All withheld information exempt under b(1) and b(3) unless otherwise noted. Approved for public release.

U.S. Department of Justice

National Security Division

U.S. FOREIGN INTELLIGENCE SURVEILLANCE COURT
2011 APR 19 PM 1:37
LEEANN FLYNN HALL
CLERK OF COURT

~~TOP SECRET//COMINT//NOFORN~~

Washington, D.C. 20530

April 19, 2011

The Honorable John D. Bates
United States Foreign Intelligence Surveillance Court
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Re: Preliminary Notice of Compliance Incidents
Regarding Collection Pursuant to Section 702 (S)

Dear Judge Bates:

Pursuant to Rule 13(b) of the Rules of Procedure for the Foreign Intelligence Surveillance Court, effective November 1, 2010, this letter provides preliminary notice of two compliance incidents. Specifically, on April 11, 2011, the National Security Agency (NSA) initially reported to the National Security Division (NSD) and the Office of the Director of National Intelligence (ODNI) two incidents involving communications that were overcollected as a result of NSA's upstream collection [redacted] pursuant to Section 702.[1] ~~(TS//SI//NF)~~

Although different in many respects, both incidents involve the acquisition of communications that in the course of transmission through the Internet have been [redacted] ~~(TS//SI//NF)~~

[1] NSA's upstream collection of electronic communications accounts includes collection performed with the assistance of electronic communication service providers of communications that are either to or from the tasked account, or communications that contain a reference to the tasked account in the communication (e.g., the body of an e-mail that contains a reference to the tasked account). [redacted] ~~(TS//SI//NF)~~

~~TOP SECRET//COMINT//NOFORN~~

Classified by: Tashina Gauhar, Deputy Assistant Attorney General, NSD, DOJ
Reason: 1.4(c)
Declassify on: 19 April 2036

OI Tracking Nos. 104675-76

Upstream Overcollection Incident [redacted] ~~(TS//SI//NF)~~

The first identified instance of overcollected [redacted] involved upstream collection [redacted] each [redacted] contained at least one communication to, from, or about a Section 702-tasked selector, but also [redacted] unrelated communications. [redacted] ~~(TS//SI//NF)~~

On [redacted], the day NSA became aware of the potential overcollection, NSA ceased Section 702 collection at [redacted]. NSA has identified no reports based upon the overcollected data, [redacted] ~~(TS//SI//NF)~~

[redacted] Overcollection Incident ~~(TS//SI//NF)~~

[redacted]

[2] SC-SSRs, as well as the terms "Collection Stores," "Master Purge List," and "discovery status" (all discussed below), refer to aspects of the process and taxonomy NSA developed in the course of improving its purge of Section 702-acquired data. This process and taxonomy are most fully described in the Government's Supplement to and Clarification of the Record, Docket Number [redacted] filed May 10, 2010. ~~(TS//SI//NF)~~

[redacted]

~~(TS//SI//NF)~~

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

[redacted] NSA has taken steps to ensure that overcollected information is handled appropriately. [redacted] ~~(TS//SI//NF)~~

[redacted]

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[3] [redacted] ~~(TS//SI//NF)~~

[4] As noted above, although all of these [redacted] include at least one communication that is to, from, or about a Section 702-tasked selector, such [redacted] may contain other communications unrelated to any Section 702-tasked selector. ~~(TS//SI//NF)~~

[redacted]. NSA advises that it has identified no reporting based upon overcollected communications.[5] [redacted] ~~(TS//SI//NF)~~

The Department of Justice will provide further reports to the Court regarding these two overcollection incidents. These reports will include updates regarding the implementation of [redacted] designed to prevent future overcollection of [redacted], as well as the status of any required purges. ~~(TS//SI//NF)~~

Respectfully submitted,

b(6) and b(7)(C)

[redacted]

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

[5] NSA has identified [redacted] serialized reports based upon objects that were initially added to the MPL for this incident. In each case, however, the object was found to be a properly acquired communication that was to, from, or about a Section 702-tasked selector. These objects had been added to the MPL as a result of the overinclusive approach to adding objects to the MPL discussed above. These [redacted] reports have not been recalled and the related objects have been removed from the MPL. ~~(TS//SI//NF)~~