrorism charges were the direct result of section 702 coverage. NSA observed that an al Qa'ida external operations account, which was under section 702 coverage, sent an e-mail to Zazi in September 2009. That allowed NSA to pass Zazi's e-mail account, [REDACTED], and telephone number to the FBI. This initial report was based solely on section 702 collection. The report led to Zazi's identification and the discovery of purchases in Colorado that could be used in a terrorist attack, and ultimately to his arrest and the arrests of others involved in the plot. Thus section 702 facilitated the disruption of one of the most serious terrorist plots against the homeland since September 11th.

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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# **EXHIBIT C**

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# Office of the Director of National Intelligence

Statistical Transparency Report Regarding use of  
National Security Authorities

Annual Statistics for Calendar Year 2013

~~Classified By: 2381928  
Derived From: ODNI COL T-12  
Reason:  
Declassify On: 20391231~~

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## **Statistical Transparency Report Regarding use of National Security Authorities**

June 26, 2014

### **Introduction.**

In June 2013, President Obama directed the Intelligence Community to declassify and make public as much information as possible about certain sensitive U.S. Government surveillance programs while protecting sensitive classified intelligence and national security information. Over the past year, the Director of National Intelligence (DNI) has declassified and authorized the public release of thousands of pages of documents relating to the use of critical national security authorities. Today, and consistent with the DNI's directive on August 29, 2013, we are releasing information related to the use of these important tools, and will do so in the future on an annual basis. Accordingly, the DNI has declassified and directed the release of the following information for calendar year 2013.

### **Annual Statistics for Calendar Year 2013 Regarding Use of Certain National Security Legal Authorities.**

#### **Titles I, III, IV, and VII of FISA.**

<b>Legal Authority</b>	<b>Annual Number of Orders</b>	<b>Estimated Number of Targets Affected</b>
FISA Orders based on probable cause (Title I and III of FISA, Sections 703 and 704 of FISA)	1,767 orders	1,144
Section 702 of FISA	1 order	89,138
FISA Pen Register/Trap and Trace (Title IV of FISA)	131 orders	319

It is important to provide some additional context to the above statistics.

- **Targets.** Within the Intelligence Community, the term "target" has multiple meanings. For example, "target" could be an individual person, a group, or an organization composed of multiple individuals or a foreign power that possesses or is likely to communicate foreign intelligence information that the U.S. government is authorized to acquire by the above-referenced laws. Some laws require that the government obtain a Court order specifying the communications facilities used by a "target" to be subject to intelligence collection. Although the government may have legal authority to conduct intelligence collection against multiple communications facilities used by the target, the user of the facilities - the "target" - is only counted once in the above figures.

- **702 Targets.** In addition to the explanation of target above, in the context of Section 702 the term “target” is generally used to refer to the act of intentionally directing intelligence collection at a particular person, a group, or organization. For example, the statutory provisions of Section 702 state that the Government “may not *intentionally target any person* known at the time of the acquisition to be located in the United States” (emphasis added), among other express limitations. Under Section 702, the Foreign Intelligence Surveillance Court (FISC) approves Certifications as opposed to individualized orders. Thus, the number of 702 “targets” reflects an estimate of the number of known users of particular facilities (sometimes referred to as selectors) subject to intelligence collection under those Certifications. This estimate is based on the information readily available to the Intelligence Community to identify unique targets – users, whose identity may be unknown, but who are reasonably believed to use the particular facility from outside the United States and who are reasonably believed to be non-United States persons. For example, foreign intelligence targets often communicate using several different email accounts. Unless the Intelligence Community has information that multiple email accounts are used by the same target, each of those accounts would be counted separately in these figures. On the other hand, if the Intelligence Community is aware that the accounts are all used by the same target, as defined above, they would be counted as one target.
- **Relationship of Orders to Targets.** In some cases, one order can by its terms affect multiple targets (as with Section 702). Alternatively, a target may be the subject of multiple orders, as noted below.
- **Amendments and Renewals.** The FISC may amend an order one or more times after it has been issued. For example, an order may be amended to add a newly discovered account used by the target. To avoid redundant counting, these statistics do not count such amendments separately. Moreover, some orders may be renewed multiple times during the calendar year (for example, the FISA statute provides that a Section 704 FISA Order against a U.S. person target may last no longer than 90 days but permits the order to be renewed). The statistics count each such renewal as a separate order.

### **Title V of FISA (Business Records).**

We are reporting information about the Government’s use of the FISA Business Records provision (Title V) separately because this authority has been used in two distinct ways – collection of business records to obtain information about a specific subject and collection of business records in bulk. Accordingly, in the interest of transparency, we have decided to clarify the extent to which individuals are affected by each use. In addition, instead of reporting on the number of Business Record orders, the government is reporting on the number of *applications* submitted to the Foreign Intelligence Surveillance Court because the FISC may issue several orders to different recipients based upon a particular application.



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Legal Authority	Annual Number of Applications	Estimated Number Affected
FISA Business Records (Title V of FISA)	178	172: The number of individuals, entities, or foreign powers subject to a business records application to obtain information about a specific subject
		423: The number of selectors approved to be queried under the NSA telephony metadata program
		248: The number of known or presumed U.S. persons who were the subject of queries of information collected in bulk or who were subject to a business records application.

### National Security Letters.

Finally, we are reporting information on the Government's use of National Security Letters (NSLs). On April 30, 2014, the Department of Justice released its Annual Foreign Intelligence Surveillance Act Report to Congress. That report, which is [available here](#) reports on the number of requests made for certain information concerning different United States persons pursuant to NSL authorities during calendar year 2013. In addition to those figures, today we are reporting (1) the total number of NSLs issued for all persons, and (2) the total number of requests for information contained within those NSLs. For example, one NSL seeking subscriber information from one provider may identify three e-mail addresses, all of which are relevant to the same pending investigation and each is considered a "request."

We are reporting the annual number of requests rather than "targets" for multiple reasons. First, the FBI's systems are configured to comply with Congressional reporting requirements, which do not require the FBI to track the number of individuals or organizations that are the subject of an NSL. Even if the FBI systems were configured differently, it would still be difficult to identify the number of specific individuals or organizations that are the subjects of NSLs. One reason for this is that the subscriber information returned to the FBI in response to an NSL may identify, for example, one subscriber for three accounts or it may identify different subscribers for each account. In some cases this occurs because the identification information provided by the subscriber to the provider may not be true. For example, a subscriber may use a fictitious name or alias when creating the account. Thus, in many instances, the FBI never identifies the actual subscriber of a facility. In other cases this occurs because individual

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subscribers may identify themselves differently for each account, e.g., inclusion of middle name, middle initial, etc., when creating an account.

We also note that the actual number of individuals or organizations that are the subject of an NSL is different than the number of NSL requests. The FBI often issues NSLs under different legal authorities, e.g., 12 U.S.C. § 3414(a)(5), 15 U.S.C. §§ 1681u(a) and (b), 15 U.S.C. § 1681v, and 18 U.S.C. § 2709, for the same individual or organization. The FBI may also serve multiple NSLs for an individual for multiple facilities, e.g., multiple e-mail accounts, landline telephone numbers, cellular phone numbers, etc. The number of requests, consequently, is significantly larger than the number of individuals or organizations that are the subjects of the NSLs.

Legal Authority	Annual Number of NSLs Issued	Annual Number of Requests for Information
National Security Letters issued pursuant to 12 U.S.C. § 3414(a)(5), 15 U.S.C. §§ 1681u(a) and (b), 15 U.S.C. § 1681v, and 18 U.S.C. § 2709	19,212	38,832

This information will be available at the website of the Office of the Director of National Intelligence (ODNI); and ODNI's public website dedicated to fostering greater public visibility into the intelligence activities of the Government, [ICOntheRecord.tumblr.com](http://ICOntheRecord.tumblr.com).

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# **EXHIBIT D**

DIRECTOR OF NATIONAL INTELLIGENCE

WASHINGTON, DC 20511

June 8, 2013

**Facts on the Collection of Intelligence Pursuant to Section 702  
of the Foreign Intelligence Surveillance Act**

- PRISM is not an undisclosed collection or data mining program. It is an internal government computer system used to facilitate the government's statutorily authorized collection of foreign intelligence information from electronic communication service providers under court supervision, as authorized by Section 702 of the Foreign Intelligence Surveillance Act (FISA) (50 U.S.C. § 1881a). This authority was created by the Congress and has been widely known and publicly discussed since its inception in 2008.
- Under Section 702 of FISA, the United States Government does not unilaterally obtain information from the servers of U.S. electronic communication service providers. All such information is obtained with FISA Court approval and with the knowledge of the provider based upon a written directive from the Attorney General and the Director of National Intelligence. In short, Section 702 facilitates the targeted acquisition of foreign intelligence information concerning foreign targets located outside the United States under court oversight. Service providers supply information to the Government when they are lawfully required to do so.
- The Government cannot target anyone under the court-approved procedures for Section 702 collection unless there is an appropriate, and documented, foreign intelligence purpose for the acquisition (such as for the prevention of terrorism, hostile cyber activities, or nuclear proliferation) and the foreign target is reasonably believed to be outside the United States. We cannot target even foreign persons overseas without a valid foreign intelligence purpose.
- In addition, Section 702 cannot be used to intentionally target any U.S. citizen, or any other U.S. person, or to intentionally target any person known to be in the United States. Likewise, Section 702 cannot be used to target a person outside the United States if the purpose is to acquire information from a person inside the United States.
- Finally, the notion that Section 702 activities are not subject to internal and external oversight is similarly incorrect. Collection of intelligence information under Section 702 is subject to an extensive oversight regime, incorporating reviews by the Executive, Legislative and Judicial branches.



- *The Courts.* All FISA collection, including collection under Section 702, is overseen and monitored by the FISA Court, a specially established Federal court comprised of 11 Federal judges appointed by the Chief Justice of the United States.
  - The FISC must approve targeting and minimization procedures under Section 702 prior to the acquisition of any surveillance information.
    - Targeting procedures are designed to ensure that an acquisition targets non-U.S. persons reasonably believed to be outside the United States for specific purposes, and also that it does not intentionally acquire a communication when all the parties are known to be inside the US.
    - Minimization procedures govern how the Intelligence Community (IC) treats the information concerning any U.S. persons whose communications might be incidentally intercepted and regulate the handling of any nonpublic information concerning U.S. persons that is acquired, including whether information concerning a U.S. person can be disseminated. Significantly, the dissemination of information about U.S. persons is expressly prohibited unless it is necessary to understand foreign intelligence or assess its importance, is evidence of a crime, or indicates a threat of death or serious bodily harm.
- *The Congress.* After extensive public debate, the Congress reauthorized Section 702 in December 2012.
  - The law specifically requires a variety of reports about Section 702 to the Congress.
    - The DNI and AG provide exhaustive semiannual reports assessing compliance with the targeting and minimization procedures.
    - These reports, along with FISA Court opinions, and a semi-annual report by the Attorney General are provided to Congress. In short, the information provided to Congress by the Executive Branch with respect to these activities provides an unprecedented degree of accountability and transparency.
  - In addition, the Congressional Intelligence and Judiciary Committees are regularly briefed on the operation of Section 702.
- *The Executive.* The Executive Branch, including through its independent Inspectors General, carries out extensive oversight of the use of Section 702 authorities, which includes regular on-site reviews of how Section 702 authorities are being implemented. These regular reviews are documented in reports produced to Congress. Targeting decisions are reviewed by ODNI and DOJ.
  - Communications collected under Section 702 have provided the Intelligence Community insight into terrorist networks and plans. For example, the Intelligence

Community acquired information on a terrorist organization's strategic planning efforts.

- Communications collected under Section 702 have yielded intelligence regarding proliferation networks and have directly and significantly contributed to successful operations to impede the proliferation of weapons of mass destruction and related technologies.
- Communications collected under Section 702 have provided significant and unique intelligence regarding potential cyber threats to the United States including specific potential computer network attacks. This insight has led to successful efforts to mitigate these threats.

# **EXHIBIT E**





9 August 2013

## National Security Agency

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### **The National Security Agency: Missions, Authorities, Oversight and Partnerships**

*“That’s why, in the years to come, we will have to keep working hard to strike the appropriate balance between our need for security and preserving those freedoms that make us who we are. That means reviewing the authorities of law enforcement, so we can intercept new types of communication, but also build in privacy protections to prevent abuse.”*

*--President Obama, May 23, 2013*

In his May 2013 address at the National Defense University, the President made clear that we, as a Government, need to review the surveillance authorities used by our law enforcement and intelligence community professionals so that we can collect information needed to keep us safe and ensure that we are undertaking the right kinds of privacy protections to prevent abuse. In the wake of recent unauthorized disclosures about some of our key intelligence collection programs, President Obama has directed that as much information as possible be made public, while mindful of the need to protect sources, methods and national security. Acting under that guidance, the Administration has provided enhanced transparency on, and engaged in robust public discussion about, key intelligence collection programs undertaken by the National Security Agency (NSA). This is important not only to foster the kind of debate the President has called for, but to correct inaccuracies that have appeared in the media and elsewhere. This document is a step in that process, and is aimed at providing a succinct description of NSA’s mission, authorities, oversight and partnerships.

### **Prologue**

After the al-Qa’ida attacks on the World Trade Center and the Pentagon, the 9/11 Commission found that the U.S. Government had failed to identify and connect the many “dots” of information that would have uncovered the planning and preparation for those attacks. We now know that 9/11 hijacker Khalid al-Midhar, who was on board American Airlines flight 77 that crashed into the Pentagon, resided in California for the first six months of 2000. While NSA had intercepted some of Midhar’s conversations with persons in an al-Qa’ida safe house in Yemen during that period, NSA did not have the U.S. phone number or any indication that the phone Midhar was using was located in San Diego. NSA did not have the tools or the database to search to identify these connections and share them with the FBI. Several programs were developed to address the U.S. Government’s need to connect the dots of information available to the intelligence community and to strengthen the coordination between foreign intelligence and domestic law enforcement agencies.

## **Background**

NSA is an element of the U.S. intelligence community charged with collecting and reporting intelligence for foreign intelligence and counterintelligence purposes. NSA performs this mission by engaging in the collection of “signals intelligence,” which, quite literally, is the production of foreign intelligence through the collection, processing, and analysis of communications or other data, passed or accessible by radio, wire, or other electromagnetic means. Every intelligence activity NSA undertakes is necessarily constrained to these central foreign intelligence and counterintelligence purposes. NSA’s challenge in an increasingly interconnected world -- a world where our adversaries make use of the same communications systems and services as Americans and our allies -- is to find and report on the communications of foreign intelligence value while respecting privacy and civil liberties. We do not need to sacrifice civil liberties for the sake of national security – both are integral to who we are as Americans. NSA can and will continue to conduct its operations in a manner that respects both. We strive to achieve this through a system that is carefully designed to be consistent with *Authorities* and *Controls* and enabled by capabilities that allow us to *Collect, Analyze, and Report* intelligence needed to protect national security.

## **NSA Mission**

NSA’s mission is to help protect national security by providing policy makers and military commanders with the intelligence information they need to do their jobs. NSA’s priorities are driven by externally developed and validated intelligence requirements, provided to NSA by the President, his national security team, and their staffs through the National Intelligence Priorities Framework.

## **NSA Collection Authorities**

NSA’s collection authorities stem from two key sources: Executive Order 12333 and the Foreign Intelligence Surveillance Act of 1978 (FISA).

## **Executive Order 12333**

Executive Order 12333 is the foundational authority by which NSA collects, retains, analyzes, and disseminates foreign signals intelligence information. The principal application of this authority is the collection of communications by foreign persons that occur wholly outside the United States. To the extent a person located outside the United States communicates with someone inside the United States or someone inside the United States communicates with a person located outside the United States those communications could also be collected. Collection pursuant to EO 12333 is conducted through various means around the globe, largely from outside the United States, which is not otherwise regulated by FISA. Intelligence activities conducted under this authority are carried out in accordance with minimization procedures established by the Secretary of Defense and approved by the Attorney General.

To undertake collections authorized by EO 12333, NSA uses a variety of methodologies. Regardless of the specific authority or collection source, NSA applies the process described below.

1. NSA identifies foreign entities (persons or organizations) that have information responsive to an identified foreign intelligence requirement. For instance, NSA works to identify individuals who may belong to a terrorist network.
2. NSA develops the “network” with which that person or organization’s information is shared or the command and control structure through which it flows. In other words, if NSA is tracking a specific terrorist, NSA will endeavor to determine who that person is in contact with, and who he is taking direction from.
3. NSA identifies how the foreign entities communicate (radio, e-mail, telephony, etc.)
4. NSA then identifies the telecommunications infrastructure used to transmit those communications.
5. NSA identifies vulnerabilities in the methods of communication used to transmit them.
6. NSA matches its collection to those vulnerabilities, or develops new capabilities to acquire communications of interest if needed.

This process will often involve the collection of communications metadata – data that helps NSA understand where to find valid foreign intelligence information needed to protect U.S. national security interests in a large and complicated global network. For instance, the collection of overseas communications metadata associated with telephone calls – such as the telephone numbers, and time and duration of calls – allows NSA to map communications between terrorists and their associates. This strategy helps ensure that NSA’s collection of communications content is more precisely focused on only those targets necessary to respond to identified foreign intelligence requirements.

NSA uses EO 12333 authority to collect foreign intelligence from communications systems around the world. Due to the fragility of these sources, providing any significant detail outside of classified channels is damaging to national security. Nonetheless, every type of collection undergoes a strict oversight and compliance process internal to NSA that is conducted by entities within NSA other than those responsible for the actual collection.

### **FISA Collection**

FISA regulates certain types of foreign intelligence collection including certain collection that occurs with compelled assistance from U.S. telecommunications companies. Given the techniques that NSA must employ when conducting NSA’s foreign intelligence mission, NSA quite properly relies on FISA authorizations to acquire significant foreign intelligence information and will work with the FBI and other agencies to connect the dots between foreign-based actors and their activities in the U.S. The FISA Court plays an important role in helping to ensure that signals intelligence collection governed by FISA is conducted in conformity with the requirements of the statute. All three branches of the U.S. Government have responsibilities for programs conducted under FISA, and a key role of the FISA Court is to ensure that activities conducted pursuant to FISA authorizations are consistent with the statute, as well as the U.S. Constitution, including the Fourth Amendment.

### **FISA Section 702**

Under Section 702 of the FISA, NSA is authorized to target non-U.S. persons who are reasonably believed to be located outside the United States. The principal application of this



authority is in the collection of communications by foreign persons that utilize U.S. communications service providers. The United States is a principal hub in the world's telecommunications system and FISA is designed to allow the U.S. Government to acquire foreign intelligence while protecting the civil liberties and privacy of Americans. In general, Section 702 authorizes the Attorney General and Director of National Intelligence to make and submit to the FISA Court written certifications for the purpose of acquiring foreign intelligence information. Upon the issuance of an order by the FISA Court approving such a certification and the use of targeting and minimization procedures, the Attorney General and Director of National Intelligence may jointly authorize for up to one year the targeting of non-United States persons reasonably believed to be located overseas to acquire foreign intelligence information. The collection is acquired through compelled assistance from relevant electronic communications service providers.

NSA provides specific identifiers (for example, e-mail addresses, telephone numbers) used by non-U.S. persons overseas who the government believes possess, communicate, or are likely to receive foreign intelligence information authorized for collection under an approved certification. Once approved, those identifiers are used to select communications for acquisition. Service providers are compelled to assist NSA in acquiring the communications associated with those identifiers.

For a variety of reasons, including technical ones, the communications of U.S. persons are sometimes incidentally acquired in targeting the foreign entities. For example, a U.S. person might be courtesy copied on an e-mail to or from a legitimate foreign target, or a person in the U.S. might be in contact with a known terrorist target. In those cases, minimization procedures adopted by the Attorney General in consultation with the Director of National Intelligence and approved by the Foreign Intelligence Surveillance Court are used to protect the privacy of the U.S. person. These minimization procedures control the acquisition, retention, and dissemination of any U.S. person information incidentally acquired during operations conducted pursuant to Section 702.

The collection under FAA Section 702 is the most significant tool in the NSA collection arsenal for the detection, identification, and disruption of terrorist threats to the U.S. and around the world. One notable example is the Najibullah Zazi case. In early September 2009, while monitoring the activities of al Qaeda terrorists in Pakistan, NSA noted contact from an individual in the U.S. that the FBI subsequently identified as Colorado-based Najibullah Zazi. The U.S. Intelligence Community, including the FBI and NSA, worked in concert to determine his relationship with al Qaeda, as well as identify any foreign or domestic terrorist links. The FBI tracked Zazi as he traveled to New York to meet with co-conspirators, where they were planning to conduct a terrorist attack. Zazi and his co-conspirators were subsequently arrested. Zazi pled guilty to conspiring to bomb the New York City subway system. The FAA Section 702 collection against foreign terrorists was critical to the discovery and disruption of this threat to the U.S.

### **FISA (Title I)**

NSA relies on Title I of FISA to conduct electronic surveillance of foreign powers or their agents, to include members of international terrorist organizations. Except for certain narrow

exceptions specified in FISA, a specific court order from the Foreign Intelligence Surveillance Court based on a showing of probable cause is required for this type of collection.

### **Collection of U.S. Person Data**

There are three additional FISA authorities that NSA relies on, after gaining court approval, that involve the acquisition of communications, or information about communications, of U.S. persons for foreign intelligence purposes on which additional focus is appropriate. These are the Business Records FISA provision in Section 501 (also known by its section numbering within the PATRIOT Act as Section 215) and Sections 704 and 705(b) of the FISA.

### **Business Records FISA, Section 215**

Under NSA's Business Records FISA program (or BR FISA), first approved by the Foreign Intelligence Surveillance Court (FISC) in 2006 and subsequently reauthorized during two different Administrations, four different Congresses, and by 14 federal judges, specified U.S. telecommunications providers are compelled by court order to provide NSA with information about telephone calls to, from, or within the U.S. The information is known as metadata, and consists of information such as the called and calling telephone numbers and the date, time, and duration of the call – but no user identification, content, or cell site locational data. The purpose of this particular collection is to identify the U.S. nexus of a foreign terrorist threat to the homeland

The Government cannot conduct substantive queries of the bulk records for any purpose other than counterterrorism. Under the FISC orders authorizing the collection, authorized queries may only begin with an “identifier,” such as a telephone number, that is associated with one of the foreign terrorist organizations that was previously identified to and approved by the Court. An identifier used to commence a query of the data is referred to as a “seed.” Specifically, under Court-approved rules applicable to the program, there must be a “reasonable, articulable suspicion” that a seed identifier used to query the data for foreign intelligence purposes is associated with a particular foreign terrorist organization. When the seed identifier is reasonably believed to be used by a U.S. person, the suspicion of an association with a particular foreign terrorist organization cannot be based solely on activities protected by the First Amendment. The “reasonable, articulable suspicion” requirement protects against the indiscriminate querying of the collected data. Technical controls preclude NSA analysts from seeing any metadata unless it is the result of a query using an approved identifier.

The BR FISA program is used in cases where there is believed to be a threat to the homeland. Of the 54 terrorism events recently discussed in public, 13 of them had a homeland nexus, and in 12 of those cases, BR FISA played a role. Every search into the BR FISA database is auditable and all three branches of our government exercise oversight over NSA's use of this authority.

### **FISA Sections 704 and 705(b)**

FISA Section 704 authorizes the targeting of a U.S. person outside the U.S. for foreign intelligence purposes if there is probable cause to believe the U.S. person is a foreign power or is an officer, employee, or agent of a foreign power. This requires a specific, individual court order

by the Foreign Intelligence Surveillance Court. The collection must be conducted using techniques not otherwise regulated by FISA.

Section 705(b) permits the Attorney General to approve similar collection against a U.S. person who is already the subject of a FISA court order obtained pursuant to Section 105 or 304 of FISA. The probable cause standard has, in these cases, already been met through the FISA court order process.

### **Scope and Scale of NSA Collection**

According to figures published by a major tech provider, the Internet carries 1,826 Petabytes of information per day. In its foreign intelligence mission, NSA touches about 1.6% of that. However, of the 1.6% of the data, only 0.025% is actually selected for review. The net effect is that NSA analysts look at 0.00004% of the world's traffic in conducting their mission – that's less than one part in a million. Put another way, if a standard basketball court represented the global communications environment, NSA's total collection would be represented by an area smaller than a dime on that basketball court.

### **The Essential Role of Corporate Communications Providers**

Under all FISA and FAA programs, the government compels one or more providers to assist NSA with the collection of information responsive to the foreign intelligence need. The government employs covernames to describe its collection by source. Some that have been revealed in the press recently include FAIRVIEW, BLARNEY, OAKSTAR, and LITHIUM. While some have tried to characterize the involvement of such providers as separate programs, that is not accurate. The role of providers compelled to provide assistance by the FISC is identified separately by the Government as a specific facet of the lawful collection activity.

### **The Essential Role of Foreign Partners**

NSA partners with well over 30 different nations in order to conduct its foreign intelligence mission. In every case, NSA does not and will not use a relationship with a foreign intelligence service to ask that service to do what NSA is itself prohibited by law from doing. These partnerships are an important part of the U.S. and allied defense against terrorists, cyber threat actors, and others who threaten our individual and collective security. Both parties to these relationships benefit.

One of the most successful sets of international partnerships for signals intelligence is the coalition that NSA developed to support U.S. and allied troops in Iraq and Afghanistan. The combined efforts of as many as 14 nations provided signals intelligence support that saved U.S. and allied lives by helping to identify and neutralize extremist threats across the breadth of both battlefields. The senior U.S. commander in Iraq credited signals intelligence with being a prime reason for the significant progress made by U.S. troops in the 2008 surge, directly enabling the removal of almost 4,000 insurgents from the battlefield.



## **The Oversight and Compliance Framework**

NSA has an internal oversight and compliance framework to provide assurance that NSA's activities – its people, its technology, and its operations – act consistently with the law and with NSA and U.S. intelligence community policies and procedures. This framework is overseen by multiple organizations external to NSA, including the Director of National Intelligence, the Attorney General, the Congress, and for activities regulated by FISA, the Foreign Intelligence Surveillance Court.

NSA has had different minimization procedures for different types of collection for decades. Among other things, NSA's minimization procedures, to include procedures implemented by United States Signals Intelligence Directive No. SP0018 (USSID 18), provide detailed instructions to NSA personnel on how to handle incidentally acquired U.S. person information. The minimization procedures reflect the reality that U.S. communications flow over the same communications channels that foreign intelligence targets use, and that foreign intelligence targets often discuss information concerning U.S. persons, such as U.S. persons who may be the intended victims of a planned terrorist attack. Minimization procedures direct NSA on the proper way to treat information at all stages of the foreign intelligence process in order to protect U.S. persons' privacy interests.

In 2009 NSA stood up a formal Director of Compliance position, affirmed by Congress in the FY2010 Intelligence Authorization Bill, which monitors verifiable consistency with laws and policies designed to protect U.S. person information during the conduct of NSA's mission. The program managed by the Director of Compliance builds on a number of previous efforts at NSA, and leverages best practices from the professional compliance community in industry and elsewhere in the government. Compliance at NSA is overseen internally by the NSA Inspector General and is also overseen by a number of organizations external to NSA, including the Department of Justice, the Office of the Director of National Intelligence, and the Assistant Secretary of Defense for Intelligence Oversight, the Congress, and the Foreign Intelligence Surveillance Court.

In addition to NSA's compliance safeguards, NSA personnel are obligated to report when they believe NSA is not, or may not be, acting consistently with law, policy, or procedure. This self-reporting is part of the culture and fabric of NSA. If NSA is not acting in accordance with law, policy, or procedure, NSA will report through its internal and external intelligence oversight channels, conduct reviews to understand the root cause, and make appropriate adjustments to constantly improve.

**EXHIBIT F**

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EXHIBIT B

U.S. FEDERAL  
INTELLIGENCE  
SURVEILLANCE COURT

MINIMIZATION PROCEDURES USED BY THE NATIONAL SECURITY AGENCY IN  
CONNECTION WITH ACQUISITIONS OF FOREIGN INTELLIGENCE  
INFORMATION PURSUANT TO SECTION 702 OF THE FOREIGN INTELLIGENCE  
SURVEILLANCE ACT OF 1978, AS AMENDED

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SEAN HALL  
CLERK OF COURT

Section 1 - Applicability and Scope (U)

These National Security Agency (NSA) minimization procedures apply to the acquisition, retention, use, and dissemination of non-publicly available information concerning unconsenting United States persons that is acquired by targeting non-United States persons reasonably believed to be located outside the United States in accordance with section 702 of the Foreign Intelligence Surveillance Act of 1978, as amended ("the Act"). (U)

If NSA determines that it must take action in apparent departure from these minimization procedures to protect against an immediate threat to human life (e.g., force protection or hostage situations) and that it is not feasible to obtain a timely modification of these procedures, NSA may take such action immediately. NSA will report the action taken to the Office of the Director of National Intelligence and to the National Security Division of the Department of Justice, which will promptly notify the Foreign Intelligence Surveillance Court of such activity. (U)

For the purposes of these procedures, the terms "National Security Agency" and "NSA personnel" refer to any employees of the National Security Agency/Central Security Service ("NSA/CSS" or "NSA") and any other personnel engaged in Signals Intelligence (SIGINT) operations authorized pursuant to section 702 of the Act if such operations are executed under the direction, authority, or control of the Director, NSA/Chief, CSS (DIRNSA). (U)

Section 2 - Definitions (U)

In addition to the definitions in sections 101 and 701 of the Act, the following definitions will apply to these procedures:

- (a) Acquisition means the collection by NSA or the FBI through electronic means of a non-public communication to which it is not an intended party. (U)
- (b) Communications concerning a United States person include all communications in which a United States person is discussed or mentioned, except where such communications reveal only publicly-available information about the person. (U)
- (c) Communications of a United States person include all communications to which a United States person is a party. (U)

Derived From: NSA/CSSM 1-52

Dated: 20070108

Declassify On: 20320108

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- (d) Consent is the agreement by a person or organization to permit the NSA to take particular actions that affect the person or organization. To be effective, consent must be given by the affected person or organization with sufficient knowledge to understand the action that may be taken and the possible consequences of that action. Consent by an organization will be deemed valid if given on behalf of the organization by an official or governing body determined by the General Counsel, NSA, to have actual or apparent authority to make such an agreement. (U)
- (e) Foreign communication means a communication that has at least one communicant outside of the United States. All other communications, including communications in which the sender and all intended recipients are reasonably believed to be located in the United States at the time of acquisition, are domestic communications. ~~(S//SI)~~
- (f) Identification of a United States person means (1) the name, unique title, or address of a United States person; or (2) other personal identifiers of a United States person when appearing in the context of activities conducted by that person or activities conducted by others that are related to that person. A reference to a product by brand name, or manufacturer's name or the use of a name in a descriptive sense, e.g., "Monroe Doctrine," is not an identification of a United States person. ~~(S//SI)~~
- (g) Internet transaction, for purposes of these procedures, means an Internet communication that is acquired through NSA's upstream collection techniques. An Internet transaction may contain information or data representing either a discrete communication [REDACTED] or multiple discrete communications [REDACTED] (TS//SI)
- (h) Processed or processing means any step necessary to convert a communication into an intelligible form intended for human inspection. (U)
- (i) Publicly available information means information that a member of the public could obtain on request, by research in public sources, or by casual observation. (U)
- (j) Technical data base means information retained for cryptanalytic, traffic analytic, or signal exploitation purposes. ~~(S//SI)~~
- (k) United States person means a United States person as defined in the Act. The following guidelines apply in determining whether a person whose status is unknown is a United States person: (U)
- (1) A person known to be currently in the United States will be treated as a United States person unless positively identified as an alien who has not been admitted for permanent residence, or unless the nature or circumstances of the person's communications give rise to a reasonable belief that such person is not a United States person. (U)
  - (2) A person known to be currently outside the United States, or whose location is unknown, will not be treated as a United States person unless such person can be

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positively identified as such, or the nature or circumstances of the person's communications give rise to a reasonable belief that such person is a United States person. (U)

- (3) A person known to be an alien admitted for permanent residence loses status as a United States person if the person leaves the United States and is not in compliance with 8 U.S.C. § 1203 enabling re-entry into the United States. Failure to follow the statutory procedures provides a reasonable basis to conclude that the alien has abandoned any intention of maintaining his status as a permanent resident alien. (U)
- (4) An unincorporated association whose headquarters or primary office is located outside the United States is presumed not to be a United States person unless there is information indicating that a substantial number of its members are citizens of the United States or aliens lawfully admitted for permanent residence. (U)

### Section 3 - Acquisition and Processing - General (U)

#### (a) Acquisition (U)

The acquisition of information by targeting non-United States persons reasonably believed to be located outside the United States pursuant to section 702 of the Act will be effected in accordance with an authorization made by the Attorney General and Director of National Intelligence pursuant to subsection 702(a) of the Act and will be conducted in a manner designed, to the greatest extent reasonably feasible, to minimize the acquisition of information not relevant to the authorized purpose of the acquisition. ~~(S//SI)~~

#### (b) Monitoring, Recording, and Processing (U)

- (1) Personnel will exercise reasonable judgment in determining whether information acquired must be minimized and will destroy inadvertently acquired communications of or concerning a United States person at the earliest practicable point in the processing cycle at which such communication can be identified either: as clearly not relevant to the authorized purpose of the acquisition (e.g., the communication does not contain foreign intelligence information); or, as not containing evidence of a crime which may be disseminated under these procedures. Except as provided for in subsection 3(c)(2) below, such inadvertently acquired communications of or concerning a United States person may be retained no longer than five years from the expiration date of the certification authorizing the collection in any event. ~~(S//SI)~~
- (2) Communications of or concerning United States persons that may be related to the authorized purpose of the acquisition may be forwarded to analytic personnel responsible for producing intelligence information from the collected data. Such communications or information may be retained and disseminated only in accordance with Sections 4, 5, 6, and 8 of these procedures. ~~(e)~~

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- (3) Magnetic tapes or other storage media that contain acquired communications may be processed. ~~(S)~~
- (4) As a communication is reviewed, NSA analyst(s) will determine whether it is a domestic or foreign communication to, from, or about a target and is reasonably believed to contain foreign intelligence information or evidence of a crime. Only such communications may be processed. All other communications may be retained or disseminated only in accordance with Sections 5, 6, and 8 of these procedures. ~~(S//SI)~~
- (5) Processing of Internet Transactions Acquired Through NSA Upstream Collection Techniques ~~(TS//SI)~~
- a. Notwithstanding any processing (e.g., decryption, translation) that may be required to render an Internet transaction intelligible to analysts, NSA will take reasonable steps post-acquisition to identify and segregate through technical means Internet transactions that cannot be reasonably identified as containing single, discrete communications where: the active user of the transaction (i.e., the electronic communications account/address/identifier used to send or receive the Internet transaction to or from a service provider) is reasonably believed to be located in the United States; or the location of the active user is unknown. ~~(TS//SI)~~
1. Internet transactions that are identified and segregated pursuant to subsection 3(b)(5)a. will be retained in an access-controlled repository that is accessible only to NSA analysts who have been trained to review such transactions for the purpose of identifying those that contain discrete communications as to which the sender and all intended recipients are reasonably believed to be located in the United States. ~~(TS//SI)~~
- (a) Any information contained in a segregated Internet transaction [REDACTED] may not be moved or copied from the segregated repository or otherwise used for foreign intelligence purposes unless it has been determined that the transaction does not contain any discrete communication as to which the sender and all intended recipients are reasonably believed to be located in the United States. Any Internet transaction that is identified and segregated pursuant to subsection 3(b)(5)a. and is subsequently determined to contain a discrete communication as to which the sender and all intended recipients are reasonably believed to be located in the United States will be destroyed upon recognition. ~~(TS//SI)~~
- (b) Any information moved or copied from the segregated repository into repositories more generally accessible to NSA analysts will be processed in accordance with subsection 3(b)(5)b. below and handled in accordance the other applicable provisions of these procedures. ~~(TS//SI)~~

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- (c) Any information moved or copied from the segregated repository into repositories more generally accessible to NSA analysts will be marked, tagged, or otherwise identified as having been previously segregated pursuant to subsection 3(b)(5)a.
2. Internet transactions that are not identified and segregated pursuant to subsection 3(b)(5)a. will be processed in accordance with subsection 3(b)(5)b. below and handled in accordance with the other applicable provisions of these procedures.
- b. NSA analysts seeking to use (for example, in a FISA application, intelligence report, or section 702 targeting) a discrete communication within an Internet transaction that contains multiple discrete communications will assess whether the discrete communication: 1) is a communication as to which the sender and all intended recipients are located in the United States; and 2) is to, from, or about a tasked selector, or otherwise contains foreign intelligence information. ~~(TS//SI)~~
1. If an NSA analyst seeks to use a discrete communication within an Internet transaction that contains multiple discrete communications, the analyst will first perform checks to determine the locations of the sender and intended recipients of that discrete communication to the extent reasonably necessary to determine whether the sender and all intended recipients of that communication are located in the United States. ~~(TS//SI)~~
2. If an NSA analyst seeks to use a discrete communication within an Internet transaction that contains multiple discrete communications, the analyst will assess whether the discrete communication is to, from, or about a tasked selector, or otherwise contains foreign intelligence information. ~~(TS//SI)~~
- (a) If the discrete communication is to, from, or about a tasked selector, any U.S. person information in that communication will be handled in accordance with the applicable provisions of these procedures. ~~(TS//SI)~~
- (b) If the discrete communication is not to, from, or about a tasked selector but otherwise contains foreign intelligence information, and the discrete communication is not to or from an identifiable U.S. person or a person reasonably believed to be located in the United States, that communication (including any U.S. person information therein) will be treated in accordance with the applicable provisions of these procedures. ~~(TS//SI)~~
- (c) If the discrete communication is not to, from, or about a tasked selector but is to or from an identifiable U.S. person or a person reasonably believed to be located in the United States, the NSA analyst will document that determination in the relevant analytic repository or tool if technically possible or reasonably feasible. Such discrete communication cannot be used for any purpose other than to protect against an immediate threat to

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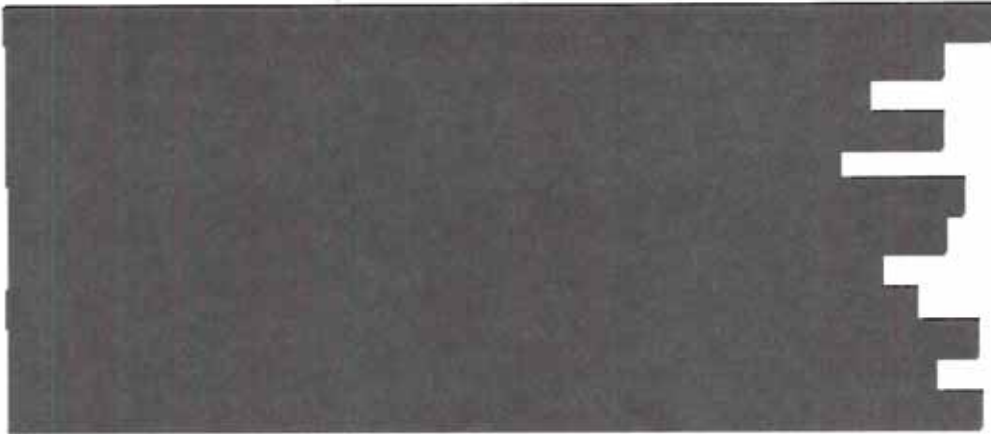
human life (e.g., force protection or hostage situations). NSA will report any such use to the Office of the Director of National Intelligence and to the National Security Division of the Department of Justice, which will promptly notify the Foreign Intelligence Surveillance Court of such use.

~~(TS//SI)~~

3. An NSA analyst seeking to use a discrete communication within an Internet transaction that contains multiple discrete communications in a FISA application, intelligence report, or section 702 targeting must appropriately document the verifications required by subsections 3(b)(5)b.1. and 2. above.

~~(TS//SI)~~

4.



- (6) Magnetic tapes or other storage media containing communications acquired pursuant to section 702 may be scanned by computer to identify and select communications for analysis. Computer selection terms used for scanning, such as telephone numbers, key words or phrases, or other discriminators, will be limited to those selection terms reasonably likely to return foreign intelligence information. Identifiers of an identifiable U.S. person may not be used as terms to identify and select for analysis any Internet communication acquired through NSA's upstream collection techniques. Any use of United States person identifiers as terms to identify and select communications must first be approved in accordance with NSA procedures. NSA will maintain records of all United States person identifiers approved for use as selection terms. The Department of Justice's National Security Division and the Office of the Director of National Intelligence will conduct oversight of NSA's activities with respect to United States persons that are conducted pursuant to this paragraph. ~~(S//SI)~~

- (7) Further processing, retention and dissemination of foreign communications will be made in accordance with Sections 4, 6, 7, and 8 as applicable, below. Further processing, storage and dissemination of inadvertently acquired domestic communications will be made in accordance with Sections 4, 5, and 8 below. ~~(S//SI)~~

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~~TOP SECRET//COMINT//NOFORN//20310108~~(c) Destruction of Raw Data ~~(C)~~

- (1) Telephony communications, Internet communications acquired by or with the assistance of the Federal Bureau of Investigation from Internet Service Providers, and other discrete forms of information (including that reduced to graphic or "hard copy" form such as facsimile, telex, computer data, or equipment emanations) that do not meet the retention standards set forth in these procedures and that are known to contain communications of or concerning United States persons will be destroyed upon recognition, and may be retained no longer than five years from the expiration date of the certification authorizing the collection in any event. ~~(S//SI)~~
- (2) Internet transactions acquired through NSA's upstream collection techniques that do not contain any information that meets the retention standards set forth in these procedures and that are known to contain communications of or concerning United States persons will be destroyed upon recognition. All Internet transactions may be retained no longer than two years from the expiration date of the certification authorizing the collection in any event. The Internet transactions that may be retained include those that were acquired because of limitations on NSA's ability to filter communications. Any Internet communications acquired through NSA's upstream collection techniques that are retained in accordance with this subsection may be reviewed and processed only in accordance with the standards set forth in subsection 3(b)(5) of these procedures. ~~(TS//SI)~~

(d) Change in Target's Location or Status ~~(S//SI)~~

- (1) In the event that NSA determines that a person is reasonably believed to be located outside the United States and after targeting this person learns that the person is inside the United States, or if NSA concludes that a person who at the time of targeting was believed to be a non-United States person is in fact a United States person, the acquisition from that person will be terminated without delay. ~~(S//SI)~~
- (2) Any communications acquired through the targeting of a person who at the time of targeting was reasonably believed to be located outside the United States but is in fact located inside the United States at the time such communications were acquired, and any communications acquired by targeting a person who at the time of targeting was believed to be a non-United States person but was in fact a United States person, will be treated as domestic communications under these procedures. ~~(S//SI)~~

Section 4 - Acquisition and Processing - Attorney-Client Communications ~~(C)~~

As soon as it becomes apparent that a communication is between a person who is known to be under criminal indictment in the United States and an attorney who represents that individual in the matter under indictment (or someone acting on behalf of the attorney), monitoring of that communication will cease and the communication will be identified as an attorney-client communication in a log maintained for that purpose. The relevant portion of the communication containing that conversation will be segregated and the National Security

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Division of the Department of Justice will be notified so that appropriate procedures may be established to protect such communications from review or use in any criminal prosecution, while preserving foreign intelligence information contained therein. Additionally, all proposed disseminations of information constituting United States person attorney-client privileged communications must be reviewed by the NSA Office of General Counsel prior to dissemination. ~~(S//SI)~~

#### Section 5 - Domestic Communications (U)

A communication identified as a domestic communication will be promptly destroyed upon recognition unless the Director (or Acting Director) of NSA specifically determines, in writing, that: ~~(S)~~

- (1) the communication is reasonably believed to contain significant foreign intelligence information. Such communication may be provided to the FBI (including United States person identities) for possible dissemination by the FBI in accordance with its minimization procedures; ~~(S)~~
- (2) the communication does not contain foreign intelligence information but is reasonably believed to contain evidence of a crime that has been, is being, or is about to be committed. Such communication may be disseminated (including United States person identities) to appropriate Federal law enforcement authorities, in accordance with 50 U.S.C. §§ 1806(b) and 1825(c), Executive Order No. 12333, and, where applicable, the crimes reporting procedures set out in the August 1995 "Memorandum of Understanding: Reporting of Information Concerning Federal Crimes," or any successor document. Such communications may be retained by NSA for a reasonable period of time, not to exceed six months unless extended in writing by the Attorney General, to permit law enforcement agencies to determine whether access to original recordings of such communications is required for law enforcement purposes; ~~(S)~~
- (3) the communication is reasonably believed to contain technical data base information, as defined in Section 2(i), or information necessary to understand or assess a communications security vulnerability. Such communication may be provided to the FBI and/or disseminated to other elements of the United States Government. Such communications may be retained for a period sufficient to allow a thorough exploitation and to permit access to data that are, or are reasonably believed likely to become, relevant to a current or future foreign intelligence requirement. Sufficient duration may vary with the nature of the exploitation. ~~(S//SI)~~
  - a. In the context of a cryptanalytic effort, maintenance of technical data bases requires retention of all communications that are enciphered or reasonably believed to contain secret meaning, and sufficient duration may consist of any period of time during which encrypted material is subject to, or of use in, cryptanalysis. ~~(S//SI)~~

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- b. In the case of communications that are not enciphered or otherwise thought to contain secret meaning, sufficient duration is five years from the expiration date of the certification authorizing the collection unless the Signal Intelligence Director, NSA, determines in writing that retention for a longer period is required to respond to authorized foreign intelligence or counterintelligence requirements; or ~~(S//SI)~~
- (4) the communication contains information pertaining to a threat of serious harm to life or property. ~~(S)~~

Notwithstanding the above, if a domestic communication indicates that a target has entered the United States, NSA may advise the FBI of that fact. Moreover, technical data regarding domestic communications may be retained and provided to the FBI and CIA for collection avoidance purposes. ~~(S//SI)~~

#### Section 6 - Foreign Communications of or Concerning United States Persons (U)

##### (a) Retention (U)

Foreign communications of or concerning United States persons collected in the course of an acquisition authorized under section 702 of the Act may be retained only:

- (1) if necessary for the maintenance of technical data bases. Retention for this purpose is permitted for a period sufficient to allow a thorough exploitation and to permit access to data that are, or are reasonably believed likely to become, relevant to a current or future foreign intelligence requirement. Sufficient duration may vary with the nature of the exploitation.
  - a. In the context of a cryptanalytic effort, maintenance of technical data bases requires retention of all communications that are enciphered or reasonably believed to contain secret meaning, and sufficient duration may consist of any period of time during which encrypted material is subject to, or of use in, cryptanalysis.
  - b. In the case of communications that are not enciphered or otherwise thought to contain secret meaning, sufficient duration is five years from the expiration date of the certification authorizing the collection unless the Signals Intelligence Director, NSA, determines in writing that retention for a longer period is required to respond to authorized foreign intelligence or counterintelligence requirements;
- (2) if dissemination of such communications with reference to such United States persons would be permitted under subsection (b) below; or
- (3) if the information is evidence of a crime that has been, is being, or is about to be committed and is provided to appropriate federal law enforcement authorities. ~~(S//SI)~~

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(b) Dissemination (U)

A report based on communications of or concerning a United States person may be disseminated in accordance with Section 7 or 8 if the identity of the United States person is deleted and a generic term or symbol is substituted so that the information cannot reasonably be connected with an identifiable United States person. Otherwise, dissemination of intelligence reports based on communications of or concerning a United States person may only be made to a recipient requiring the identity of such person for the performance of official duties but only if at least one of the following criteria is also met:

- (1) the United States person has consented to dissemination or the information of or concerning the United States person is available publicly;
- (2) the identity of the United States person is necessary to understand foreign intelligence information or assess its importance, e.g., the identity of a senior official in the Executive Branch;
- (3) the communication or information indicates that the United States person may be:
  - a. an agent of a foreign power;
  - b. a foreign power as defined in Section 101(a) of the Act;
  - c. residing outside the United States and holding an official position in the government or military forces of a foreign power;
  - d. a corporation or other entity that is owned or controlled directly or indirectly by a foreign power; or
  - e. acting in collaboration with an intelligence or security service of a foreign power and the United States person has, or has had, access to classified national security information or material;
- (4) the communication or information indicates that the United States person may be the target of intelligence activities of a foreign power;
- (5) the communication or information indicates that the United States person is engaged in the unauthorized disclosure of classified national security information or the United States person's identity is necessary to understand or assess a communications security vulnerability, but only after the agency that originated the information certifies that it is properly classified;
- (6) the communication or information indicates that the United States person may be engaging in international terrorist activities;

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- (7) the acquisition of the United States person's communication was authorized by a court order issued pursuant to the Act and the communication may relate to the foreign intelligence purpose of the surveillance; or
- (8) the communication or information is reasonably believed to contain evidence that a crime has been, is being, or is about to be committed, provided that dissemination is for law enforcement purposes and is made in accordance with 50 U.S.C. §§ 1806(b) and 1825(c), Executive Order No. 12333, and, where applicable, the crimes reporting procedures set out in the August 1995 "Memorandum of Understanding: Reporting of Information Concerning Federal Crimes," or any successor document. (U)

(c) Provision of Unminimized Communications to CIA and FBI ~~(S//NF)~~

- (1) NSA may provide to the Central Intelligence Agency (CIA) unminimized communications acquired pursuant to section 702 of the Act. CIA will identify to NSA targets for which NSA may provide unminimized communications to CIA. CIA will process any such unminimized communications received from NSA in accordance with CIA minimization procedures adopted by the Attorney General, in consultation with the Director of National Intelligence, pursuant to subsection 702(e) of the Act. ~~(S//SI//NF)~~
- (2) NSA may provide to the FBI unminimized communications acquired pursuant to section 702 of the Act. The FBI will identify to NSA targets for which NSA may provide unminimized communications to the FBI. The FBI will process any such unminimized communications received from NSA in accordance with FBI minimization procedures adopted by the Attorney General, in consultation with the Director of National Intelligence, pursuant to subsection 702(e) of the Act. ~~(S//SI)~~

## Section 7 - Other Foreign Communications (U)

Foreign communications of or concerning a non-United States person may be retained, used, and disseminated in any form in accordance with other applicable law, regulation, and policy. (U)

Section 8 - Collaboration with Foreign Governments ~~(S//SI)~~

- (a) Procedures for the dissemination of evaluated and minimized information. Pursuant to Section 1.7(c)(8) of Executive Order No. 12333, as amended, NSA conducts foreign cryptologic liaison relationships with certain foreign governments. Information acquired pursuant to section 702 of the Act may be disseminated to a foreign government. Except as provided in subsection 8(b) of these procedures, any dissemination to a foreign government of information of or concerning a United States person that is acquired pursuant to section 702 may only be done in a manner consistent with subsections 6(b) and 7 of these NSA minimization procedures. ~~(S)~~

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- (b) Procedures for technical or linguistic assistance. It is anticipated that NSA may obtain information or communications that, because of their technical or linguistic content, may require further analysis by foreign governments to assist NSA in determining their meaning or significance. Notwithstanding other provisions of these minimization procedures, NSA may disseminate computer disks, tape recordings, transcripts, or other information or items containing unminimized information or communications acquired pursuant to section 702 to foreign governments for further processing and analysis, under the following restrictions with respect to any materials so disseminated: ~~(S)~~
- (1) Dissemination to foreign governments will be solely for translation or analysis of such information or communications, and assisting foreign governments will make no use of any information or any communication of or concerning any person except to provide technical and linguistic assistance to NSA. ~~(S)~~
  - (2) Dissemination will be only to those personnel within foreign governments involved in the translation or analysis of such information or communications. The number of such personnel will be restricted to the extent feasible. There will be no dissemination within foreign governments of this unminimized data. ~~(S)~~
  - (3) Foreign governments will make no permanent agency record of information or communications of or concerning any person referred to or recorded on computer disks, tape recordings, transcripts, or other items disseminated by NSA to foreign governments, provided that foreign governments may maintain such temporary records as are necessary to enable them to assist NSA with the translation or analysis of such information. Records maintained by foreign governments for this purpose may not be disseminated within the foreign governments, except to personnel involved in providing technical or linguistic assistance to NSA. ~~(S)~~
  - (4) Upon the conclusion of such technical or linguistic assistance to NSA, computer disks, tape recordings, transcripts, or other items or information disseminated to foreign governments will either be returned to NSA or be destroyed with an accounting of such destruction made to NSA. ~~(S)~~

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- (5) Any information that foreign governments provide to NSA as a result of such technical or linguistic assistance may be disseminated by NSA in accordance with these minimization procedures. ~~(S)~~

10-31-11  
Date

  
Eric H. Holder, Jr.  
Attorney General of the United States

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