



U.S. Department of Justice

National Security Division

U.S. FOREIGN INTELLIGENCE SURVEILLANCE COURT

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Washington, D.C. 20530

LEEANN FLYNN HALL  
CLERK OF COURT

July 30, 2014

The Honorable Thomas F. Hogan  
United States Foreign Intelligence Surveillance Court  
333 Constitution Avenue, N.W.  
Washington, D.C. 20001

Re: ~~(S)~~ Update Regarding Compliance Incidents  
Reported in the December 2013, March 2014, and  
June 2014 Section 702 Quarterly Reports

Dear Judge Hogan:

~~(S)~~ On July 17, 2014, representatives from the National Security Division (NSD) met with Court staff to discuss certain compliance incidents reported in the December 2013, March 2014, and June 2014 Section 702 Quarterly Reports. Below is the requested information.

1. ~~(S)~~ Facilities That Remain Tasked Pursuant to Section 702 While Questions are Resolved Concerning Documentation and/or Foreignness Issues

~~(S//NF)~~ There are occasional instances in which the National Security Agency's (NSA) post-tasking checks or NSD's review of tasking sheets reveals a potential issue with the pre-tasking foreignness checks performed by the analyst. For example, the June 2014 Quarterly Report identified the following issue with respect to [REDACTED]

~~(TS//SI//NF)~~ [REDACTED]

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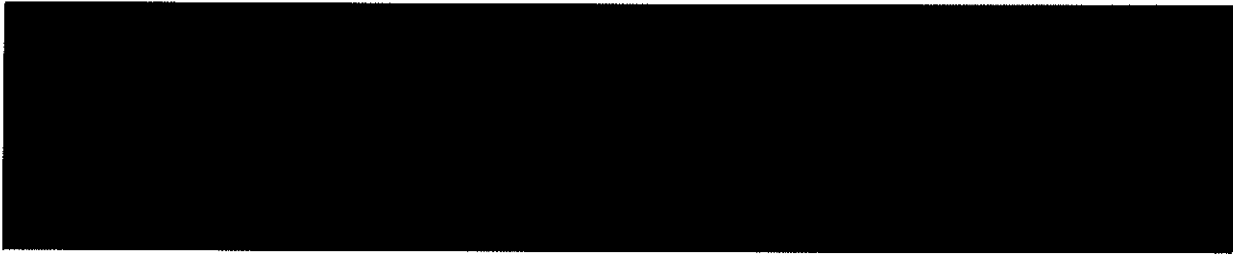
Classified by: Tashina Gauhar, Deputy Assistant  
Attorney General, NSD, DOJ

Reason: 1.4(e)

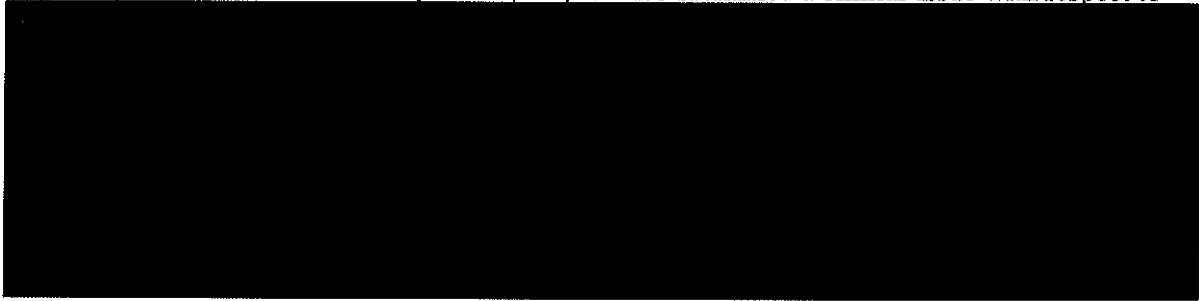
Declassify on: 30 July 2039

[REDACTED] 116742, 108444, 118965

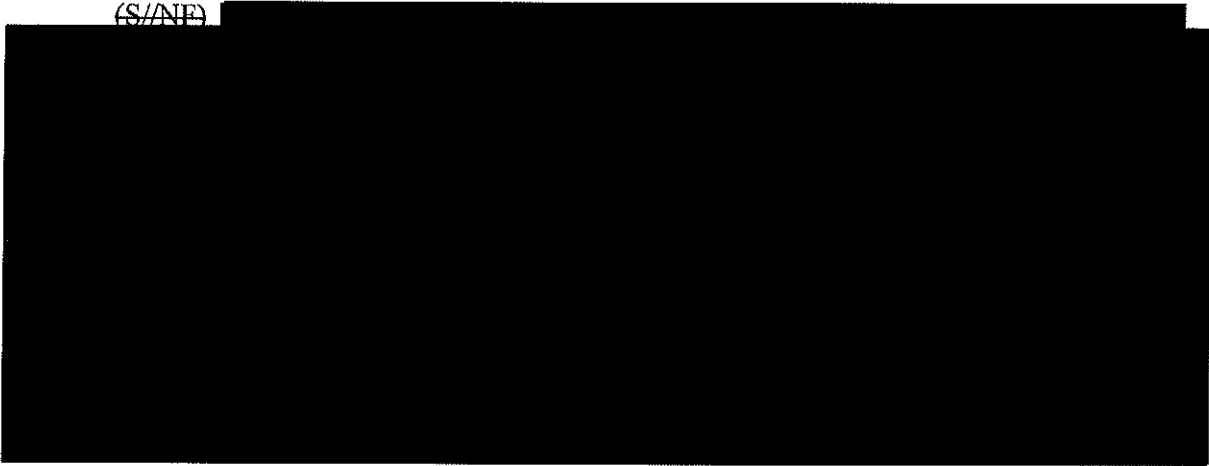
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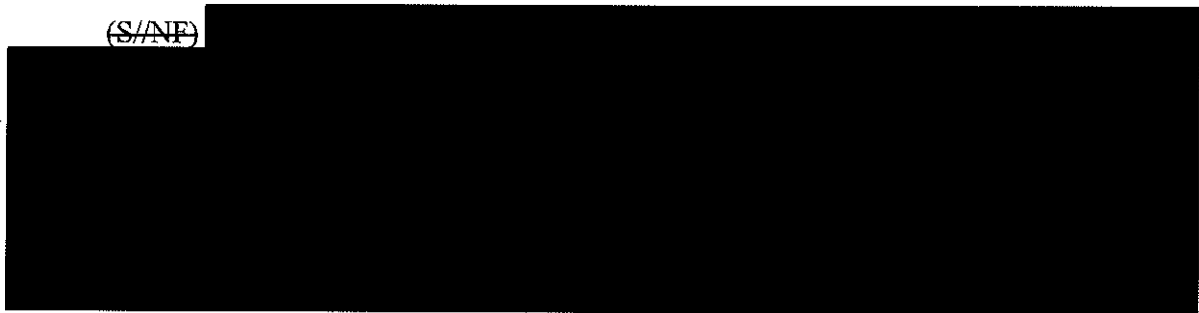
(S//NF) The June 2014 Quarterly Report also identified a similar issue with respect to



(S//NF)



(S//NF)



<sup>1</sup> (S)



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(S//NF) As with any other possible compliance incident, if there is an issue with the pre-tasking foreignness justification, the Government immediately starts to investigate the possible instance of non-compliance. If the Government discovers that the pre-tasking foreignness justification was sufficient, that potential incident is closed. If, however, the pre-tasking record was incomplete (a documentation error) or the pre-tasking checks were not properly conducted (a tasking error), the incident will be reported/documented to the Court. [REDACTED]

[REDACTED]

(S//NF) [REDACTED]

2. (S) [REDACTED]

(TS//SI//NF) [REDACTED]

(TS//SI//NF) [REDACTED]

<sup>2</sup> (S) [REDACTED]

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[REDACTED]

(S) Subsequent to the June 2014 Quarterly Report, NSA advised [REDACTED]

[REDACTED]

**3. (U) Notification Delays**

(S) NSA's targeting procedures require NSA to report certain incidents to NSD and ODNI even if these incidents do not involve noncompliance with the targeting procedures. Specifically, NSA is required to terminate acquisition and notify NSD and ODNI if [REDACTED]

[REDACTED]

(S) During the July 17, 2014, meeting with the Court, it was noted that there had been a significant improvement in the timeliness of NSA reporting of these incidents. The below information responds to the Court's request for certain metrics regarding the notification delays. Specifically, in the December 2013, March 2014, and June 2014 Quarterly Reports, the Government identified [REDACTED] instances, respectively, in which NSA did not provide NSD and ODNI the required notification within [REDACTED]. During the time periods covered by the December 2013, March 2014, and June 2014 Section 702 Quarterly Reports, there were approximately [REDACTED] matters, respectively, reported to NSD that were subject to the [REDACTED] reporting period.<sup>3</sup> For the time periods covered by the December 2013, March 2014, and June 2014 Section 702 Quarterly Reports, NSA exceeded the [REDACTED] notification requirement in 42%, 17%, and 3% of those matters, respectively.

**4. (U) Unauthorized Access to Section 702-Acquired Data**

(S//NF) On June 17, 2014, in a notice filed with the Court, and in the June 2014 Quarterly Report, the Government advised the Court of an incident involving certain NSA personnel who had gained access to unminimized Section 702-acquired information without the appropriate training. More specifically, NSA reported that on [REDACTED], while discussing operational matters, [REDACTED] personnel [REDACTED] had been put on an e-mail distribution list that regularly received unminimized Section 702-acquired

<sup>3</sup> (S) For additional context, during the time periods covered by the December 2013, March 2014, and June 2014 Quarterly Reports, NSD and ODNI received [REDACTED] incident reports, respectively. This means, for example, that of the [REDACTED] matters reported to NSD and ODNI during the period of time covered by the June 2014 Quarterly Report, [REDACTED] (80%) were properly reported within the required the [REDACTED]

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information.<sup>4</sup> Some personnel [REDACTED] had not received the appropriate training to permit access to unminimized Section 702 data. As of the June 2014 Quarterly Report, NSA advised that it was difficult to assess the scope of information provided to personnel [REDACTED] given the passage of time and [REDACTED]. NSA also advised, however, that as of [REDACTED]<sup>5</sup> all personnel [REDACTED] were removed from the e-mail distribution list. NSA further advised that all personnel [REDACTED] have been instructed to delete the relevant e-mails. Given the operational practices of [REDACTED], NSA assessed that it is unlikely that personnel further disseminated any unminimized Section 702 data.

~~(S//NF)~~ Subsequent to the June 2014 Quarterly Report, and in response to questions from the Court, NSA advised that certain NSA offices supporting [REDACTED] targets have an e-mail distribution list for Section 702-trained personnel. NSA employees [REDACTED] were inadvertently added to the distribution list in the above incident in approximately December 2012. NSA further advises that although Section 702-trained personnel who were on the distribution list recognized the information as Section 702-acquired, the e-mail distributions in this case did not specifically identify the collection as Section 702. Of the personnel [REDACTED], NSA has identified [REDACTED] non-Section 702-trained individuals who had access to the e-mail distribution list.<sup>6</sup> All [REDACTED] individuals have confirmed that all relevant e-mails have been deleted from their systems. As these [REDACTED] individuals advised that they did not read any of the e-mail messages containing unminimized Section 702 information,<sup>7</sup> NSA remains confident that no improper dissemination of the Section 702-acquired data resulted from this incident.

##### 5. ~~(S)~~ Review of Section 702 Collection Without the Use of a Required Review Team

~~(S//NF)~~ Section III.E.1. of the Minimization Procedures Used by the Federal Bureau of Investigation (FBI) in Connection with Acquisitions of Foreign Intelligence Information Pursuant to Section 702 of the Foreign Intelligence Surveillance Act of 1978, As Amended, requires that FBI "implement procedures that ensure that the target's attorney-client privilege is protected." Specifically, Section III.E.1.a. provides for "[e]stablishment of a review team of one or more monitors and/or reviewers, who have no role in the prosecution of the charged criminal matter, to initially access and review information or communications acquired from a

<sup>4</sup> ~~(S//NF)~~ The distribution list was developed to encourage collaboration among NSA analysts working similar targets, and was not accessible to non-NSA personnel.

<sup>5</sup> (U) In the June 2014 notice and Quarterly Report, the Government incorrectly identified this date as [REDACTED]

<sup>6</sup> (S) As noted above, NSA advised that it is difficult to assess the full scope of information provided to personnel [REDACTED] including the total number of e-mails received, given the passage of time and [REDACTED]

<sup>7</sup> (S)-A Section 702-training analyst recognized the issue in [REDACTED]

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surveillance or search of a target who is charged with a crime pursuant to the United States Code.”

(S//NF) In separate notices, and in the March and June 2014 Quarterly Reports, the Government identified [redacted] in which FBI personnel continued to review communications [redacted].<sup>8</sup> In a February notice and the March 2014 Quarterly Report, the Government reported an incident involving [redacted] accounts. Specifically, the user of [redacted]

but FBI monitored the [redacted]

FBI established the necessary [redacted]

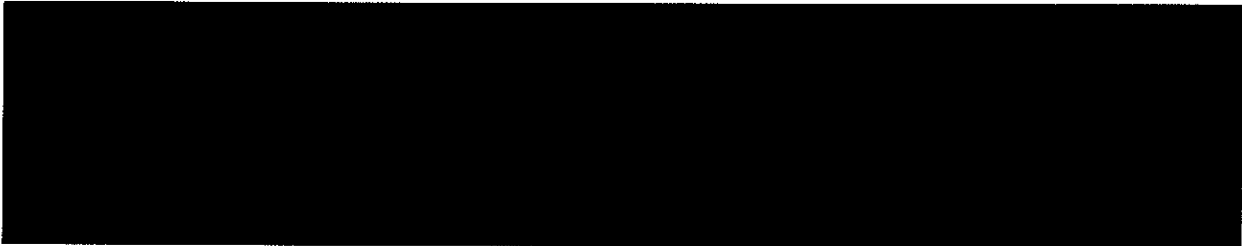
(S//NF) In an April 2014 notice and the June 2014 Quarterly Report, the Government identified a separate incident involving [redacted] accounts. Specifically, the user of e-mail accounts [redacted]

collection from the [redacted]

FBI received [redacted]

(S) FBI currently requires specific training prior to any agent or analyst receiving authorization to review raw Section 702-acquired communications. This training includes a full discussion of the Section 702 minimization procedures, including attorney-client communications, and FBI’s policy guide. In addition to this training, NSD conducts reviews at approximately 31 FBI field offices each year. As part of those reviews, NSD lawyers provide

<sup>8</sup> (S) There have been additional, subsequent instances of this type of compliance incident.



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additional training on Section 702 issues, and specifically address possible attorney-client issues. Finally, whenever any compliance incident arises, FBI ensures that the relevant personnel receive the necessary reminders. While there have been isolated instances in which FBI personnel have not established the necessary review teams, the Government believes that these were the result of individual failures or confusion and not a systematic issue. NSD and FBI will continue to provide training on the attorney-client communication provisions of the minimization procedures.

**6. (U) FBI Incomplete Purges**

(S//NF) In a May 7, 2014, notice and the June 2014 Quarterly Report, the Government advised the Court of [REDACTED] when FISA-acquired information has been [REDACTED]. The Court requested additional information on this matter during the July 17, 2014 meeting, and the Government filed a supplemental notice with the Court on July 25, 2014, that provides additional information on this issue.

**7. (S) NSA Incomplete Purges of [REDACTED]**

(S//SI//NF) In a [REDACTED] notice and the March and June 2014 Quarterly Reports, the Government advised the Court of a gap in NSA's purge discovery processes that affects purges of information under certain circumstances that, [REDACTED]

[REDACTED]

(S//NF) [REDACTED]

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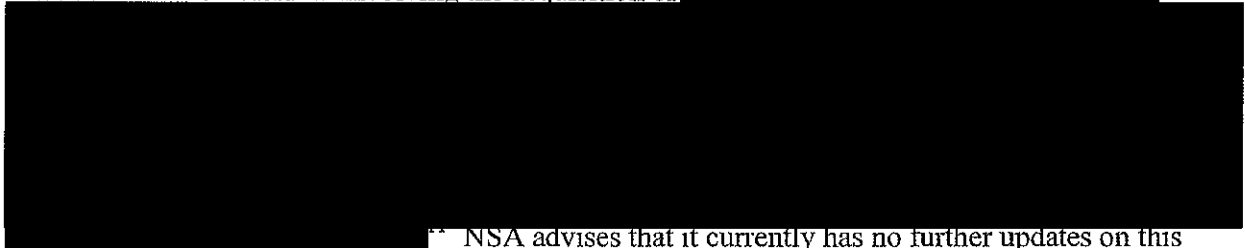


8. (S) [REDACTED] Incident

(S//NF) In February 2013, March 2013, August 2013, and July 2014 notices, and in the March 2013, June 2013, September 2013, December 2013, March 2014, and June 2014 Quarterly reports, the Government provided information regarding NSA's efforts to evaluate transcripts stored in a database [REDACTED] that may have been retained longer than permitted. NSA is using the identifying criteria that [REDACTED] used to delete the transcripts to identify whether any transcripts exist in [REDACTED] will use these criteria to identify and delete any transcripts identified, and the results of this action will be reported to the Court. To date, NSA has not identified any transcripts from [REDACTED] that have been sent to [REDACTED]

9. (S) Overcollection Incident Related to [REDACTED]

(S//NF) In a November 2011 notice, and in the December 2011, March 2012, June 2012, September 2012, December 2012, March 2013, June 2013, September 2013, December 2013, March 2014, and June 2014 Quarterly reports, the Government provided information regarding an overcollection incident involving the acquisition of [REDACTED]



[REDACTED] NSA advises that it currently has no further updates on this matter.

10. (S) FBI's [REDACTED] Systems

(S//NF) In an October 2013 notice and the December 2013 Quarterly Report, the Government advised the Court that there were multiple instances in which copies of [REDACTED] were provided to requesting FBI case agents after the information was [REDACTED] Agents would then place copies of the [REDACTED] information on [REDACTED] for additional analysis. On November 14, 2013,

<sup>11</sup> (S) In the prior Quarterly Reports, the Government incorrectly advised that NSA was continuing to sequester all [REDACTED]

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the Attorney General and Director of National Intelligence approved amended certifications which included amended minimization procedures for FBI that permit FBI to process and retain raw Section 702-acquired information, subject to certain conditions and restrictions. [REDACTED]

The Court approved these minimization procedures on December 13, 2013.

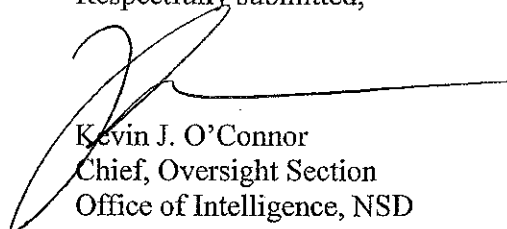
(S//NF) According to Section IV.B.2 of these amended procedures:

The FBI will implement procedures regarding storage of FISA-acquired information in an [REDACTED] database, which will require the FBI to (1) maintain adequate records of all persons who have been granted access to FISA-acquired information in an ad hoc database, (2) track the FISA-acquired information in an ad hoc database that has been determined to be foreign intelligence information, necessary to understand foreign intelligence information or assess its importance, or evidence of a crime, and (3) maintain adequate records to ensure FBI can comply with the destruction requirement discussed in subparagraph B. 1. of this section.

The FBI adopted the procedures required by this section as of February 25, 2014.

(U) NSA and FBI have verified the accuracy of the relevant information in this letter.

Respectfully submitted,

  
Kevin J. O'Connor  
Chief, Oversight Section  
Office of Intelligence, NSD  
U.S. Department of Justice

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