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17 December 2014

The Honorable James R. Clapper, Jr.
Director of National Intelligence
Washington, DC 20511

Dear Director Clapper:

(U) Section 702 (l) (2) of the Foreign Intelligence Surveillance Act (FISA) of 1978, as amended by the FISA Amendments Act of 2008 (FAA), authorizes the National Security Agency/Central Security Service (NSA/CSS) Office of the Inspector General (OIG) to assess the Agency's compliance with procedures for targeting non-U.S. persons reasonably believed to be located outside the United States. My Office reviews incidents involving compliance with procedures for targeting non-U.S. persons reasonably believed to be located outside the United States and incidents involving minimization of U.S. person information as they are reported to the OIG and quarterly. Each incident is evaluated by NSA against the targeting and minimization procedures adopted by the Attorney General, in consultation with the Director of National Intelligence, and approved by the Foreign Intelligence Surveillance Court (FISC). This letter covers the 12-month period ending 31 August 2014.

(~~S//SI//NF~~) During the reporting period, the OIG performed two special studies of the FAA §702 program: *Management Controls for* [redacted] and the *Implementation of Section 702 of the FISA Amendments Act of 2008*. The first study, published in October 2013, examined [redacted]

[redacted] The second study, requested by members of the U.S. Senate Judiciary Committee and scheduled to be published in January 2015, documents NSA's implementation of the FAA §702 authority, the controls used to protect U.S. person privacy, past incidents of non-compliance, and use of FAA §702 data to support intelligence missions.

(~~S//NF~~) In compliance with the FAA §702 targeting and minimization procedures, [redacted] intelligence reports were disseminated by NSA/CSS [redacted] based on signals intelligence (SIGINT) derived in whole or in part from FAA §702 authorized [redacted]

Classified By: [redacted]
Derived From: NSA/CSS Manual 1-52
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collection. Of the [REDACTED] disseminated reports, 3,966 contained one or more references to U.S. persons.¹

(U//FOUO) NSA/CSS released [REDACTED] U.S. person identities in response to customer requests for U.S. person identities not referred to by name or title in the original reporting.² The majority of these requests were received from elements of the United States Intelligence Community and federal law enforcement agencies.

(S//NF) During this reporting period, NSA determined that, on [REDACTED] occasions, selectors belonging to non-U.S. persons reasonably believed to be located outside the United States at the time of tasking were later suspected or confirmed to have been accessed from within the United States. [REDACTED]

[REDACTED] Of the [REDACTED] cases, [REDACTED] were located through [REDACTED] and [REDACTED] through [REDACTED].

(S//SI//NF) On 13 August 2013, the Department of Justice (DoJ) filed with the FISC a preliminary notice of a compliance incident that advised the Court that the [REDACTED] Report that NSA oversight personnel rely on as one of several post-tasking checks to determine if the users of telephony selectors [REDACTED] have entered the U.S. did not always account for selectors that had been tasked in [REDACTED]

[REDACTED].³ On 29 October 2013, DoJ filed a preliminary notice of a possible compliance incident with the FISC explaining that certain telephony data acquired by NSA and associated with [REDACTED] selectors may not have been [REDACTED]

[REDACTED] NSA fixed the technical problems and NSA's minimization procedures were subsequently amended to account for use of information that may have been acquired when

¹ (S//NF) NSA does not maintain records that allow it to readily determine, in reports that include information from several sources, from which source a reference to a U.S. person was derived. Accordingly, the references to U.S. person identities might have resulted from collection pursuant to FAA §702 or from other authorized SIGINT activity NSA conducted that was reported in conjunction with information acquired under FAA §702. For the previous reporting period, NSA reported that 3,477 intelligence reports contained one or more references to U.S. persons, including references to U.S. electronic communications providers as part of a communications identifier. (S//NF) The Central Intelligence Agency (CIA) does not conduct acquisitions under FAA §702. However, it receives unminimized non-upstream communications from NSA and FBI and disseminates information based on those communications. CIA provided the following information to NSA for inclusion in this report. [REDACTED]

² (S//NF) For the previous reporting period, NSA reported that [REDACTED] identities were disseminated in response to requests for identities not referred to by name or title in the original reporting. For the current reporting period, approximately 27% of the disseminated U.S. person identities were proper names of individuals or their titles. In the majority of instances, the released identity information consisted of [REDACTED]

³ (U//FOUO) NSA sent a Congressional Notification on this matter on 26 August 2013 with the subject "Congressional Notification – Post-Tasking Controls – INFORMATION MEMORANDUM."

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there is uncertainty about the location of the target of the acquisition because the [REDACTED] post-tasking checks were not working as intended. For such information, NSA has implemented internal procedures that require NSA to conduct additional analysis to confirm the foreignness of the target before the acquired communications may be used.

(U) As explained in the OIG's quarterly report to the President's Intelligence Oversight Board on NSA activities, compliance incidents occurred under such circumstances as:

- (U//FOUO) Tasked selector not meeting the requirements of the certification,
- (U//FOUO) System errors resulting in improper storage or access,
- (U//FOUO) Delayed detasking of targets identified as U.S. persons or traveling in the United States,
- (U//FOUO) Dissemination errors,
- (U//FOUO) Poor construction of database queries, and
- (U//FOUO) Post-tasking discovery of U.S. person status.

(U) Action has been taken to correct mistakes, and management processes have been reviewed and adjusted to reduce the risk of unauthorized acquisition and improper retention of U.S. person communications.

(U) This is the sixth year for which the OIG has reviewed for the Congress the Agency's compliance with FAA §702. To ensure consistency between DIRNSA's report of the annual review conducted in accordance with FAA §702 (l) (3) and this OIG report, the OIG and the Signals Intelligence Directorate worked together to achieve a common understanding of the reporting requirements and have agreed on a methodology for accumulating and analyzing compliance statistics.

(U) The OIG continues to exercise oversight of Agency intelligence activities.



DR. GEORGE ELLARD
Inspector General

Copy Furnished:
The Honorable Irvin C. McCullough III
Inspector General of the Intelligence Community