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(U) 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

(U) Reporting Period: 01 December 2020 – 31 May 2021

August 2022

Classified By [redacted]
Derived From:
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(U) 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

August 2022

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(U) FACT SHEET

(U) Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of the Foreign Intelligence Surveillance Act (FISA)

(U) This Fact Sheet provides an overview of the *Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of the Foreign Intelligence Surveillance Act*. These assessments are commonly referred to as "joint assessments," and are submitted by the Attorney General and the Director of National Intelligence (DNI). As of August 2022, twenty-six joint assessments have been submitted.

(U) **Joint Assessment Basics:**

- (U) *Why is the joint assessment required?* The FISA Amendments Act of 2008 (50 U.S.C. § 1881a(m)(1)) requires the Attorney General and the DNI to assess compliance with certain procedures and guidelines issued pursuant to FISA Section 702.
- (U) *What period is covered by a joint assessment?* Each joint assessment covers a six-month period: 01 December through 31 May or 01 June through 30 November. This assessment covers the period from 01 December 2020 through 31 May 2021.
- (U) *Who receives it?* Each joint assessment is submitted to the following oversight entities: the Foreign Intelligence Surveillance Court (FISC), relevant congressional committees, and the Privacy and Civil Liberties Oversight Board (PCLOB).
- (U) *What is being assessed?* The Attorney General and the DNI jointly assess the Government's compliance with Attorney General Guidelines and with FISC-approved "targeting," "minimization," and "querying" procedures.
- (U) *What are targeting, minimization, and querying procedures?* Section 702 allows for the targeting of (i) non-United States persons (ii) reasonably believed to be located outside the United States (iii) to acquire foreign intelligence information. To ensure that all three requirements are appropriately met, Section 702 requires targeting procedures. Targeting is effectuated by tasking communications facilities (such as telephone numbers and electronic communications accounts) to United States electronic communication service providers. Section 702 also requires minimization procedures to minimize and protect any non-public information of United States persons that may be incidentally collected when appropriately targeting non-United States persons abroad for foreign intelligence information. Querying procedures set rules for using United States person and non-United States person identifiers to query Section 702-acquired information.
- (U) *What compliance and oversight efforts underlie the joint assessment?* Agencies employ extensive compliance measures to implement Section 702 in accordance with procedural, statutory, judicial, and constitutional requirements. A joint oversight team consisting of experts from the Department of Justice and the Office of the Director of National Intelligence oversees these measures. Each incident of non-compliance (*i.e.*, compliance incident) is documented, reviewed by the joint oversight team, remediated, and reported to the FISC and relevant congressional committees. The joint assessment

summarizes trends, assesses compliance, and may include recommendations to help prevent compliance incidents or increase transparency.

- (U) *What government agencies are involved with implementing Section 702?* The National Security Agency, the Federal Bureau of Investigation, the Central Intelligence Agency, and the National Counterterrorism Center each plays a role in implementing Section 702 and receives shares of Section 702 collection. Each joint assessment discusses how these agencies implement the authority.
- (U) *Why is the joint assessment classified?* The joint assessment is classified to allow the Government to provide the FISC, the congressional oversight committees, and the PCLOB a complete assessment of the Section 702 program, while at the same time protecting sources and methods. It is carefully redacted for public release in the interest of transparency.
- (U) *What is the format of the joint assessment?* The joint assessment generally contains an Executive Summary, five sections, and an Appendix. Sections 1 and 5 provide an introduction and conclusion. Section 2 details internal compliance efforts by the agencies that implement Section 702, interagency oversight, training efforts, and efforts to improve the implementation of Section 702. Section 3 compiles and presents data regarding the overall scope of the Section 702 program. Section 4 describes compliance trends.
- (U) *What are the types of compliance incidents discussed?* Generally, the joint assessment groups incidents into six or seven categories. Categories 1-4 (tasking incidents, detasking incidents, notification delays, and documentation errors) discuss non-compliance with targeting procedures. Category 5 discusses incidents of non-compliance with minimization procedures, such as improper dissemination of information acquired pursuant to Section 702, and querying procedures, such as non-compliant queries of Section 702-acquired information using United States person identifiers. Category 6 is a catch-all category for incidents that do not fall into one of the other categories. When appropriate, a seventh category discussing incidents of overcollection is included. The actual number of compliance incidents is classified; the percentage breakdown of those incidents is unclassified. Additionally, because Section 702 collection occurs with the assistance of United States electronic communication service providers who receive a Section 702(i) directive, the joint assessment includes a review of any compliance incidents by such service providers.
- (U) *Did all of the compliance incidents discussed in this report occur during the reporting period?* No. Many of the compliance incidents discussed in this report occurred during a prior period, but were discovered and/or reported during the reporting period covered by this report.

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(U) 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

August 2022

(U) Reporting Period: 01 December 2020 – 31 May 2021

(U) EXECUTIVE SUMMARY

(U) The Foreign Intelligence Surveillance Act of 1978 (FISA), 50 U.S.C. § 1801 *et seq*., as amended, requires the Attorney General and the Director of National Intelligence (DNI) to assess compliance with certain procedures and guidelines issued pursuant to FISA Section 702 (hereinafter, "Section 702"), and to submit such assessments to the Foreign Intelligence Surveillance Court (FISC) and relevant congressional committees at least once every six months. Section 702 authorizes, subject to restrictions imposed by the statute and required targeting, minimization, and querying procedures, the targeting of non-United States persons reasonably believed to be located outside the United States in order to acquire foreign intelligence information. The present assessment sets forth the twenty-sixth joint compliance assessment of the Section 702 program (hereinafter, the "joint assessment"). This assessment covers the period from 01 December 2020 through 31 May 2021 (hereinafter, the "reporting period") and acts as a corollary to the Semiannual Report of the Attorney General Concerning Acquisitions under Section 702 of the Foreign Intelligence Surveillance Act as required by Section 707(b)(1) of FISA (hereinafter, the "Section 707 Report"). The Department of Justice (DOJ) submitted the Section 707 Report covering this reporting period on 03 September 2021.

(U) This joint assessment is based upon the compliance assessment activities that have been conducted by a joint oversight team consisting of experts from DOJ's National Security Division (NSD) and the Office of the Director of National Intelligence (ODNI) (hereinafter, the "joint oversight team").

(U) This joint assessment finds that the agencies have continued to implement the procedures and follow the guidelines in a manner that reflects a focused and concerted effort by agency personnel to comply with the requirements of Section 702. The personnel involved in implementing the authorities are appropriately focused on directing their efforts at non-United States persons reasonably believed to be located outside the United States for the purpose of acquiring foreign intelligence information. Processes are in place to implement these authorities and to impose internal controls for compliance and verification purposes.

(U) However, notwithstanding a focused and concerted effort by Federal Bureau of Investigation (FBI) personnel to comply with the requirements of Section 702, misapplication of FBI's querying procedures continued to cause query errors. Although the number of FBI compliance incidents reported during this reporting period was lower than in some recent reporting periods, FBI querying errors continued to be prevalent in the field offices reviewed in 2021 by NSD, and the joint oversight team continues to pay close attention to this issue.

(U) This reporting period was impacted by the coronavirus pandemic, although the joint oversight team believes that the effects of the pandemic began to wane towards the end of the reporting period. At the time of writing this joint assessment, the joint oversight team is not able to determine the extent to which the compliance trends during this reporting period reflect changes in the number of compliance incidents that occurred – whether as a result of the coronavirus pandemic or other factors – as opposed to difficulties in discovering and reporting compliance incidents as a result of the pandemic. As it pertains to the latter, NSD and ODNI's reviews were affected by the pandemic. Specifically, during this reporting period, NSD and ODNI conducted remote, rather than onsite, reviews at the National Counterterrorism Center and FBI headquarters. In addition, between March 2020 and February 2021, NSD and ODNI temporarily suspended reviews at FBI field offices. Further, most of the noncompliant queries discussed in the FBI section of this report occurred during prior reporting periods but were not discovered and reported until this reporting period.

(U) As discussed in the 25th Joint Assessment, the joint oversight team no longer reports the overall compliance incident rate. The overall compliance incident rate, which compared the total number of compliance incidents to the average number of tasked facilities (two metrics that are not dependent upon one another), was an imperfect and potentially misleading metric, making it difficult to draw conclusions about overall compliance from the metric. For example, the number of FBI query errors is not related to the average number of facilities subject to acquisition. The deficiencies of the overall compliance incident rate became more apparent throughout the pandemic. In order to provide a more nuanced and accurate assessment of compliance, the joint oversight team has developed, and continues to develop, more tailored compliance metrics aimed at better tracking specific compliance matters.

(U) The following table presents two key compliance metrics – the NSA targeting compliance incident rate[1] and the FBI query compliance incident rate[2] – from this reporting period and compares them to the comparable metrics reported in the three previous joint assessments.

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	23rd Joint Assessment (Jun. '19 - Nov. '19)	24th Joint Assessment (Dec. '19 - May '20)	25th Joint Assessment (Jun. '20 - Nov. '20)	26th Joint Assessment (Dec. '20 - May '21)
NSA Targeting Compliance Incident Rate	0.14 percent	0.10 percent	0.05 percent	0.11 percent
FBI Query Compliance Incident Rate	36.59 percent	0.82 percent	2.23 percent	0.40 percent

(U) This figure is UNCLASSIFIED.

(U) Prior to the pandemic, FBI field office reviews were responsible for discovering a significant portion of FBI minimization and querying incidents that are reported in each joint assessment. Because FBI field office reviews remained suspended during a portion of this reporting period and relatively few reviews were conducted, incidents that might typically be discovered by NSD during field office reviews may not have been discovered or reported during this period.[3] Some of the most significant errors identified as a result of these reviews have been those related to batch jobs, a functionality available in an FBI system that permits users to query multiple identifiers in sequential queries as part of a single batch job. A single non-compliant batch job can, accordingly, result in hundreds or thousands of non-compliant queries. Indeed, just a handful of

[1] (U) The NSA targeting compliance incident rate represents the number of NSA targeting compliance incidents, expressed as a percentage of the average number of facilities subject to acquisition on any given day during the reporting period.

[2] ~~(S//NF)~~ The FBI query compliance incident rate represents the total number of FBI query compliance incidents reported to the FISC during the reporting period, expressed as a percentage of the total number of FBI queries reviewed by NSD in connection with the field office reviews during which NSD identified such FBI query compliance incidents. The number of queries reviewed and included in this total are queries contained in query logs provided to NSD by FBI that were run in FBI's [redacted] NSD has, in prior query reviews, found that a small percentage of queries that were included in particular query logs were not run against unminimized FISA-acquired information, to include unminimized Section 702-acquired information.

[3] (U) Onsite field office reviews were suspended in March 2020, at the onset of the coronavirus pandemic and related travel restrictions in the United States. NSD resumed field office reviews remotely in February 2021, at which time NSD selected for sampling a range of historical queries conducted throughout 2020 by users in multiple FBI field offices. Thus, during this reporting period, NSD was conducting field office reviews for only approximately four months. Moreover, incidents discovered during the reviews that occurred during those four months were not all reported during this reporting period. As discussed in Section 4(1)(C), there may be delays in resolving and reporting compliance incidents after they are first identified, in part, because of delays in the Government's investigation while FBI gathers the relevant facts, or while FBI and NSD discuss whether the facts of a matter constitute a compliance incident.

non-compliant batch jobs have been responsible for the large fluctuations in the FBI query compliance incident rate over the last several reporting periods. Whether such non-compliant batch jobs would have been discovered and reported during the portion of this reporting period in which field office reviews were suspended is unknown. As a result, the joint oversight team is unable to evaluate how FBI's compliance with its querying procedures during this reporting period compares to other reporting periods. NSD and ODNI do assess, however, that query issues were a pervasive compliance challenge during the period of time covered by this joint assessment based on the results of NSD's query reviews conducted during and subsequent to this reporting period. Beginning in the fall of 2019 and through early 2022, FBI implemented a series of remedial measures (discussed in further detail below), and the joint oversight team continues to work with FBI to review progress and the efficacy of these remedial measures.

(U) SECTION 1: INTRODUCTION

(U) The Foreign Intelligence Surveillance Act of 1978 (FISA), 50 U.S.C. § 1801 *et seq.*, as amended, specifically, FISA Section 702(m)(1),[4] requires the Attorney General and the Director of National Intelligence (DNI) to assess compliance with certain procedures and guidelines issued pursuant to Section 702 and to submit such assessments to the Foreign Intelligence Surveillance Court (FISC) and relevant congressional committees at least once every six months. To fulfill this requirement, a team of oversight personnel from the Department of Justice's (DOJ) National Security Division (NSD) and the Office of the Director of National Intelligence (ODNI) (hereinafter, the "joint oversight team") conducts compliance reviews to assess whether the authorities under Section 702 have been implemented in accordance with the applicable procedures and guidelines. This report sets forth NSD and ODNI's 26th Joint Assessment of FISA compliance, based on oversight activities during this reporting period, under Section 702, covering the period 01 December 2020 through 31 May 2021 (hereinafter, the "reporting period").[5]

(U) Section 702 requires that the Attorney General, in consultation with the DNI, adopt targeting, minimization, and querying procedures, as well as guidelines. A primary purpose of the guidelines is to ensure compliance with the limitations set forth in subsection (b) of Section 702, which are as follows:

> An acquisition authorized under subsection (a) –
>
> (1) may not intentionally target any person known at the time of acquisition to be located in the United States;
>
> (2) may not intentionally target a person reasonably believed to be located outside the United States if the purpose of such acquisition is to target a particular, known person reasonably believed to be in the United States;
>
> (3) may not intentionally target a United States person reasonably believed to be located outside the United States;
>
> (4) may not intentionally acquire any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States; and
>
> (5) shall be conducted in a manner consistent with the [F]ourth [A]mendment to the Constitution of the United States.

(U) Pursuant to Section 702(g), the Attorney General's Guidelines for the Acquisition of Foreign Intelligence Information Pursuant to the Foreign Intelligence Surveillance Act of 1978, as

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[4] (U) 50 U.S.C. §1881a(m)(1).

[5] (U) This report acts as a corollary to the Semiannual Report of the Attorney General Concerning Acquisitions under Section 702, which was previously submitted on 03 September 2021, as required by Section 707(b)(1) of FISA (hereinafter, the "Section 707 Report"). This 26th Joint Assessment covers the same reporting period as the 26th Section 707 Report. The joint assessment evaluates the information included in the Section 707 Report to identify trends in Section 702 compliance and usage, and assess the need for added training and mitigation strategies.

amended (hereinafter, "the Attorney General's Acquisition Guidelines") were adopted by the Attorney General, in consultation with the DNI, on 05 August 2008, as revised on 27 March 2018.

(U) During this reporting period, the Government acquired foreign intelligence information under Attorney General and DNI authorized Section 702(h) certifications that targeted non-United States persons reasonably believed to be located outside the United States in order to acquire different types of foreign intelligence information. The foreign intelligence information must fall within a specific type (*i.e.*, category) of foreign intelligence information that has been authorized for collection pursuant to the Section 702(h) certifications.[6] Four agencies are primarily involved in implementing Section 702: the National Security Agency (NSA), the Federal Bureau of Investigation (FBI), the Central Intelligence Agency (CIA), and the National Counterterrorism Center (NCTC). An overview of how these agencies implement the authority appears in the Appendix of this assessment.

(U) Section 2 of this joint assessment provides an overview of oversight measures the Government employs to ensure compliance with the targeting, minimization, and querying procedures, as well as the Attorney General's Acquisition Guidelines. Section 3 compiles and presents data acquired from the joint oversight team's compliance reviews in order to provide insight into the overall scope of the Section 702 program, as well as trends in targeting, reporting, and the minimization of United States person information. Section 4 describes compliance trends. All of the specific compliance incidents for the reporting period have been previously reported to the FISC and described in the Section 707 Report. As with the prior joint assessments, some of those compliance incidents are analyzed here to determine whether these incidents are part of a larger trend or pattern that could be addressed through additional measures, and to assess whether the agency involved has implemented processes to prevent reoccurrences. Finally, this joint assessment contains an Appendix, which includes a general description of the oversight at each agency.

(U) The joint oversight team finds that the agencies have continued to implement their respective procedures and follow the guidelines in a manner that reflects a focused and concerted effort by agency personnel to comply with the requirements of Section 702 during this reporting period. However, notwithstanding a focused and concerted effort by FBI personnel to comply with the requirements of Section 702 and a substantial decrease in the number of FBI compliance incidents compared to other recent reporting periods, the misapplication of FBI's querying procedures continued to cause a number of query errors.

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[6] ~~(TS//SI//NF)~~ These three Section 702(h) certifications, all targeting non-United States persons reasonably believed to be located outside the United States in order to acquire foreign intelligence information, concerned the following topic areas of foreign intelligence information:

- Certification 2020-A's [redacted]
- Certification 2020-B's [redacted]
- Certification 2020-C's [redacted]

(U) In its ongoing efforts to reduce the number of future compliance incidents, the Government will continue to focus on measures to improve (a) inter- and intra-agency communication, (b) training, and (c) systems used in the handling of Section 702-acquired information. The joint oversight team will also continue to monitor agency practices to ensure appropriate remediation steps are taken to prevent, whenever possible, reoccurrences of the types of compliance incidents discussed herein and in the Section 707 Report. Each joint assessment provides, as appropriate, updates on these ongoing efforts.

(U) SECTION 2: OVERSIGHT OF THE IMPLEMENTATION OF SECTION 702

(U) The implementation of Section 702 is a multi-agency effort. As described in detail in the Appendix, NSA and FBI each acquires certain types of data pursuant to its own Section 702 targeting procedures. NSA, FBI, CIA, and NCTC[7] each handles Section 702-acquired information in accordance with its own minimization and querying procedures.[8] There are differences in the way each agency implements its procedures resulting from unique provisions in the procedures themselves, differences in how these agencies utilize Section 702-acquired information, and efficiencies gained by leveraging existing agency-specific systems and processes to implement Section 702 authorities. Because of these differences in practice and procedure, there are corresponding differences in each agency's internal compliance programs and in the external NSD and ODNI oversight programs.

(U) The joint oversight team – consisting of members from NSD, the ODNI Office of Civil Liberties, Privacy, and Transparency, the ODNI Office of General Counsel (ODNI OGC), and the ODNI Mission Integration Directorate Mission Performance, Analysis, and Collection – conducts independent Section 702 oversight activities. The team members play complementary roles in the review process. The following section describes the oversight activities of the joint oversight team, the results of which, in conjunction with the internal oversight conducted by the reviewed agencies, provide the basis for this joint assessment.

(U) I. Joint Oversight of NSA

(U) Under the process established by the Attorney General and DNI's certifications, all Section 702 targeting is initiated pursuant to NSA's targeting procedures. Additionally, NSA is responsible for conducting post-tasking checks of all Section 702-tasked communication facilities[9] (also referred to as selectors) once collection begins. NSA must also minimize its collection in accordance with its minimization procedures and conduct queries in accordance with its querying procedures. Each of these responsibilities is detailed in the Appendix. Given its central role in the Section 702 process, NSA has devoted substantial oversight and compliance resources to

[7] (U) As discussed herein, CIA, FBI, and NCTC receive Section 702-acquired data from NSA. Additionally, CIA, NCTC, and NSA also receive Section 702-acquired data from FBI.

[8] (U) All of the Section 702 targeting, minimization, and querying procedures are approved by the Attorney General and reviewed by the FISC. The targeting, minimization, and querying procedures that were in effect during this assessment's reporting period were those approved as part of the 2020 Section 702 Certifications in October 2020. On 26 April 2021, the DNI released, in redacted form, each of the 2020 minimization procedures and the 2020 querying procedures for NSA, FBI, CIA, and NCTC, as well the 2020 targeting procedures for NSA and FBI. The 2020 procedures are posted on ODNI's *intel.gov* website via the "IC on the Record" database.

[9] (U) Section 702 authorizes the targeting of non-United States persons reasonably believed to be located outside the United States. This *targeting* is effectuated by *tasking* communication facilities, including but not limited to telephone numbers and electronic communications accounts, to Section 702 electronic communication service providers. The oversight review process, which is described in this joint assessment, applies to the tasking of every communication facility, regardless of the type of facility. A fuller description of the Section 702 targeting process is found in the Appendix. This assessment uses the terms facilities and selectors interchangeably and does not make a substantive distinction between the two terms.

monitoring its implementation of the Section 702 authorities. NSA's internal oversight and compliance mechanisms are further described in the Appendix.

(U) NSD and ODNI's joint oversight of NSA's implementation of Section 702 consists of periodic compliance reviews, which NSA's targeting procedures require, as well as the investigation and reporting of specific compliance incidents throughout the reporting period. During this reporting period, reviews were conducted at NSA on the dates shown in Figure 1.

(U) **Figure 1: NSA Reviews**

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Approximate Dates of Review	Targeting, Minimization, and Querying Reviewed
26 February 2021 (onsite)	01 December 2020 – 31 January 2021
30 April 2021 (onsite)	01 February 2021 – 31 March 2021
24 June 2021 (onsite)	01 April 2021 – 31 May 2021

(U) Figure 1 is UNCLASSIFIED.

~~(S//NF)~~ Bimonthly reports for each of these reviews document the relevant time period of the review, the number and types of communication facilities tasked, and the types of information that NSA relied upon, as well as provide a detailed summary of the findings for that reporting period. [redacted] with the Section 707 Report, as required by Section 707(b)(1)(F) of FISA; [redacted] was provided to the congressional committees with the March 2022 Section 707 report.

(U) The joint oversight review process for NSA targeting begins well before the onsite review. Prior to each onsite review, NSA electronically sends the tasking record (known as a tasking sheet) for *each* facility tasked during the reporting period to NSD and ODNI. Members of the joint oversight team initially review the tasking sheets, with ODNI team members sending any questions they may have concerning the tasking sheets to NSD, who then prepares a detailed report of the findings, including any questions and requests for additional information. NSD shares this report with the ODNI members of the joint oversight team. During this initial review, the joint oversight team determines whether the tasking sheets meet the documentation standards required by NSA's targeting procedures and provide sufficient information to ascertain the basis for NSA's foreignness determinations. The joint oversight team also reviews whether the tasking was in conformance with the targeting procedures and statutory requirements (*i.e.*, that the target is a non-United States person reasonably believed to be located outside the United States, and that the target is reasonably expected to possess, receive, and/or likely communicate foreign intelligence information related to the categories of foreign intelligence information specified in the certifications). For those tasking sheets that, on their face, meet the standards and provide sufficient information, no further supporting documentation is requested. The joint oversight team then identifies the tasking sheets that did not provide sufficient information and requests additional information.

(U) During the onsite review, the joint oversight team examines the cited documentation underlying these identified tasking sheets, together with NSA's Office of Compliance for Cyber and Operations (OCCO), NSA attorneys, and other NSA personnel, as required. The joint oversight team works with NSA to answer questions, identify issues, clarify ambiguous entries, and provide guidance on areas of potential improvement. Interaction continues following the onsite reviews in the form of electronic and telephonic exchanges to answer questions and clarify issues.

(U) The joint oversight team also reviews NSA's minimization of Section 702-acquired information. NSD currently reviews all (and ODNI reviews a sample) of the serialized reports that NSA has disseminated and identified as containing Section 702-acquired United States person information. The joint oversight team also reviews a sample of serialized reports that NSA has disseminated and identified as containing Section-702 acquired *non*-United States person information. The joint oversight team further reviews a sample of NSA disseminations to certain foreign government partners made outside of NSA's serialized reporting process. These disseminations consist of information that NSA has evaluated for foreign intelligence and minimized, but that may not have been translated into English.

(U) NSA's Section 702 querying procedures provide that any use of United States person identifiers as terms to identify and select Section 702-acquired information must be accompanied by a statement of facts establishing that the use of any such identifier as a selection term is reasonably likely to return foreign intelligence information, as defined in FISA. With respect to queries of Section 702-acquired *content* using a United States person identifier, the procedures provide that the United States person identifier must first be approved by NSA's Office of General Counsel (NSA OGC). The joint oversight team reviews all approved United States person identifiers to ensure compliance with NSA's minimization procedures.[10] For each approved identifier, NSA also provides information detailing why the proposed use of the United States person identifier would be reasonably likely to return foreign intelligence information, the date that the United States person identifier was authorized to be used as a query term,[11] and any other relevant information. In addition, with respect to queries of Section 702-acquired *metadata* using a United States person identifier, NSA's querying procedures require that NSA analysts document the basis for each such metadata query prior to conducting the query. NSD reviews the documentation for 100 percent of such metadata queries that NSA provides to NSD.[12]

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[10] (U) On 29 April 2022, the DNI publicly released ODNI's ninth *Annual Statistical Transparency Report Regarding the Intelligence Community's Use of National Security Authorities* for calendar year 2021 (hereinafter, the "CY 2021 Transparency Report"). Pursuant to reporting requirements prescribed by the USA FREEDOM Act (*see* 50 U.S.C. § 1873(b)(2)(B)), the CY 2021 Transparency Report provided the "estimated number of search terms concerning a known U.S. person used to retrieve the unminimized contents of communications obtained under Section 702" (emphasis added) for the entire calendar year of 2021. The CY 2021 Transparency Report covered five months during this joint assessment's reporting period (01 January 2021 through 31 May 2021). The first month of this reporting period, December 2020, was covered in the 2020 version of the same report.

[11] (U) NSA's Section 702 querying procedures provide that NSA may approve the use of a United States person identifier to query Section 702-acquired *content* for no longer than a period of one year and that such approvals may be renewed for periods up to one year.

[12] (U) Also pursuant to reporting requirements prescribed by the USA FREEDOM Act (*see* 50 U.S.C. § 1873(b)(2)(C)), the CY 2021 Transparency Report provided the "estimated number of queries concerning a known U.S. person of

(U) Additionally, the joint oversight team investigates and reports incidents of non-compliance with NSA's targeting, minimization, and querying procedures, as well as with the Attorney General Acquisition Guidelines. While some of these incidents may be identified during the reviews, most are identified by NSA analysts or by NSA's internal compliance program and reported to NSD and ODNI. NSA is also required to report certain events that may not be incidents of non-compliance. For example, NSA is required to report *all* instances in which Section 702 acquisition continued while a targeted individual was in the United States, whether or not NSA had any knowledge of the target's travel to the United States.[13] The purpose of such reporting is to allow the joint oversight team to assess whether a compliance incident has occurred and to confirm that any necessary remedial action is taken. Investigations of these incidents sometimes result in requests for supplemental information. All compliance incidents identified by these investigations are reported to the congressional committees in the Section 707 Report and to the FISC.

(U) II. Joint Oversight of FBI

(U) FBI fulfills various roles in the implementation of Section 702, which are set forth in further detail in the Appendix. First, FBI is authorized under the certifications to acquire foreign intelligence information. Those acquisitions must be conducted pursuant to FBI's Section 702 targeting procedures.

~~(S//NF)~~ Second, FBI also [redacted] Pursuant to its own authority, FBI is authorized to [redacted] from electronic communication service providers by targeting facilities that NSA designates. FBI conveys [redacted] from the electronic communication service providers to [redacted] for processing in accordance with the agencies' FISC-approved minimization procedures.

~~(S//NF)~~ Third, FBI may receive dual-routed,[14] unminimized Section 702-acquired information. Such communications must be minimized pursuant to FBI's Section 702 minimization procedures. As described below, FBI has a process for nominating to NSA new facilities to be targeted pursuant to Section 702.

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unminimized non-contents information obtained under Section 702" (emphasis added) for the entire calendar year of 2021.

[13] (U) If NSA had no prior knowledge of the target's travel to the United States and, upon learning of the target's travel, "detasked" (*i.e.*, stopped collection against) the target's facility without delay, as is required by NSA's targeting procedures, the collection while the target was in the United States would not be considered a compliance incident under NSA's targeting procedures. However, the collection would generally be subject to purge under the applicable minimization procedures. The joint oversight team carefully considers, and where appropriate, obtains additional facts regarding every reported detasking decision to ensure that NSA's tasking and detasking complied with its targeting procedures.

[14] ~~(S//NF)~~ Dual-routing is the process whereby CIA, FBI, and/or NCTC requests that NSA route collection to them from already-tasked Section 702 facilities.

(U) NSD and ODNI's oversight program is designed to ensure FBI's compliance with statutory and procedural requirements for each of those three roles. NSD and ODNI generally conduct bi-monthly reviews of FBI's compliance with its targeting procedures, quarterly reviews of compliance by FBI headquarters components with FBI's minimization procedures, and querying reviews at certain FBI field offices during the course of the reporting period. As a result of FBI's reduced staffing due to the coronavirus pandemic, FBI was unable to gather the information necessary to finalize one of the reports before the production to Congress of the Section 707 Report; the remaining report was subsequently finalized with the help of FBI and provided to the congressional committees with the March 2022 Section 707 reports. For this reporting period, reviews were conducted during the time frames shown in Figure 2.

(U) **Figure 2: FBI Reviews**

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Approximate Dates of Review	Targeting, Minimization, and Querying Reviewed
January – February 2021 (remote)	01 October 2020 – 30 November 2020 (targeting); 01 September 2020 and 30 November 2020 (minimization)
March – April 2021 (remote)	01 December 2020 – 31 January 2021 (targeting); 01 December 2020 – 28 February 2021 (minimization)
June – July 2021 (remote)	01 February – 30 March 2021 (targeting); 01 March 2021 – 31 May 2021 (minimization)
July – August 2021 (remote)	01 April – 31 May 2021 (targeting)
February 2021 (remote)	Baltimore Division (querying)
May 2021 (remote)	Washington Division (querying)
March 2021 (remote)	New York Division (querying)
March 2021 (remote)	Seattle Division (querying)

(U) Figure 2 is UNCLASSIFIED.

(U) In conducting targeting reviews, the joint oversight team reviews the targeting checklists completed by FBI analysts and supervisory personnel involved in the process, together with supporting documentation.[15] The joint oversight team also reviews a sample of other files to identify any other potential compliance issues. FBI analysts, supervisory personnel, and attorneys from FBI's National Security and Cyber Law Branch (NSCLB) are available to answer questions and provide supporting documentation. The joint oversight team provides guidance on areas of potential improvement.

[15] ~~(S//NF)~~ If FBI's application of its targeting procedures to [redacted] returns information from the databases discussed in FBI's targeting procedures, then FBI provides a checklist that shows the results of its database queries. If FBI's database queries returned results that FBI identifies as relevant to the target's location or citizenship status, then FBI also provides the joint oversight team with supporting documentation [redacted] During this reporting period, the joint oversight team reviewed a sample of checklists and supporting documentation provided by FBI for approved requests for which information is returned by FBI's database queries.

(U) In conducting FBI minimization reviews, the joint oversight team reviews documents related to FBI's application of its Section 702 minimization procedures. The team reviews a sample of communications that FBI has marked in its systems as both meeting the retention standards and containing United States person information. The team also reviews all disseminations by the relevant FBI headquarters unit of information acquired under Section 702 that FBI identified as potentially containing non-publicly available information concerning unconsenting United States persons.

(U) Prior to the pandemic, NSD conducted minimization reviews at FBI field offices in order to review retention and dissemination decisions made by field office personnel with respect to Section 702-acquired information. During those reviews, NSD reviewed a sample of retention decisions made by FBI personnel in connection with investigations involving the acquisition of data pursuant to Section 702 and a sample of disseminations of information acquired pursuant to Section 702 that FBI identified as potentially containing non-publicly available information concerning unconsenting United States persons. As of mid-2022, NSD has restarted these reviews of compliance by FBI field office personnel with the FBI's Section 702 minimization procedures.

(U) As noted in the chart above, NSD conducted querying reviews at four FBI field offices (Baltimore, New York, Seattle, and Washington, D.C.) during this reporting period. ODNI received written summaries regarding all of the reviews from NSD. Those reviews are further discussed in Section 4 below and in the Attorney General's Section 707 Report.

(U) During its querying reviews at FBI field offices, NSD reviewed the querying decisions made by FBI field office personnel with respect to Section 702-acquired information. NSD reviewed a sample of queries by FBI personnel in FBI systems that contain unminimized FISA-acquired information, including Section 702-acquired information. Those reviews evaluated whether the queries complied with the requirements in FBI's FISA minimization and querying procedures, including its Section 702 querying procedures. In addition, as a result of a Court-ordered reporting requirement set forth in the FISC's 18 November 2020 Memorandum Opinion and Order (the "2020 Opinion")[16] regarding queries conducted solely to retrieve evidence of a crime, as well as certain requirements in Section 702(f)(2) of FISA, NSD reviews those queries to determine if any such queries were conducted solely to retrieve evidence of a crime. If such a query was conducted, NSD would seek additional information as to whether FBI personnel received and reviewed the results of such a query. Pursuant to the 2020 Opinion, such queries must subsequently be reported to the FISC.

[16] (U) The 2020 Opinion approved the 2020 Section 702 Certifications. On 26 April 2021, the DNI, in consultation with the Attorney General, released the 2020 Opinion in redacted form on the ODNI public website *intel.gov* via the "IC on the Record" database.

~~(S//NF)~~ The full title of the 2020 Opinion is *In re DNI/AG 702(g) Certifications 2020-A, 2020-B-, 2020-C, and Predecessor Certifications*. The 2020 Opinion modified reporting query requirements set forth in the 06 December 2019 Opinion and Order approving the 2019 Section 702 Certifications. In turn, the 06 December 2019 Opinion and Order modified reporting query requirements first set forth in the 06 November 2015 Opinion and Order approving the 2015 Section 702 Certifications.

~~(S//NF)~~ Separately, in order to evaluate FBI's [redacted] acquisition [redacted] and provision of [redacted] the joint oversight team conducts an annual process review with FBI's technical personnel to ensure that those activities complied with applicable minimization procedures. While outside this reporting period, the most recent annual process review occurred in June 2022, and a report regarding that review will be submitted to Congress along with the relevant Section 707 Report.

~~(S//NF)~~ As further described in detail in the Appendix, FBI nominates potential Section 702 [redacted] FBI has established internal compliance mechanisms and procedures to oversee proper implementation of its Section 702 authorities. Those processes are further described in the Appendix.

(U) Throughout the reporting period, the joint oversight team also investigates potential incidents of non-compliance with FBI's targeting, minimization, and querying procedures, the Attorney General's Acquisition Guidelines, or other agencies' procedures in which FBI is involved.[17] Those investigations are coordinated with FBI's Office of General Counsel and may involve requests for further information; meetings with FBI legal, analytical, and/or technical personnel; or review of source documentation. Compliance incidents identified through those investigations are reported to the congressional committees in the Section 707 Report and to the FISC.

(U) III. Joint Oversight of CIA

(U) As further described in detail in the Appendix, although CIA does not directly engage in targeting or acquisition, it does nominate potential Section 702 targets to NSA. Because CIA nominates potential Section 702 targets to NSA, the joint oversight team typically conducts onsite visits at CIA[18] and includes the results of those visits in the bimonthly NSA review reports discussed above. CIA has established internal compliance mechanisms and procedures to oversee proper implementation of its Section 702 authorities.

(U) The reviews also focus on CIA's application of its Section 702 minimization procedures and querying procedures. Reports for each of those reviews have previously been provided to the congressional committees with the Section 707 Report, as required by Section 707(b)(1)(F) of FISA. For this reporting period, the joint oversight team conducted reviews of CIA's application of its minimization and querying procedures during the dates shown in Figure 3.

[17] (U) Insofar as FBI nominates facilities for tasking and reviews content that may indicate that a target is located in the United States or is a United States person, some investigations of possible non-compliance with NSA's targeting procedures can also involve FBI.

[18] (U) Due to the coronavirus pandemic, the joint oversight team conducted one review of CIA's application of its minimization and querying procedures remotely over a period of several weeks. However, the joint oversight team conducted the remainder of the reviews onsite at CIA during this reporting period.

(U) **Figure 3: CIA Reviews**

UNCLASSIFIED

Approximate Dates of Review	Minimization and Querying Reviewed
December 2020-January 2021 (remote)	01 October – 30 November 2020
23 and 24 March 2021	01 December 2020 – 31 January 2021
26 and 27 May 2021	01 February – 31 March 2021
13 July 2021	01 April – 31 May 2021

(U) Figure 3 is UNCLASSIFIED.

(U) As a part of the typical reviews, the joint oversight team examines documents related to CIA's retention, dissemination, and querying of Section 702-acquired information. NSD reviews all of the descriptions of communications containing United States person information that have been minimized for long-term retention, some of which have also been transferred to CIA-wide systems. Reviewers ensure that communications have been properly minimized and discuss with CIA personnel issues involving the proper application of CIA's minimization procedures. The team also reviews all disseminations of information acquired under Section 702 that CIA identified as potentially containing United States person information.[19] In addition, NSD reviews CIA's written foreign intelligence justifications for all queries using United States person identifiers of unminimized Section 702-acquired information to assess whether those queries were compliant with CIA's querying procedure requirements that such queries are reasonably likely to return foreign intelligence information, as defined by FISA.

~~(S//NF)~~ CIA may receive dual-routed unminimized Section 702-acquired communications. Such communications must be minimized pursuant to CIA's minimization procedures. Additionally, and as further described in detail in the Appendix, CIA nominates potential Section 702 targets to NSA. [redacted] the joint oversight team may conduct onsite visits at CIA to review CIA's original source documentation [redacted] the results of those visits are included in the bimonthly NSA review reports discussed previously. CIA has established internal compliance mechanisms and procedures to oversee proper implementation of its Section 702 authorities. Those processes are further described in the Appendix.

(U) In addition to the bimonthly reviews, throughout the reporting period, the joint oversight team also investigates and reports incidents of non-compliance with CIA's minimization and querying procedures, the Attorney General Acquisition Guidelines, or other agencies' procedures in which CIA is involved.[20] Investigations are coordinated through CIA's FISA Program Office and CIA's Office of General Counsel (CIA OGC), and when necessary, may involve requests for further information, meetings with CIA legal, analytical, and/or technical personnel, or the review of source

[19] (U) Due to the sensitive nature of these disseminations, they must be reviewed in person at CIA.

[20] (U) Insofar as CIA nominates facilities for tasking and reviews content that may indicate that a target is located in the United States or is a United States person, some investigations of possible non-compliance with NSA's targeting procedures can also involve CIA.

documentation. All compliance incidents identified by those investigations are reported to the congressional committees in the Section 707 Report and to the FISC.

(U) IV. Joint Oversight of NCTC

~~(S//NF)~~ NCTC is authorized to receive unminimized Section 702-acquired information and has access to certain FBI systems containing minimized Section 702 information pertaining to counterterrorism. Certain NCTC personnel also have access to a database containing certain CIA operational cables. NCTC may also receive dual-routed unminimized Section 702-acquired communications. NCTC's processing, retention, dissemination, and querying of such information is subject to its Section 702 minimization and querying procedures. Unlike NSA, FBI, and CIA, NCTC does not directly engage in targeting or acquisition, nor does it nominate potential Section 702 targets to NSA.

(U) NCTC has established internal compliance mechanisms and procedures to oversee proper implementation of its Section 702 authorities. Because NCTC acquires unminimized Section 702 information, the joint oversight team typically conducts onsite visits at NCTC, and the results of those visits are included in bimonthly NCTC review reports. However, due to the coronavirus pandemic, the joint oversight team conducted the bimonthly reviews during the review period remotely.

(U) The reviews focus on NCTC's application of its Section 702 minimization procedures and querying procedures. Reports for each of those reviews have been provided to the congressional committees with the Section 707 Report, as required by Section 707(b)(1)(F) of FISA. For this reporting period, reviews of NCTC's application of its minimization and querying procedures were conducted on the dates shown in Figure 4.

(U) **Figure 4: NCTC Reviews**

UNCLASSIFIED

Approximate Date of Review	Minimization and Querying Reviewed
January 2021 (remote)	01 November – 31 December 2020
March 2021 (remote)	01 January – 28 February 2021
May 2021 (remote)	01 March – 30 April 2021

(U) Figure 4 is UNCLASSIFIED.

(U) As a part of the reviews, the joint oversight team examines documents related to NCTC's retention, dissemination, and querying of Section 702-acquired information. The team reviews all communication logs acquired under Section 702 that have been minimized and retained by NCTC, irrespective of whether they contain United States person information, but only reviews the contents of those communications if they contain United States person information. Reviewers ensure that communications have been properly minimized and discuss with personnel issues involving the proper application of NCTC's minimization procedures. The team also reviews all NCTC disseminations containing United States person information acquired under Section 702. In addition, the joint oversight team reviews all of NCTC's queries of unminimized Section 702-acquired information and the associated written foreign intelligence justifications for those queries.

(U) In addition to the bimonthly reviews, throughout the reporting period, the joint oversight team also investigates and reports incidents of non-compliance with NCTC's minimization and querying procedures or other agencies' procedures in which NCTC is involved.[21] Investigations are coordinated through the NCTC Compliance and Transparency Group and NCTC Legal, a forward deployed component of the ODNI OGC, and when necessary, may involve requests for further information; meetings with NCTC legal, analytical, and/or technical personnel, or the review of source documentation. All compliance incidents identified by those investigations are reported to the congressional committees in the Section 707 Report and to the FISC.

(U) V. Interagency / Programmatic Oversight

(U) Because the implementation and oversight of the Government's Section 702 authorities are multi-agency efforts, investigations of particular compliance incidents may involve more than one agency. The resolution of particular compliance incidents can provide lessons learned for all agencies. Robust communication among the agencies is required for each to effectively implement its authorities, gather foreign intelligence information, and comply with all legal requirements. For those reasons, NSD and ODNI generally lead calls and meetings on relevant compliance topics, including calls or meetings with representatives from all agencies implementing Section 702 authorities, so as to address interagency issues affecting compliance with the statute and applicable procedures. Additionally, NSD and ODNI work closely with NSA to address certain outstanding compliance matters and work through the process of understanding those matters and reporting incidents to the FISC.

(U) NSD and ODNI's programmatic oversight also involves efforts to proactively minimize the number of incidents of non-compliance. For example, NSD and ODNI have required agencies to demonstrate for the joint oversight team new or substantially revised systems involved in Section 702 targeting, querying, or minimization, prior to implementation. NSD and ODNI personnel also continue to work with the agencies to review and, where appropriate, seek modifications of their targeting, querying, and minimization procedures in an effort to enhance the Government's collection of foreign intelligence information, civil liberties protections, and compliance.

(U) VI. Training

(U) In addition to specific instructions to personnel directly involved in certain incidents of non-compliance discussed in Section 4, the agencies and the joint oversight team have continued their training efforts to ensure compliance with the targeting, minimization, and querying procedures. During this reporting period, NSA continued to administer the compliance training course dated November 2016.[22] All NSA personnel who require access to Section 702 data are

[21] (U) Insofar as NCTC reviews content that may indicate that a target is located in the United States or is a United States person, some investigations of possible non-compliance with NSA's targeting procedures can also involve NCTC.

[22] (U) NSA released the transcript associated with this training, dated August 2016, in response to a Freedom of Information (FOIA) case filed in the United States District Court, Southern District of New York, ACLU v. National Security Agency, et al. (hereinafter, the "ACLU FOIA"). The transcript was posted, in redacted form, on ODNI's *intel.gov* website via the "IC on the Record" database on 11 April 2017. The transcript is titled, *OVSC1203: FISA*

required to complete this course on an annual basis in order to gain or maintain that access. Additionally, NSA continued providing training on a more informal and ad hoc basis by issuing training reminders and compliance advisories to analysts concerning new or updated guidance to maintain compliance with the Section 702 procedures. Those training reminders and compliance advisories are e-mailed to individual analysts and targeting adjudicators and maintained on internal agency websites[23] where personnel can obtain information about specific types of Section 702-related issues and compliance matters.

(U) During this reporting period, FBI similarly continued implementing its online training programs regarding Section 702 nominations, minimization, querying, and other related requirements. Completion of those trainings is required of all FBI personnel who request access to Section 702 information. Prior to the pandemic, NSD and FBI also conducted in-person trainings at multiple FBI field offices. For example, prior to March 2020, NSD and FBI provided additional focused training at FBI field offices on the Section 702 minimization procedures and the application of the querying standard, as well as the FISC warrant and reporting requirements discussed in Section 2(11). NSD resumed its query training at FBI field offices in 2022. NSD's trainings are regularly updated to reflect evolving procedures and reporting requirements.

(U) As part of its historical efforts to address certain issues causing non-compliant queries, in June 2018 and November 2019, FBI worked with NSD and ODNI to develop updated guidance on the query provisions in FBI's procedures. This enhanced training on the query restrictions in FBI's procedures was designed to address misunderstandings regarding the query standard and how to avoid non-compliant queries. This training was mandatory for FBI personnel who are authorized to access unminimized Section 702-acquired information. FBI conducted this training between November and December 2019. Then-current users who did not complete this training by mid-December 2019 would have had their access to unminimized Section 702-acquired information temporarily suspended until they took the training. As is discussed in greater detail below, subsequent to this reporting period, in November 2021 NSD provided additional formal guidance to FBI regarding queries. Based on this revised guidance, FBI provided enhanced training beginning at the end of calendar year 2021.

(U) During this reporting period, CIA provided targeted FISA training to attorneys it embeds with CIA operational personnel who regularly handle FISA matters, and continued to provide FISA training to any attorney beginning an assignment that may involve the provision of legal advice on FISA matters. Additionally, CIA has a required training program for anyone handling unminimized Section 702-acquired information that provides hands-on experience with handling and minimizing Section 702-acquired information, as well as the Section 702 nomination process. During this reporting period, CIA continued to implement this training, which is required

Amendments Act Section 702 (Document 17, NSA's Training on FISA Amendments Act Section 702). The November 2016 training is in the process of being revised, with an expected rollout in summer 2022.

[23] (U) Examples of these types of documents were posted, in redacted form, on ODNI's *intel.gov* website via the "IC on the Record" database on 23 August 2017, in response to the aforementioned ACLU FOIA case: *NSA's 702 Targeting Review Guidance* (Document 10), *NSA's 702 Practical Applications Training* (Document 11), *NSA's 702 Training for NSA Adjudicators* (Document 12), and *NSA's 702 Adjudication Checklist* (Document 13).

for all personnel who nominate facilities to NSA and/or minimize Section 702-acquired communications. Furthermore, CIA has issued guidance to its personnel about how to properly conduct United States person queries that are reasonably likely to return foreign intelligence information.[24]

(U) During this reporting period, NCTC provided training on NCTC's Section 702 minimization and querying procedures to all of its personnel who will have access to unminimized Section 702-acquired information. NCTC uses a training tracking system through which NCTC can verify that its users have received the appropriate Section 702 training before being given access to unminimized Section 702-acquired information. In addition, NCTC conducts audits of personnel at NCTC who have access to unminimized Section 702-acquired information to confirm that those personnel have received training on NCTC's Section 702 minimization and querying procedures.

[24] (U) *See USP Query Guidance for Personnel with Access to Unminimized FISA Section 702 Data.* As discussed in previous joint assessments, in response to the aforementioned ACLU FOIA case, CIA's guidance document was posted, in redacted form, on ODNI's *intel.gov* website via the "IC on the Record" database on 11 April 2017, *see* Document 15 "CIA's United States Person Query Guidelines for Personnel."

(U) SECTION 3: TRENDS IN SECTION 702 TARGETING AND MINIMIZATION

(U) In conducting the above-described oversight program, NSD, ODNI, and the agencies have collected a substantial amount of data regarding the implementation of Section 702. In this section, a collection of this data has been compiled in order to identify overall trends in the agencies' targeting and minimization.

~~(S//NF)~~ This section and Section 4 report trends compared with previous reporting periods. As with the prior two reporting periods, this reporting period was disrupted by the coronavirus pandemic. The joint oversight team believes many of the changes in numbers and trends during this reporting period, as compared to reporting periods that preceded the coronavirus pandemic, are attributable, at least in part, to the disruption [redacted] caused by the pandemic.

(U) I. Trends in NSA Targeting and Minimization

(U) NSA provides to the joint oversight team the average approximate number of facilities that were under collection on any given day during the reporting period. Because the actual number of facilities tasked remains classified,[25] the figure charting the average number of facilities under collection is classified as well. Since the inception of the program, the total number of facilities under collection during each reporting period has steadily increased with the exception of two reporting periods that experienced minor decreases.[26]

[25] (U) The provided number of facilities, on average, subject to acquisition during the reporting period remains classified and is different from the unclassified estimated number of targets affected by Section 702 released by the ODNI in its CY2021 Transparency Report. The classified numbers estimate the number of *facilities* subject to Section 702 acquisition, whereas the unclassified numbers provided in the CY 2021 Transparency Report estimate the number of Section 702 *targets*. As noted in the CY 2021 Transparency Report, the number of Section 702 targets reflects an estimate of the number of known users of particular facilities, subject to intelligence collection under those certifications. The classified number of facilities accounts for those facilities subject to Section 702 acquisition *during the current six month reporting period*, whereas the CY 2021 Transparency Report estimates the number of targets affected by Section 702 *during the calendar year*.

[26] (U) The two previous reporting periods in which the average number of facilities under collection decreased are not captured in Figure 5, as both occurred prior to 2016.

(U) **Figure 5: Average Number of Facilities under Collection**

(U) Figure 5 is classified ~~SECRET~~

~~(TS//SI//NF)~~ NSA reports that, on average, approximately facilities[27] were under collection pursuant to the applicable certifications on any given day during the reporting period. This represents a 9.4 percent increase from the approximately facilities under collection on any given day in the last reporting period. The 9.4 percent increase is substantially higher than the 1.2 percent increase in the prior reporting period and resumes the upward trend experienced in prior reporting periods.

~~(S//NF)~~ certification (2020-A); certification (2020-B); certification (2020-C).

(U) The above statistics describe the *average* number of facilities under collection at any given time during the reporting period. The total number of *newly* tasked facilities during the

[27] ~~(TS//SI//NF)~~ The Government counts the tasking of to ensure consistency with how it counts other tasked facilities.

reporting period provides another useful metric.[28] Figure 6 charts the average monthly numbers of newly tasked facilities from 2016 through November 2020 and the total monthly numbers of newly tasked facilities from December 2020 through May 2021.

(U) **Figure 6: New Taskings by Month (Yearly Average for 2016 through November 2020)**

[redacted]

(U) Figure 6 is classified ~~SECRET~~ [redacted]

~~(S//SI//NF)~~ NSA provided documentation of approximately [redacted] new taskings during the reporting period. This represents a 33.6 percent increase from the [redacted] new taskings from the previous reporting period. When compared to the prior reporting period, the number of newly tasked electronic communication accounts increased 32.9 percent and the number of newly tasked telephony facilities increased 34.1 percent. [redacted]

(U) With respect to minimization, NSA identified to the joint oversight team the number of serialized reports NSA generated based upon minimized Section 702-acquired information and provided NSD and ODNI access to all reports NSA identified as containing United States person information. Figure 7 contains the classified number of serialized reports and reports identified as containing United States person information over the last 10 reporting periods. The joint oversight team's reviews revealed that the United States person information was at least initially masked in

[28] (U) The term newly tasked facilities refers to any facility that was added to collection under a certification. This term includes any facility added to collection pursuant to the Section 702 targeting procedures; some of these newly tasked facilities are facilities that had been previously tasked for collection, were detasked, and then retasked.

the vast majority of circumstances.[29] The number of serialized reports NSA has identified as containing United States person information increased when compared with the previous reporting period.

(U) **Figure 7: Total Disseminated NSA Serialized Reports Based Upon Section 702-Acquired Information and Number of Such Reports NSA Identified as Containing USP Information**

(U) Figure 7 is classified ~~SECRET//NOFORN~~.

~~(S//NF)~~ For this reporting period, NSA identified to NSD and ODNI approximately [redacted] serialized reports based upon minimized Section 702-acquired information. Figure 7 reflects NSA reporting over the last 10 reporting periods; the overall number of reports identified by NSA increased when compared to the prior reporting period, but remained lower than the number of reports identified in reporting periods prior to the pandemic. The number of serialized reports

[29] (U) NSA generally "masks" United States person information by replacing the name or other identifying information of the United States person with a generic term, such as "United States person #1." Agencies may request that NSA "unmask" the United States person identity. Prior to such unmasking, NSA must determine that the United States person's identity meets the applicable standards in NSA's minimization procedures.

identified as containing United States person information increased from [redacted] in the prior reporting period to the current [redacted][30]

(U) II. Trends in FBI Targeting

(U) Under Section 702, NSA designates and submits facilities to FBI for acquisition of communications from those facilities (hereinafter, "Designated Accounts") that have been previously approved for Section 702 acquisition under the NSA targeting procedures. FBI applies its own targeting procedures with regard to these Designated Accounts. FBI reports to the joint oversight team the specific number of Designated Accounts, as well as the number of accounts approved for acquisition by FBI.[31] As detailed below, the number of Designated Accounts increased significantly from the prior reporting period, which may be due, at least in part, to increased staffing at NSA, allowing for the targeting of additional selectors.[32]

(U) As Figure 8 details, FBI approves the vast majority of NSA's Designated Accounts and the percentage of approved Designated Accounts has been consistently high across reporting periods. The high rate of approval can be attributed to the fact that the Designated Accounts have already been evaluated and found to meet the NSA targeting procedures. FBI might not approve NSA's request for acquisition of a Designated Account for several reasons, including withdrawal of the request because the potential data to be acquired is no longer of foreign intelligence interest, or because FBI has uncovered information causing NSA and/or FBI to question whether the user or users of the Designated Account are non-United States persons located outside the United States. Historically, the joint oversight team notes that for those accounts not approved by FBI, only a small portion[33] were rejected on the basis that they were ineligible for Section 702 collection.

(U) The yearly average (through November for calendar year 2020) of Designated Accounts approved by FBI increased each year from 2016 through 2019. The yearly average of Designated Accounts approved by FBI decreased in 2020, likely due, at least in part, to the coronavirus pandemic. The number of Designated Accounts approved by FBI each month in this reporting period has varied.

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[30] (U) NSA does not maintain records that allow it to readily determine, in the case of a report that includes information from several sources, from which source a reference to a United States person was derived. Accordingly, the references to United States person identities may have resulted from collection pursuant to Section 702 or from other authorized signals intelligence activity conducted by NSA that was reported in conjunction with information acquired under Section 702. Thus, the number provided above is assessed to likely be over-inclusive.

[31] [redacted]

[32] [redacted]

[33] ~~(S//NF)~~ [redacted] such accounts is rejected on the basis that it is ineligible for Section 702 collection.

Figure 8: [redacted]

(U) Figure 8 is classified ~~SECRET//NOFORN~~.

~~(S//SI//NF)~~ FBI reports that NSA designated approximately [redacted] accounts [redacted] during the reporting period – an avera[redacted]proximately Designated Accounts per month.[34] FBI approved approximately [redacted][5] requests [redacted]

[34] [redacted]

[35] (U) As previously noted, beginning with the joint assessment covering the reporting period December 2017 through May 2018, the Government changed its counting methodology to ensure statistical accuracy for the number of Designated Accounts approved.

[redacted] during the reporting period. In the previous reporting period, NSA designated approximately [redacted] accounts for [redacted] and FBI approved approximately [redacted] requests. Figure 8 shows that both the number of Designated Accounts and the number of Designed Accounts that were approved by FBI returned to, and in some cases surpassed, pre-pandemic levels during the reporting period. In addition, Figure 8 illustrates that in certain months during the reporting period, FBI approved more requests [redacted] than the number of accounts designated by NSA; this reflects FBI's continued processing of requests submitted by NSA in prior months.

(U) III. Trends in CIA Minimization

(U) CIA only identifies for NSD and ODNI disseminations of Section 702-acquired United States person information. Figure 9 compiles the number of such disseminations of reports containing United States person information identified in the last 10 reporting periods (June 2016 through November 2016 through the current period of December 2020 through May 2021). While the number of CIA-identified disseminations containing United States person information has fluctuated over the years, those fluctuations, whether upward or downward, have generally been incremental. The current reporting period's number of CIA-identified disseminations containing United States person information increased, following a small decline in the prior period.

(U) Figure 9: Disseminations Identified by CIA as Containing Minimized Section 702-Acquired United States Person Information (Excluding Certain Disseminations to NCTC)

[redacted]

(U) Figure 9 is classified ~~SECRET//NOFORN~~.

~~(S//NF)~~ During this reporting period, CIA identified approximately [redacted] disseminations of Section 702-acquired information containing minimized United States person information [redacted] CIA permits some [redacted]

(U) CIA also tracks the number of files its personnel determine are appropriate for broader access and longer-term retention. The CIA minimization procedures must be applied to those files before they are retained or transferred to systems with broader access.[36] Figure 10 details the total number of files that were either retained or transferred, as well as the number of those retained or transferred files that contain identified United States person information. This current assessment reports the total number of files CIA transferred from December 2020 through May 2021. For reference, however, the number of files retained from prior reporting periods is also displayed in Figure 10.[37] The percentage of retained or transferred files identified by CIA as potentially containing United States person information has remained consistently low.

[36] ~~(S//NF)~~ [redacted] In making those retention decisions, CIA personnel are required to identify any files potentially containing United States person information.

[37] ~~(S//NF)~~ For this reporting period, CIA analysts transferred a total of approximately [redacted] ~~(2.9 percent)~~ of which were identified by CIA as containing a communication with potential United States person information.

(U) **Figure 10: Total CIA Files Retained or Transferred and Total CIA Files that Were Retained or Transferred which Contained Potential United States Person Information**[38]

(U) Figure 10 is classified ~~SECRET//NOFORN~~.

(U) IV. Trends in NCTC Minimization

(U) Beginning with the reporting period covering June 2017 through November 2017, the joint assessment now includes statistics regarding the total number of disseminations identified by NCTC as containing Section 702-acquired information. This number is classified and reported in Figure 11. Starting in November 2018, NCTC identified and provided to NSD and ODNI only disseminations containing minimized United States person information. Because NCTC only began obtaining unminimized Section 702-aquired data after the FISC approval of such in April 2017, there are only eight six-month periods to report in this assessment.[39]

[38] [redacted]

[39] (S//NF) The FISC's April 2017 opinion approved NCTC's 2016 Minimization Procedures allowing NCTC to obtain unminimized Section 702-acquired information. NCTC began receiving unminimized Section 702-acquired information on [redacted] May [redacted]

(U) **Figure 11: Disseminations Identified by NCTC as Containing Minimized Section 702-Acquired Information**

Figure 11 is classified ~~SECRET//NOFORN~~.

~~(S//NF)~~ During this reporting period, NCTC identified and provided to NSD and ODNI approximately [redacted] disseminations of Section 702-acquired information containing minimized United States person information. This represented a 48 percent increase in disseminations containing minimized United States person information when compared to the previous reporting period, and an increase of approximately 263 percent over the last four reporting periods. This increase is in part attributed to trainings designed to enhance understanding of the value of Section 702 data and system updates designed to increase efficiency.

(U) SECTION 4: COMPLIANCE ASSESSMENT – FINDINGS

(U) The joint oversight team finds that during this reporting period, the agencies have continued to implement their procedures and follow the guidelines in a manner that reflects a focused and concerted effort by agency personnel to comply with the requirements of Section 702. The personnel involved in implementing the Section 702 authorities are appropriately directing their efforts at non-United States persons reasonably believed to be located outside the United States for the purpose of acquiring foreign intelligence information. Processes have been put in place to implement these authorities and to impose internal controls for compliance and verification purposes.

(U) However, notwithstanding a focused and concerted effort by FBI personnel to comply with the requirements of Section 702 and a substantial decrease in the number of FBI compliance incidents compared to other recent reporting periods,[40] the joint oversight team remains concerned about, and focused on, FBI's compliance with its Section 702 querying procedures based on the results of joint oversight conducted of queries occurring after this reporting period. The query incidents discussed in this joint assessment occurred prior to FBI's implementation in mid-2021 of significant corrective measures to ensure FBI users correctly apply the Section 702 querying procedures and avoid errors that may have contributed to query incidents in the past. These corrective measures are addressed further below.

(U) As noted in prior joint assessments, in the cooperative environment the implementing agencies have established, an action by one agency can result in an incident of non-compliance with another agency's procedures. For example, an "NSA compliance incident" could be caused by typographical errors contained in another agency's nomination to NSA for tasking. Further, as is discussed in the Section 707 report and below, some compliance incidents involve more than one element of the IC. Incidents have therefore been grouped not by the agency "at fault," but instead by the set of procedures that such actions violated.

(U) Each of the compliance incidents for this reporting period is described in the corresponding Section 707 Report. This joint assessment does not reiterate the compliance incidents set forth in the Section 707 Report. It does, however, examine those incidents to assess broader implications and to determine whether the agency's corrective measures address those implications.

(U) The joint assessment provides NSD and ODNI's analysis of compliance incidents in an effort to identify existing patterns or trends that might identify underlying causes of those incidents. The joint oversight team then considers whether and how those underlying causes could be addressed through additional remedial or proactive measures and assesses whether the agency involved has implemented appropriate procedures to prevent recurrences. The joint oversight team continues to assist in the development of such measures, some of which are detailed below, especially as it pertains to investigating whether additional or new system automation may assist in preventing compliance incidents.

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[40] ~~(S//NF)~~ The number of FBI minimization and querying errors for the current reporting period was [redacted] minimization and querying errors in the previous reporting period.

(U) I. Compliance Incidents – General

(U) A. Statistical Data Relating to Compliance Incidents

(U) This reporting period was impacted by the coronavirus pandemic, although the joint oversight team believes that the effects of the pandemic began to wane towards the end of the reporting period. At the time of writing this joint assessment, the joint oversight team is not able to determine the extent to which the compliance trends during this reporting period reflect changes in the number of compliance incidents that occurred—whether as a result of the coronavirus pandemic or other factors—as opposed to difficulties in discovering and reporting compliance incidents as a result of the pandemic.

~~(S//NF)~~ As noted in the Section 707 Report, during this reporting period, there were a total of [redacted] compliance incidents,[41] including [redacted] compliance incidents that involved non-compliance with NSA's targeting, minimization, or querying procedures and [redacted] compliance incidents involving non-compliance with FBI's targeting, minimization, or querying procedures. In addition, during this reporting period, there were [redacted] incidents of non-compliance with CIA's minimization and querying procedures. There were [redacted] incidents of non-compliance with NCTC's minimization and querying procedures. There were [redacted] dentified instances of non-compliance by an electronic communication service provider issued a directive pursuant to Section 702(i) of FISA.

(U) As it pertains to FBI querying incidents, the joint oversight team identified a number of non-compliant queries, though far fewer than in prior reporting periods.[42] The joint oversight team believes thatthe suspension of NSD's FBI field office reviews for two thirds of this reporting period was likely a significant factor in this decrease.[43] As discussed in Section 2(VI), NSD conducted far fewer query reviews than before the pandemic. Notably, during this reporting period, NSD conducted query reviews of only four field offices, whereas NSD conducted query reviews of 27 field offices in 2019 and 29 field offices in 2018. In those reporting periods, field office reviews were responsible for discovering the majority of FBI's query compliance incidents, including "batch jobs," which have the potential to substantially affect the FBI query compliance incident rate. The batch job query function in a certain FBI system permits users to conduct multiple queries as part of a single batch job; a single non-compliant batch job can result in hundreds or thousands of non-compliant queries. Whether such a non-compliant batch job would have been discovered and reported during the portion of this reporting period when FBI field office reviews were suspended is unknown. As a result, the joint oversight team is unable to evaluate how FBI's compliance with its querying procedures during this reporting period compares to other reporting periods. NSD and ODNI do assess, however, that query issues were a pervasive compliance challenge during the

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[41] ~~(S//NF)~~ There were [redacted] ompliance incidents in the prior reporting period.

[42] ~~(S//NF)~~ [redacted] of the FBI incidents were the result o [redacted] arge query incidents involving United States persons. [redacted] (of which [redacted] nvolved batch job queries).

(U) [43] ~~(U//FOUO)~~ NSD generally conducts onsite reviews at FBI field offices. However, in response to the coronavirus pandemic, NSD temporarily suspended its onsite reviews in March 2020. NSD began conducting remote reviews in February 2021.

period of time covered by this joint assessment based on the results of NSD's reviews conducted during and subsequent to this reporting period. The joint oversight team continues to work with FBI to prevent non-compliant queries and improve training and guidance regarding this issue.

(U) As explained in previous assessments, the joint oversight team periodically evaluates how and what data it collects to provide for more meaningful statistics. For example, the team considers whether there are other means of comparison—whether with the currently tracked actions or by implementing the tracking of certain other data—that could provide a better understanding of overall compliance. In the last reporting period the joint oversight team suspended its use of the overall compliance incident rate in favor of more focused, agency-specific metrics, with an aim to track, and provide greater transparency into, areas where compliance incidents have been most prevalent and require greater attention. This assessment provides two such metrics: the NSA targeting compliance incident rate (*see* Figures 13 and 14) and, because FBI query errors have comprised a substantial number of the incidents reported during recent reporting periods, a query error rate for FBI (*see* Figure 17). The joint oversight team continues to assess the feasibility and probative value of additional metrics.

(U) B. NSA's Compliance Incidents: Categories and Number of Incidents

(U) As in prior reporting periods, excluding FBI query incidents, most of the compliance incidents that occurred during this reporting period involved non-compliance with NSA's targeting, minimization, or querying procedures. This reflects NSA's central role in the Government's implementation of the Section 702 authority. Compliance incidents involving NSA's targeting, minimization, or querying procedures have historically fallen into the categories below. However, in some instances, an incident may involve more than one category and would typically be reported as multiple errors.

(U) Incidents of non-compliance with NSA's Targeting Procedures:

- (U) *Tasking Issues.* This category involves incidents where non-compliance with the targeting procedures resulted in an error in the initial tasking of the facility.
- (U) *Detasking Issues.* This category involves incidents in which the facility was properly tasked in accordance with the targeting procedures, but errors in the detasking of the facility caused non-compliance with the targeting procedures.
- (U) *Overcollection.* This category involves incidents in which NSA's collection systems, in the process of attempting to acquire the communications of properly tasked facilities, also acquired data regarding untasked facilities, resulting in "overcollection."
- (U) *Notification Delays.* This category involves incidents in which a notification requirement contained in the targeting procedures was not satisfied.[44]

[44] (U) A compliance incident may involve both a failure to meet the notification requirement and a substantive error (for example, a tasking or detasking error). However, in those instances, the substantive error is counted separate from the notification delay. For the majority of delayed notification incidents, the only incident of non-compliance was the failure to comply with the notification requirement.

- (U) *Documentation Issues.* This category involves incidents where the determination to target a facility was not properly documented as required by the targeting procedures.

(U) Incidents of non-compliance with NSA's Minimization and Querying Procedures:

- (U) *Minimization Issues.* This category involves incidents relating to improper acquisition, retention, use or dissemination of United States person information.
- (U) *Querying Issues.* This category involves incidents relating to improper queries of Section 702-acquired information – generally, (i) queries that were either not reasonably likely to return foreign intelligence, or (ii) United States person queries that were not pre-approved by NSA OGC, as required by NSA's querying procedures.

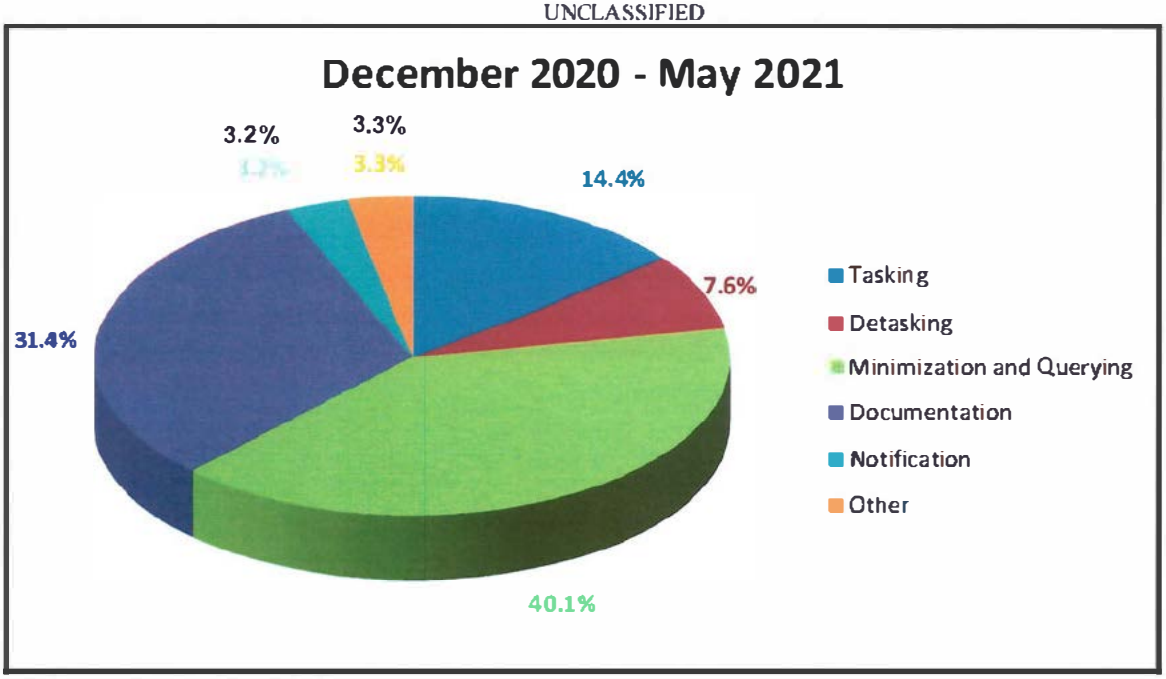
(U) *Other Issues.* This category involves incidents that do not fall into one of the above categories. In these instances, the joint oversight team assesses each incident to determine if it resulted from non-compliance with NSA's targeting, minimization, or querying procedures and accounts for those incidents accordingly.

(U) While these categories specifically pertain to NSA incidents, the FBI targeting incident categories and all agencies' minimization and querying incident categories generally align with the above categories. Because only NSA and FBI are permitted to target facilities pursuant to Section 702, only NSA and FBI have targeting procedures (which have been publicly released). All four agencies have minimization and querying procedures (which have been publicly released). FBI, CIA, and NCTC compliance incidents are discussed in their respective sections below.

(U) These categories are helpful for purposes of reporting and understanding compliance incidents. Because the actual number of incidents remains classified, Figure 12A depicts the percentage of NSA compliance incidents in each category that occurred during this reporting period, whereas Figure 12B provides the actual classified number of NSA incidents.

(U) Figure 12A: Percentage Breakdown of Compliance Incidents Involving NSA's Targeting, Minimization, and Querying Procedures[45]

UNCLASSIFIED



(U) Figure 12A is UNCLASSIFIED.

(U) Note to Readers: 3.2% and 3.3% were added in larger and darker font to aid readers because the original font color was light and possibly difficult for some readers to see.

[45] (U) Percentages for minimization and querying errors reported in the 22nd, 23rd, and 24th Joint Assessments were incorrectly reported as 17.3 percent. The correct percentages are 68.2, 29.8, and 22.7 percent, respectively.

(U) **Figure 12B: Number of Compliance Incidents Involving NSA's Targeting, Minimization, and Querying Procedures**

(U) Figure 12B is classified ~~SECRET//NOFORN~~.

(U) As Figures 12A and 12B demonstrate, during this reporting period, minimization and querying errors accounted for the largest portion of incidents across all categories, followed closely by documentation errors. Tasking and detasking incidents accounted for the third and fourth largest percentages of incidents.

(U) Tracking the proportion of incidents allows for the joint oversight team to identify trends and to address the non-compliance with appropriate remedies. Being able to do so is important for a variety of reasons, especially as it pertains to tasking and detasking compliance incidents that can (but do not always) involve collection obtained from a facility used by a United States person or an individual located in the United States. The joint oversight team also focuses on incidents of non-compliance with minimization and querying procedures, in part, because these types of incidents may involve information concerning United States persons.

~~(S//NF)~~ More specifically, the number of tasking incidents increased from [redacted] detasking incidents increased from [redacted] minimization and querying incidents increased from [redacted] documentation incidents increased from [redacted] and "other" category incidents increased from [redacted] The number of notification delays increased from [redacted] There were no overcollection incidents in this period nor in the prior period. The joint oversight team assesses that increases over the last reporting period were

likely, in part, [redacted][46] [redacted]

(U) As mentioned above, separating the targeting errors from the minimization and querying errors allows for another layer of evaluation as opposed to comparing all of the errors together. By narrowing the focus to errors implicating NSA's targeting procedures, Figure 13 provides the NSA targeting compliance incident rate for this reporting period. This metric compares the number of NSA targeting incidents (*i.e.*, the "numerator") and the average number of facilities tasked by NSA (*i.e.*, the "denominator"). The number of NSA targeting incidents includes the following categories of incidents that implicate NSA's targeting procedures: tasking errors, detasking delays, documentation errors, notification delays, and overcollection incidents (if any). As explained above, incidents that fall into the "other issues" category may also be included if those constituted errors involving a violation of NSA's targeting procedures.

(U) **Figure 13: NSA Targeting Compliance Incident Rate**

~~SECRET~~ [redacted]

(U) Compliance incidents relating to NSA's targeting procedures, during reporting period (01 December 2020 – 31 May 2021)	[redacted]
(U) Average number of facilities subject to acquisition during the reporting period	
(U) NSA targeting compliance incident rate: Number of targeting incidents divided by average number of facilities subject to acquisition	(U) 0.11 percent

(U) Figure 13 is classified ~~SECRET~~ [redacted]

(U) The NSA targeting compliance incident rate in and of itself does not provide a full measure of compliance in the program. A single targeting incident, for example, may involve multiple facilities. Also, a single action may result in numerous incidents. Furthermore, other incidents, such as notification delays, may have limited significance with respect to United States persons.

[redacted]

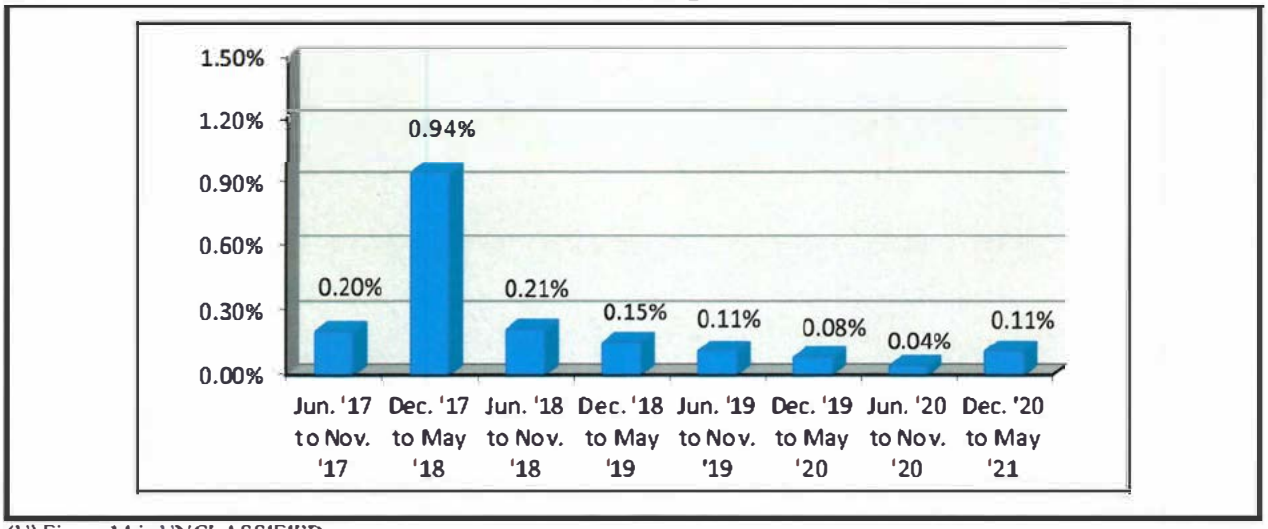
46 [redacted]

47 [redacted]

(U) The joint oversight team has determined that excluding NSA's notification delay incidents from the NSA targeting compliance incident rate provides another measure of compliance. The targeting compliance rate during this period remained the same with and without notification delays. Figure 14 shows the NSA targeting compliance incident rate, not including notification delay errors over the last eight reporting periods. As Figure 14 shows, NSA's targeting compliance incident rate increased during this reporting period, but remained low.

(U) Figure 14: NSA Targeting Compliance Incident Rate (as the number of incidents divided by the average number of facilities tasked), *not* including Notification Delays[48]

UNCLASSIFIED

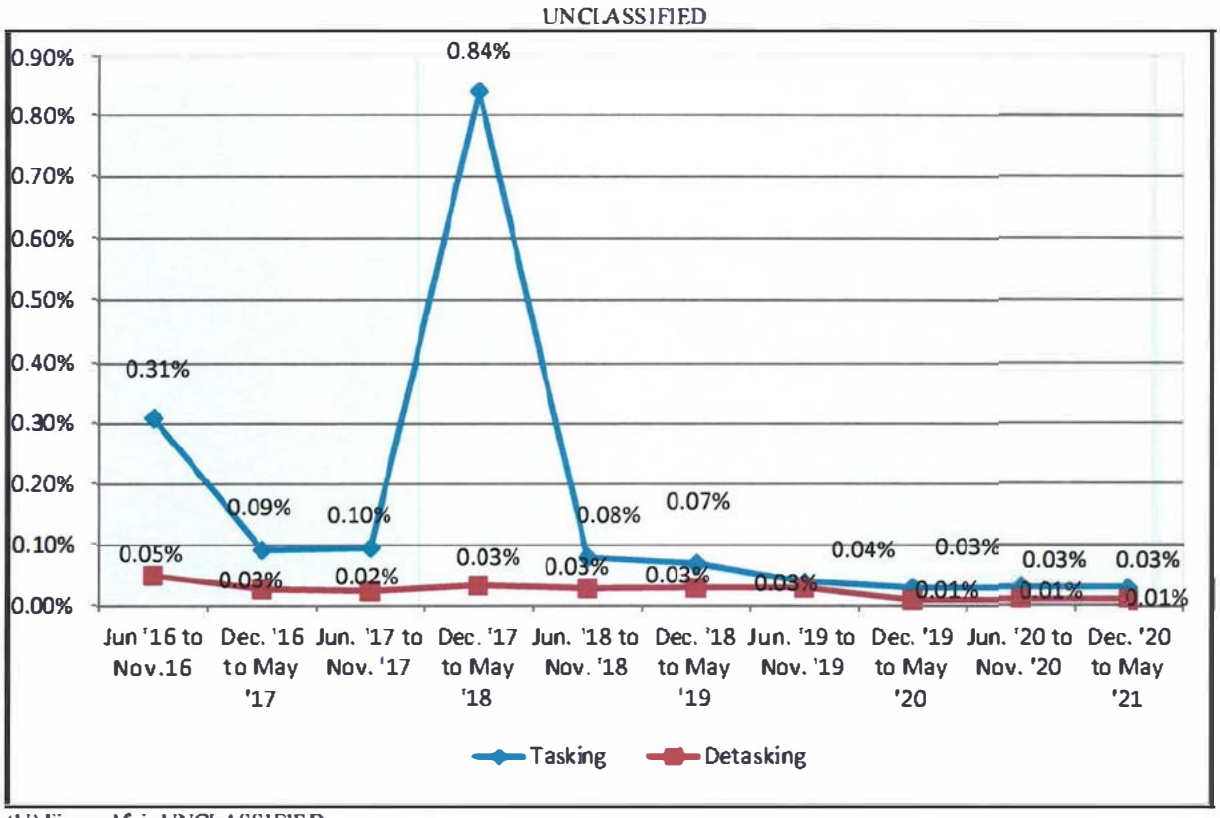


(U) Figure 14 is UNCLASSIFIED.

(U) Whereas Figure 14 depicts NSA targeting incidents by combining all targeting incidents, except for notification delays, Figure 15 depicts NSA's compliance incident rates individually for tasking and detasking incidents. Figure 15 separates those types of incidents for more granularity and understanding of the trends for each. As previously calculated and reported, the tasking and detasking incident rates compare the number of tasking errors and detasking delays, as applicable, to the average number of facilities on collection on any given day during the reporting period. While these tasking and detasking incidents are grouped in a single chart for comparison, the tasking and detasking incidents are not relational to each other (*i.e.*, an increase or decrease in the rate of tasking incidents does not result in an increase or decrease in the detasking incident rate).

[48] (U) As described in prior joint assessments, the increase from 0.20 percent in the reporting period from 01 June 2017 through 30 November 2017 to 0.94 percent in the reporting period from 01 December 2017 through 31 May 2018 was primarily a result of one NSA office's misunderstanding regarding how a targeting tool functioned, which resulted in an abnormally large number of targeting incidents.

(U) **Figure 15: NSA Tasking and Detasking Incident Compliance Rates**[49]



(U) Figure 15 is UNCLASSIFIED.

(U) It is important to note that, while Figure 15 provides a visual representation of trends of non-compliance, the non-compliance rate is less than 1 percent and has remained so for over 10 reporting periods. The tasking and detasking incident compliance rate has varied by fractions of a percentage point as compared to the average size of the collection.[50] The tasking incident rate remained 0.03 percent during this reporting period, which comports with its historically low rate. The tasking compliance incident rate involving facilities used by United States persons remained

[49] (U) As previously noted, the increase in the tasking incident rate reported in the 20th Joint Assessment, 01 December 2017 through 1 May 2018, was primarily due to a single NSA targeting office misunderstanding how to use a targeting tool.

[50] (U) Tasking errors cover a variety of incidents, ranging from the tasking of an account that the Government should have reasonably known was used by a United States person or an individual located in the United States to typographical errors in the initial tasking of the account that affected no United States persons or persons located in the United States. Detasking errors more often involve a facility used by a United States person or an individual located in the United States, who may or may not have been the targeted user. In addition, a single detasking delay may involve multiple facilities that were not timely detasked.

[redacted]

almost zero. The percentage of compliance incidents involving detasking incidents has remained consistently low. The detasking compliance incident rate involving facilities used by United States persons was also close to zero.

(U) **C. FBI: Number of Compliance Incidents**

(U) The total number of compliance incidents identified relating to FBI's targeting procedures increased slightly as compared to the last period. The number of errors relating to FBI's minimization and querying procedures decreased significantly this reporting period. The joint oversight team believes that the temporary suspension of NSD's FBI field office reviews starting in March 2020, due to the coronavirus pandemic, and the potentially related non-identification of extremely large batch job query errors, were significant factors in this decrease. In recent years, FBI field office reviews have been responsible for discovering a significant portion of FBI's minimization and querying incidents that are reported in each joint assessment. Because FBI field office reviews were suspended during a portion of this reporting period and relatively few reviews were conducted during the remainder of the period, incidents that might typically be discovered by NSD during field office reviews may not have been discovered or reported during this period.[51]

(U) Figure 16 shows the classified number of incidents for the last 10 reporting periods. The joint oversight team assesses that the increase in FBI errors beginning in the 01 June 2017 through 30 November 2017 reporting period is attributable to various factors. In particular, NSD has increased its focus on reviewing FBI querying practices; this focus resulted in NSD's increased experience in evaluating those types of FBI queries and NSD's increased knowledge of FBI systems storing Section 702-acquired information. The joint oversight team believes that this increased focus and experience, along with other factors, resulted in NSD identifying a larger number of non-compliant queries.

[51] ~~(S//NF)~~ From 01 December 2020 through 31 May 2021 [redacted] incidents of non-compliance with the FBI targeting, minimization, or querying procedures were identified. Most of these incidents pertain to non-compliant queries.

(U) Figure 16: Number of Compliance Incidents Involving the FBI Targeting, Minimization, and Querying Procedures

(U) Figure 16 is classified ~~SECRET//NOFORN~~.

(U) During this reporting period, the FBI targeting compliance incident rate remained the same (0.01 percent) as the previous reporting period.[52] Historically, this rate has remained well-below one percent. The joint oversight team assesses that FBI's compliance with respect to targeting is a result of its training, systems, and processes.

(U) Figure 17 provides the FBI query compliance incident rate, which is calculated as the total number of FBI query compliance incidents reported by NSD to the FISC during the reporting period, expressed as a percentage of the total number of FBI queries reviewed by NSD in connection with the field office reviews conducted in this reporting period and certain field office reviews conducted in prior reporting periods. As noted above, due to the pandemic, NSD had

[52] ~~(S//NF)~~ The FBI targeting compliance incident rate is calculated as the total number of FBI targeting errors reported during the reporting period, expressed as a percentage of the total number of facilities for which FBI approved a request [redacted] during the reporting period. As noted above, the joint oversight team does not review all such approved requests. The joint oversight team only reviews checklists and supporting documentation relating to approved requests for which information was returned by FBI's database queries. In addition, during this reporting period, the joint oversight team only reviewed checklists and supporting documentation for a sample of such approved requests.

suspended its query reviews during a significant portion of this reporting period, and only conducted such reviews between February 2021 and May 2021.

(U) Figure 17: FBI Query Compliance Incident Rate

~~SECRET//NOFORN~~

(U) FBI query compliance incidents reported to the FISC during the reporting period (01 December 2020 – 31 May 2021)	[redacted]
(U) Number of FBI queries reviewed by NSD in connection with field office reviews during which NSD identified the FBI query compliance incidents reported to the FISC during the reporting period[53]	
(U) FBI query compliance incident rate: number of query incidents reported, divided by number of queries reviewed	(U) 0.4 percent

(U) Figure 17 is classified ~~SECRET//NOFORN~~.

(U) The FBI query compliance incident rate of 0.4 percent is a decrease from the 2.2 percent incident rate reported in the prior reporting period. Although the total number of queries reviewed by NSD decreased by 75.7 percent, when compared to the 23rd Joint Assessment (the last complete reporting period unaffected by the suspension of NSD's field office reviews during the pandemic), the FBI query compliance incident rate decreased by 84 percent. The joint oversight team assesses that the difference between these two decreases is likely attributable to a lack of reported large batch job query incidents, which have been prevalent in prior reporting periods. A certain FBI system permits users to conduct multiple queries as part of a single batch job, such that a single non-compliant batch job can result in hundreds or thousands of non-compliant queries; therefore, the discovery of a single non-compliant batch job can substantially affect the FBI query compliance incident rate. Large non-compliant batch jobs were discovered during the reporting periods for the 21st, 22nd, and 23rd Joint Assessments. While, as discussed below, a batch job query error was found in this reporting period, it was substantially smaller than the batch job query error discovered during the earlier joint assessment reporting periods. Even without large scale batch job query errors during this reporting period, NSD identified query compliance issues in each field office reviewed during this reporting period and during calendar years 2019 and 2020.[54] Most of these noncompliant queries were conducted during prior reporting periods. Since NSD resumed its query reviews in 2021, NSD has continued to identify query compliance incidents during its field office reviews, and NSD has continued to discover non-compliant batch jobs (which will be reported in future joint assessments) during some reviews. Between 2019 and early 2022, FBI implemented

[53] (U) This number also would include the number of FBI queries audited by NSD in connection with any field office reviews completed by NSD during this reporting period but for which no FBI query compliance incidents were discovered. No such field office review occurred during this reporting period.

[54] (U) In 2018, NSD identified query errors in 26 of 29 field offices reviewed. In 2019, 2020, and 2021, query errors were identified in all offices reviewed.

certain remedial measures to address query compliance issues and, since that time, the joint oversight team has continued to work with FBI to assess the efficacy of the measures. The remedial measures undertaken by FBI are discussed further below.

(U) In connection with its reviews at FBI field offices, NSD reviews a sample of queries conducted by FBI personnel in FBI systems that contain unminimized FISA-acquired information, including Section 702-acquired information. FBI provides NSD with logs of all the queries conducted in its systems during a given three-month period preceding the relevant field office review. NSD reviews the query logs and then consults with FBI personnel to obtain additional facts regarding the queries that were conducted. It is possible that some of the queries in the logs provided by FBI were not run against Section 702-acquired information, as NSD's query reviews are designed to review compliance with FBI's query requirements in all of its applicable FISA procedures. The FBI query error rate may also include identical queries that were conducted multiple times. For example, if NSD discovered that the same improper query was conducted on two separate occasions, those would be counted as two compliance incidents.

(U) Neither the number of incidents reported in Figure 16, nor the FBI query compliance incident rate in Figure 17, is based on the number of compliance incidents that *occurred* during a given reporting period. Rather, each is based on the number of incidents that were *reported* to the FISC as compliance incidents during the reporting period. There may be delays in resolving and reporting compliance incidents after they are first identified, in part, because of delays in the Government's investigation while FBI gathers the relevant facts, or while FBI and NSD discuss whether the facts of a matter constitute a compliance incident. Incidents that occur during a given reporting period may, accordingly, be reported over multiple joint assessments, and the number of incidents reported in a given joint assessment may include incidents that occurred during multiple periods. The number of query compliance incidents reported in Figure 16, and the FBI query compliance incident rate in Figure 17, includes queries conducted by FBI personnel during prior periods, but these queries were discovered and/or reported during this reporting period. Indeed, most of the noncompliant queries discussed in this report were conducted in prior periods.

(U) In addition, because of delays in resolving and reporting certain compliance incidents, incidents discovered during a single field office review may be reported during different reporting periods. When that occurs, the total number of FBI queries reviewed by NSD in connection with the relevant field office review is included in the denominator of the FBI query compliance incident rate for both reporting periods, even though the total number of FBI query compliance incidents discovered as a result of reviewing those queries is split between reporting periods. There were two field office reviews conducted during prior periods for which some, but not all, of the FBI query compliance incidents were reported during this reporting period.

(U) D. CIA and NCTC: Number of Compliance Incidents

~~(S//NF)~~ There were [redacted] compliance incidents reported to the FISC during this reporting period that involved CIA's minimization or querying procedures,[55] an increase from the [redacted]

[55] (U) Recall that CIA does not have targeting procedures and may not target. Because CIA only has minimization procedures and querying procedures, errors can only occur as it pertains to its minimization and querying procedures.

incidents reported in the previous reporting period. As the incident description below demonstrates, the joint oversight team does not attribute this rise to any larger trends or systemic issues and notes that this number remains low. The joint oversight team assesses that CIA's low number of compliance incidents is a result of its training, systems, and processes that were implemented to ensure compliance with Section 702 and its minimization and querying procedures, and the work of its internal oversight team.

~~(S//NF)~~ There were [redacted] compliance incidents reported to the FISC during this reporting period that involved NCTC's minimization and querying procedures, which is a slight increase from [redacted] incidents reported for the previous reporting period.[56] The joint oversight team assesses that NCTC's low number of compliance incidents is a result of its training, systems, and processes that were implemented when NCTC was authorized to receive certain unminimized Section 702-acquired information.

(U) Figure 18 provides the classified number of minimization and querying errors that involved CIA for the last 10 reporting periods and NCTC for reporting periods beginning with the 19th Joint Assessment reporting period.

(U) Figure 18: Number of Compliance Incidents Involving CIA's or NCTC's Minimization and Querying Procedures

[redacted]

(U) Figure 18 is classified ~~SECRET//NOFORN~~.

(U) E. Service Providers: Number of Compliance Incidents

~~(S//NF)~~ Finally, there were [redacted] incidents of non-compliance caused by errors made by electronic communication service providers during this reporting period, which represents an increase from the zero incidents reported in the prior reporting period. All [redacted] incidents involved

[56] (U) Recall that NCTC does not have targeting procedures and may not target. Because NCTC only has minimization procedures and querying procedures, errors can only occur as it pertains to its minimization and querying procedures.

human errors or previously unrecognized errors relating [redacted] and have since been corrected. The joint oversight team assesses that the relatively low number of errors by electronic communication service providers [redacted] is the result of continuous efforts by the Government and providers to ensure that lawful intercept systems effectively comply with the law while protecting the privacy of the providers' customers.

(U) II. Review of Compliance Incidents – NSA Targeting, Minimization, and Querying Procedures

(U) As with the prior joint assessment, this joint assessment takes a broad approach and discusses the trends, patterns, and underlying causes of the compliance incidents reported in the Section 707 Report. The Section 707 Report provides further details regarding each individual incident and information on applicable remedial and mitigating actions. For each individual incident in the Section 707 Report, details are provided as to how any erroneously acquired, disseminated, or queried information was handled through various purge, recall, and deletion processes. Information is also provided about personnel remediation and, when applicable, wider training efforts to address incidents. In certain instances, processes or technical tools are adjusted, as appropriate, to remedy the incidents, to mitigate impact, and to reduce the potential for future incidents.

(U) The joint oversight team believes that analyzing these trends, especially what caused these incidents, helps the agencies focus resources, avoid future incidents, and improve overall compliance. The joint assessment primarily focuses on incidents involving NSA's targeting, minimization, and querying procedures, the volume and nature of which are better-suited to detecting such patterns and trends. The following subsections examine incidents of non-compliance involving NSA's targeting, minimization, and querying procedures.

(U) Most of these incidents did not involve United States persons, and instead involved matters such as typographical or other tasking errors, detasking delays with respect to facilities used by non-United States persons who may have entered the United States, and improper queries that were not reasonably likely to return foreign intelligence information due to their design. Regardless of whether United States persons were impacted, robust oversight is conducted to ensure compliance with all aspects of the targeting, minimization, and querying procedures. All identified incidents are reported to the FISC and to Congress, and all incidents are required to be appropriately remedied. The joint oversight team then works closely with NSA to prevent future incidents.

(U) In the subsections that follow, this joint assessment examines some of the underlying causes of incidents of non-compliance. This joint assessment first examines and explains incidents impacting United States persons, even though those incidents represent a minority of overall incidents. This joint assessment then discusses other types of human errors and communication and systemic issues.

(U) A. The Impact of Compliance Incidents on United States Persons

(U) A primary concern of the joint oversight team is the impact of compliance incidents on United States persons.[57] United States persons were primarily impacted by (1) tasking errors that led to the tasking of facilities used by United States persons, and (2) delays in detasking facilities after NSA determined that the user of the facility was a United States person. United States persons were also impacted by minimization and querying errors during this reporting period. None of these incidents involved an intentional effort to target a United States person. While the number of incidents involving United States persons remained low, these incidents are highlighted below due to their importance.

(U) *(1) Tasking Errors Impacting United States Persons*

(U) During this reporting period, 5.6 percent of the total number of tasking errors reported involved instances where facilities used by United States persons were tasked pursuant to Section 702.[58] This percentage represents a decrease from the last reporting period (eight percent). All of the tasking errors in this reporting period impacting United States persons involved the tasking of facilities where the Government knew or should have known that at least one user of the facility was a United States person. These incidents represent isolated instances of insufficient due diligence, or other oversights, and did not involve an intentional effort to target a United States person. The majority of these tasking errors involved situations where an analyst made an erroneous assessment, overlooked information, and/or conducted insufficient research prior to tasking a facility and, as a result, inadvertently tasked a facility used by a United States person. In all of the incidents, personnel were reminded of the Section 702 tasking requirements, use of any applicable collection was restricted in NSA's systems, and any applicable collection was purged as required by NSA's targeting and minimization procedures.

[redacted]

[57] (U) The Section 707 Report discusses every incident of non-compliance with the targeting, minimization, and querying procedures and how any erroneously acquired, disseminated, or queried United States person information was remediated through various purge, recall, and deletion processes.

58 [redacted]

59

[redacted]

(U) *(2) Delays in Detasking Impacting United States Persons*

~~(S//NF)~~ During this reporting period, 30.3 percent of detasking delays involved facilities used by a United States person. This percentage represents a moderate increase from the last reporting period (25 percent).[60] The detasking delay incidents impacting United States persons in this reporting period were caused by unintentional human errors (such as misunderstandings of the detasking requirements [redacted] and instances of poor interagency communication). One such detasking delay is described above because it involved both a tasking error and a detasking delay. In all of the incidents, personnel were reminded of the Section 702 tasking requirements, any applicable collection was purged, and no reporting was identified based on the collection.

[redacted]

[60] ~~(S//NF)~~ Note that this is 30.3 percent of detasking incidents. The overall detasking compliance incident rate involving United States persons was close to zero.

[redacted]

[61]

(U) B. Effect of Human Error

(U) Unlike in the prior section, which focused exclusively on incidents impacting United States persons, this section addresses incidents that impacted *both* United States persons and non-United States persons. Each of the agencies has established processes to both reduce human errors and to identify such errors when they occur. Some human errors, such as those resulting from misunderstanding the rules and procedures, can be mitigated with additional training and guidance. Such processes and trainings have helped to limit such errors, but some categories of human errors (such as typographical errors) are unlikely to ever be entirely eliminated.

(U) *(1) Tasking & Detasking Errors*

(U) This section discusses some of the common types and causes of tasking errors and detasking delays from this reporting period, along with the corresponding compliance trends.[62] The majority of detasking delays during this reporting period involved (i) non-United States persons who traveled (or appeared to have traveled) to the United States, or (ii) unexplained indications that a Section 702-tasked account appeared to have been accessed from within the United States.

- (U) "Foreign intelligence information purpose" errors: Certain tasking errors result from NSA's failure to establish a valid "foreign intelligence information purpose" for the tasking (*i.e.*, that the targeted user is reasonably expected to possess, receive, and/or is likely communicate foreign intelligence information as defined in 50 U.S.C. § 1801(e)) in relation to the categories of foreign intelligence information specified in the Section 702 certifications. During this reporting period, approximately 47.5 percent of tasking errors were the result of NSA not having a sufficient foreign intelligence purpose for the tasking, an increase from the previous reporting period's 31 percent and an even greater increase from the preceding period's 16 percent.[63] The joint oversight team attributes the increase over the previous two periods to a few tasking decisions involving multiple facilities, meaning that a few tasking decisions resulted in a large number of incidents. In all of the instances, at the time of tasking, NSA had sufficiently established that the users were non-United States persons located outside the United States. Any erroneously collected information was purged, and no reporting was identified.
- (U) "Foreignness determination" errors: Certain tasking errors result from NSA not properly establishing a sufficient basis to assess that a target was located outside the United States (otherwise referred to as the "foreignness determination") or not sufficiently addressing conflicting information that calls into question whether a target was located outside the United States. During this reporting period, approximately 14.6 percent of tasking errors were the result of insufficient foreignness determinations, an increase from the previous reporting period's eight percent.[64] Certain of these incidents involved the failure to conduct a necessary foreignness check prior to tasking, or

62 [redacted]

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64 [redacted]

involved too long of a delay between the necessary foreignness checks and the tasking of the facility. In many of these incidents, NSA advised that it acquired no data from the erroneous tasking. However, in the event data was acquired, it was purged.

- (U) Typographical errors: Certain tasking errors result from typographical or similar errors. During this reporting period, approximately 20.1 percent of the tasking errors involved typographical or similar errors, an increase from the previous reporting period's 13 percent.[65] In approximately 90 percent of these incidents, NSA advised that there was no indication that the incorrectly tasked facilities were used by a United States person or by someone in the United States. NSA and CIA further advised that each had completed any required purges and had identified no reporting based on this collection.
- (U) Incorrect providers: Certain tasking errors result from NSA inadvertently tasking a facility to an incorrect provider. During this reporting period, 1.4 percent of tasking errors involved tasking a facility to an incorrect provider, equivalent to the previous reporting period. NSA and CIA advised that each had completed any required purges and had identified no reporting based on this collection.
- (U) Incomplete detaskings: Certain detasking delays result from NSA (or another requesting agency) detasking some, but not all, of a target's facilities. During this reporting period, 14.5 percent of detasking delays involved such incidents where certain of a target's facilities were not timely detasked (a moderate increase from 10 percent in the previous reporting period).[66] Again, any data acquired as a result of such detasking errors is required to be purged.

(U) Some of the above tasking and detasking errors were caused by personnel misunderstanding or misapplying the rules or procedures related to tasking or detasking, while others were caused by inadvertent human errors. In each case, the relevant agency had advised that it reminded its personnel about the Section 702 tasking and detasking requirements, or to exercise care when completing tasking and detasking processes, as applicable.

(U) *(2) Minimization and Querying Errors*

(U) NSA's minimization procedures have various requirements, including rules regarding under what circumstances Section 702-acquired information may be *disseminated*, and rules regarding how long unminimized Section 702-acquired information may be *retained*. NSA's querying procedures also have various requirements, including rules regarding *querying* unminimized Section 702-acquired information. Particular issues of non-compliance with minimization and querying procedures are detailed below.

(U) Querying Rules: During this reporting period, NSA's querying procedures included two principal restrictions on querying unminimized Section 702 collection.

65 [redacted]

66 [redacted]

1) (U) NSA's Section 702 querying procedures in effect during this reporting period required that queries of unminimized Section 702 collection *must be designed in a manner "reasonably likely to return foreign intelligence information."* For example, if a query did not meet this standard due to a typographical or comparable error in the construction of the query term,[67] it constituted a compliance incident, regardless of whether the query term used a non-United States person identifier or a United States person identifier.

2) (U) Although NSA's Section 702 querying procedures in effect during this reporting period permitted queries of unminimized Section 702 content using United States person identifiers, such queries *must be approved by NSA OGC.* If an NSA analyst used a United States person identifier that had not been approved by NSA OGC to query Section 702-acquired content, it constituted a compliance incident.

~~(S//NF)~~ During this reporting period, NSA minimization and querying incidents accounted for approximately ~~40~~ percent of all NSA incidents of non-compliance, equivalent to 39 percent in the previous reporting period. However, there was a significant increase in the raw number of minimization and querying incidents as compared to the prior reporting period.[68] The joint oversight team assesses that this significant increase was likely due to two factors [redacted] and a few separate query events that accounted for a large number of improper queries of United States person identifiers.

(U) As with prior joint assessments, query incidents remained the cause of most compliance incidents involving NSA's minimization and querying procedures, though the overall percentage dropped in recent reporting periods. In the previous two reporting periods, approximately 88 percent and 94 percent, respectively, of incidents of non-compliance with NSA's minimization and querying procedures involved improper queries. During this reporting period, out of all of the NSA minimization and querying errors, approximately 94 percent involved improper queries.

- (U) Approximately 67 percent of query errors involved NSA analysts conducting improper queries using a United States person identifier, which represents an increase from last reporting period's 54 percent.[69]

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[67] (U) For example, this type of query error occurs when an analyst mistakenly inserts an "or" instead of an "and" in constructing a Boolean query, resulting in an improperly tailored query that would potentially receive overly broad results and was unlikely to retrieve foreign intelligence information.

[68] ~~(S//NF)~~ Minimization and querying incidents increased to [redacted] incidents in the previous reporting period.

[69] ~~(TS//SI//NF)~~ During this reporting period, there were [redacted] query incidents involving improper queries of Section 702-acquired content using United States person identifiers, compared to [redacted] in the previous reporting period. In [redacted] query incidents, the responsible NSA analysts queried United States person identifiers that had not been approved by NSA OGC to query Section 702-acquired content. The remaining [redacted] uery incidents involved queries of United States person identifiers that exceeded the scope of the approvals provided by NSA OGC. For example, in one incident, an NSA analyst queried using a list of United States person identifiers that had been approved in accordance with the Section 702 querying procedures. However, the analyst inadvertently conducted the query the day after the authorization had expired.

- (U) Approximately 63 percent of query errors involved NSA analysts conducting queries using United States person identifiers that had not been approved by NSA OGC for use to query Section 702-acquired content.
- (U) Approximately four percent of query errors involved NSA analysts conducting queries using United States person identifiers that exceeded the scope of the approval from NSA OGC—for example, because the responsible NSA analyst conducted the query outside of the time period permitted by the relevant approval, or because the analyst queried datasets that had not been authorized for querying.

- (U) Approximately 33 percent of query errors involved queries that were not reasonably likely to return foreign intelligence information, which represents a decrease from the previous reporting period's 40 percent.[70]

~~(TS//SI//NF)~~ With respect to the first category of query errors, [redacted] such query incidents involved NSA analysts using United States person identifiers that had not been previously approved by NSA OGC to query Section 702-acquired content. [redacted]

[redacted]

70 [redacted]

[redacted]

(U) The joint oversight team assesses that, although individuals continue to make mistakes, NSA's personnel training and guidance have contributed to overall compliance with NSA's minimization and querying procedures. Further, as with previous reporting periods, there were no identified NSA incidents of an analyst intentionally running improper queries. The joint oversight team, however, will continue to monitor trends with respect to NSA query incidents.

(U) Dissemination Rules: NSA's minimization procedures set forth requirements for the dissemination of United States person information collected while targeting non-United States persons located overseas. In this reporting period, incidents involving NSA's dissemination of United States person information that did not comport with NSA's minimization procedures represented approximately four percent of total minimization and querying incidents (equivalent to the last reporting period).[71] Improper disseminations of United States person information are usually the result of human error, because unmasked United States person information that is not necessary to understand foreign intelligence information is included in the dissemination. For example, in one instance, a dissemination of unmasked United States person information was distributed to a broader group of recipients than is permitted by NSA's Section 702 minimization procedures.[72] Specifically, an NSA analyst discovered that NSA had issued a report that included the names of three United States persons who were United States Government employees and whose names and identifiers were necessary to understand foreign intelligence information, but the dissemination was not limited to recipients requiring the United States person identities. NSA recalled the report and reissued it to a more limited set of recipients. The joint oversight team has reviewed the human errors that caused the dissemination errors during this reporting period and has not identified any discernible patterns. Further, as was the case with NSA querying incidents, there were no identified NSA incidents of an analyst intentionally violating the dissemination rules.

~~(S//NF)~~ Improper Dissemination of Attorney-Client Communications: During this reporting period, there were [redacted] incidents in which NSA improperly disseminated Section 702-acquired information in a manner contrary to the requirements of NSA's Section 702 minimization procedures that govern the handling of attorney-client communications.[73] Specifically, [redacted]

[71] ~~(S//NF)~~ There were [redacted] incidents involving NSA's dissemination of United States person information that did not meet the dissemination standard in NSA's minimization procedures, compared to [redacted]

[72] [redacted]

[73] [redacted]

community. The attorney-client communications in these reports did not pertain to a criminal charge in the United States nor to a legal proceeding to which the United States is a party. In addition, the reports had not been disseminated outside the intelligence community and the Department of Defense.

~~(TS//SI//NF)~~ Retention Rules: During this reporting period, there was one incident in which NSA improperly retained information acquired pursuant to Section 702 for longer than permitted by NSA's minimization procedures.[74] This incident involved an NSA system error [redacted]

(U) *(3) Other Errors*[75]

~~(S//NF)~~ Incomplete Purge Errors: During this reporting period, there were [redacted] incidents in which NSA improperly retained information acquired pursuant to Section 702 that was subject to purge as unauthorized collection.[76] These incidents primarily involved NSA system errors and human errors that resulted in information subject to purge not being completely removed from NSA's systems.

~~(S//NF)~~ Documentation Errors: NSA's targeting procedures require that for each tasked facility NSA document the source of the "foreignness determination" and identify the foreign power or foreign territory about which NSA expects to obtain foreign intelligence information. The targeting procedures also require a written explanation of the basis for the assessment, at the time of targeting, that the target is expected to possess, receive, and/or is likely to communicate foreign intelligence information concerning the foreign power or foreign territory that is covered by the certification under which the accounts were tasked ("foreign intelligence purpose"). The number of documentation errors increased to approximately 31.4 percent of the total number of NSA compliance incidents in this period.[77] While this represents a significant increase from 6.4 percent in the prior reporting period, that increase was due almost entirely to NSD's internal processes for identifying and reporting documentation errors [redacted] Indeed, the cumulative average number of documentation errors in this and the 25th Joint Assessment is lower than the number of documentation errors in the 24th Joint Assessment. In all of these incidents, while the actual tasking

[74] [redacted]

[75] [redacted]

[76] [redacted]

[77] ~~(S//NF)~~ [redacted] incidents resulted from documentation errors, representing a significant increase from the last reporting period, which reported [redacted] documentation errors. In particular, the number of documentation errors resulting from the tasking of a facility to a different DNI/AG Section 702(h) certification than intended increased [redacted]

of each facility was appropriate, the analyst failed to sufficiently document the "foreignness determination" or the "foreign intelligence purpose" on the tasking sheet, or the Section 702(h) certification to which the facility was tasked was not appropriate based on the documented foreign intelligence purpose. In each of these incidents, NSA issued reminders to the targeting officer to review the tasking sheet data thoroughly prior to submission and to select the appropriate certification based on the foreign intelligence they want to receive from the user.

(U) Notification Delays: Notification errors remained low, accounting for 3.2 percent of all NSA compliance incidents in this reporting period, a slight decrease from 4.5 percent in the last reporting period.[78]

(TS//SI//NF) Post-Targeting Analysis: NSA's targeting procedures require that, "After a person has been targeted for acquisition by NSA, NSA will conduct post-targeting analysis ... designed to detect those occasions when a person who when targeted was reasonably believed to be located outside the United States is located in the United States." During this reporting period, there were a small number of incidents involving the failure to conduct post-targeting analysis as required by NSA's targeting procedures.[79]

(U) C. Inter-Agency and Intra-Agency Communications

(U) Section 702 compliance requires good communication and coordination within and between agencies. In order to ensure targeting decisions are made based on the totality of the circumstances and after the exercise of due diligence, those involved in a targeting decision must communicate the relevant facts to each other. Analysts also must have access to the necessary records that inform such decisions. Good communication among analysts is needed to ensure that facilities are promptly detasked when it is determined that the Government has lost its reasonable basis for assessing that the facility is used by a non-United States person reasonably believed to be located outside the United States for the purpose of acquiring foreign intelligence information. Furthermore, query rules regarding United States person identifiers and dissemination decisions regarding United States person information require inter- and intra-agency communications regarding who the Government has determined to be a United States person.

(U) In this reporting period, approximately 19.7 percent of the detasking delays were attributable to miscommunications or delays in communicating relevant facts.[80] Although this is a decrease from the last reporting period (31 percent), the joint oversight team assesses that there is still room to improve inter- and intra-agency communication. The detasking delays caused by

[redacted]

miscommunication typically involved travel or possible travel of non-United States persons to the United States. Further, none of the tasking errors involved situations in which intra-agency miscommunications resulted in the erroneous tasking of a facility.

(U) The joint oversight team assesses that agencies should continue their training efforts to ensure that appropriate protocols continue to be utilized. As part of its ongoing oversight efforts, the joint oversight team will also continue to monitor NSA, CIA, FBI, and NCTC's Section 702 activities and practices to ensure that the agencies maintain efficient and effective channels of communication.

(U) D. Systemic Issues

[redacted]

(U) Administrative updates: Certain tasking errors result from the incorrect processing of administrative updates to tasking records in NSA systems. During this reporting period, 9.7 percent of tasking errors involved errors in which an NSA target office requested administrative updates to the tasking record for a facility, and the incorrect processing of the request resulted in NSA retasking the facility pursuant to Section 702 without fully applying its targeting procedures.[82]

~~(S//NF)~~ ~~(U)~~ System errors: Certain detasking errors result from system errors. During this reporting period, 6.5 percent of detasking errors involved system errors that resulted in delayed detaskings of multiple facilities.[83] Most of these system errors involved errors affecting the ability of NSA's systems to send tasking and detasking requests to other NSA systems [redacted] One incident involved a system outage that temporarily affected the functioning of certain compliance-related analytics and temporarily degraded NSA's ability to determine if Section 702 targets had entered the United States. All of these system errors have subsequently been resolved.

(U) III. Review of Compliance Incidents – FBI Targeting, Minimization, and Querying Procedures

(U) There was a significant decrease in the number of incidents involving non-compliance with FBI's targeting, minimization, and querying procedures. As with the previous reporting

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period, a large majority of those incidents involved querying errors.[84] Some of the improper queries were conducted as a result of FBI personnel inadvertently failing to opt out of querying against unminimized FISA-acquired information (for example, where FBI personnel neglected to opt-out of unminimized FISA datasets when searching for intelligence reports or general open-source information). In addition, other improper queries were conducted in connection with FBI efforts to vet various individuals and were unlikely to retrieve foreign intelligence information or evidence of a crime.

(U) A. Targeting Incidents

(S//NF) During this reporting period, approximately five percent of FBI compliance incidents involved non-compliance with FBI's targeting procedures, a slight increase from the seven incidents reported during the previous reporting period.[85] [redacted][86] In all of the incidents, FBI and NSA personnel, as applicable, were reminded of the Section 702 requirements for tasking and any necessary recall or purge was completed.

[redacted]

84 [redacted]

85 [redacted]

86 [redacted]

(U) B. Minimization and Querying Incidents

(U) With respect to FBI's minimization and querying procedures, the total number of compliance incidents decreased substantially from the previous reporting period.[87] As discussed above, the joint oversight team believes that the suspension of reviews at FBI field offices during a portion of this reporting period was a significant factor in the reduction in identified and reported compliance incidents.[88] In general, personnel involved in these compliance incidents were reminded of the requirements under FBI's minimization and querying procedures.

(U) *(1) Errors Caused by a Failure to Document a Justification for United States Person Queries*

~~(S//NF)~~ During this reporting period, [redacted] query incidents, or 42 percent of all FBI compliance incidents, were the result of FBI's failure to correctly document justifications for certain queries using United States person identifiers. In the course of an internal audit, FBI discovered that [redacted] users of [redacted] an FBI system [redacted] had conducted United States person queries in [redacted] without recording the justifications for those queries in a separate FBI system, as instructed by FBI (and in accordance with FBI trainings).[89] In addition, [redacted] query incidents were the result of FBI personnel misidentifying queries of United States person identifiers as being queries of non-United States person identifiers, meaning they were never prompted to enter a justification for the query.[90]

(U) *(2) Batch Job Errors*

(U) During this reporting period, NSD identified a set of batch job queries involving a number of identifiers, including United States person identifiers, without having a reasonable expectation that such batch job queries were likely to return foreign intelligence information or evidence of a crime. Because certain FBI systems permit users to conduct multiple queries as part of a single batch job, a single batch job can result in hundreds or thousands of non-compliant queries. For example, if a user wanted to conduct queries to vet 100 e-mail accounts used by prospective law enforcement personnel, that user could use the batch job query tool, which would result in 100 separate queries being conducted using each e-mail account as a query term as part of a single batch job. In these incidents, although the FBI analysts conducted the queries for work-related purposes, the analysts misunderstood the application of the query requirements. Thus, as the

[87] ~~(S//NF)~~ The number of minimization and querying errors for the current reporting period was [redacted] in the previous reporting period.

[88] (U) In response to the coronavirus pandemic, NSD temporarily suspended reviews at FBI field offices during a portion of this reporting period. In recent years, these field office reviews had been responsible for discovering a significant portion of FBI's minimization and querying incidents that are reported in each Section 707 Report. As a result, incidents that would typically be discovered by NSD during those field office reviews were not discovered during the portion of this reporting period when such reviews were suspended. In February 2021, NSD resumed its reviews of queries conducted by FBI personnel; these reviews were conducted remotely due to the pandemic.

[89] [redacted]

[90] [redacted]

FISC explained in its October 2018 opinion, "a single improper decision or assessment resulted in the use of query terms corresponding to a large number of individuals, including United States persons."[91]

~~(S//NF)~~ Approximately 24 percent of all FBI compliance incidents during this reporting period were the result of a single improper querying decision using the batch job query tool.[92] In this instance, an FBI [redacted] conducted approximately [redacted] queries in FBI's [redacted] using the names and other identifiers of individuals, including United States persons, who [redacted] NSD's review determined that [redacted] ran these queries as a part of an FBI initiative to vet [redacted] for derogatory information. [redacted] NSD assesses that the queries described above violated FBI's querying procedures insofar as FBI had no reasonable basis to believe that the particular queries were reasonably likely to retrieve foreign intelligence information or evidence of a crime.

(U) To help address batch job query compliance incidents where a single improper decision or assessment by FBI personnel results in a large number of compliance errors, FBI (subsequent to this reporting period) imposed a requirement that individual queries conducted using the batch job query tool in an FBI system of 100 or more identifiers require FBI attorney approval prior to the queries being conducted. This change became effective in the FBI system as of June 2021. This policy is designed to add an extra layer of oversight for decisions that may have greater impacts on privacy and civil liberties. As discussed further below, NSD also developed guidance on the query standard to help address non-compliant queries that did not meet the justification requirement for the query standard (*i.e.*, the queries were not reasonably likely to retrieve foreign intelligence information or evidence of a crime). Further remedial steps applicable to all queries, including batch job query incidents, are discussed in Section 4(III)(C) below.

(U) *(3) Query Errors Caused by Misunderstanding of the Query Standard*

(U) During this reporting period, [redacted] incidents, or approximately 26 percent of all FBI compliance incidents, resulted from FBI personnel misunderstanding the querying rules.[93] Even though the queries were conducted for work-management purposes or work-related purposes, these

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[91] (U) *FISC's October 18, 2018 Memorandum and Opinion*, at 68.

[92] [redacted]

[93] ~~(S//NF)~~ [redacted] involved a failure to opt out of raw Section 702 datasets): [redacted] f the queries were improperly tailored, and one of the non-compliant queries did not meet the justification requirement of the query standard). In addition, [redacted] queries using the names and dates of birth of individuals named as decedents on homicide reports in order to find out whether FBI had any derogatory information about these individuals to assist FBI in developing leads in the homicide investigation. FBI reports that this practice of querying individuals named in homicide reports dates to approximately late 2016.

queries were not reasonably likely to retrieve foreign intelligence information or evidence of a crime and, thus, constituted compliance incidents. In most of the instances, FBI personnel did not fully understand the application of the query rules.

(U) For example, some of the improper queries involved FBI personnel conducting queries, including using United States person identifiers, to research individuals for vetting purposes without a reasonable basis to believe the queries would be likely to return foreign intelligence information or evidence of a crime in FISA-acquired data.[94] In all of these incidents, FBI personnel misunderstood the application of the query rules, and they were subsequently reminded of how to correctly apply the query rules. These and other similar query compliance incidents during this period were due to personnel conducting queries to vet individuals or entities for any derogatory information, where little or no information was available indicating that the individual or entity posed a risk, or there was no reasonable basis to believe that derogatory information would be found in FISA-acquired data, prior to query. NSD has observed this common scenario in numerous query compliance incidents in this reporting period and prior reporting periods, as well as in field office reviews conducted after this reporting period. These types of queries can impact United States persons. As discussed further below, NSD developed guidance on the query standard to help address this type of query incident and the batch job query incidents noted above. Further remedial steps applicable to all queries are discussed in Section 4(III)(C).

(U) *(4) Errors Related to Queries Conducted Solely for an Evidence of a Crime Purpose*

~~(S//NF)~~ ~~(U~~ [redacted] errors, or just over 2 percent of all FBI compliance incidents, related to requirements associated with United States person queries conducted solely to retrieve evidence of a crime. The first is a statutory approval requirement and pertains to queries conducted in connection with a predicated criminal investigation. The second is a FISC-mandated quarterly reporting requirement and pertains to United States person queries conducted solely to retrieve evidence of a crime, whether or not associated with a predicated criminal investigation.

(U) With regard to the first requirement, Section 702(f)(2)(A) provides that FBI may not access the results of a query conducted in connection with a predicated criminal investigation, using a United States person query term, that was not designed to find and extract foreign intelligence information, unless FBI applies for an order from the FISC, based on probable cause, and the FISC enters an order approving the application. During this reporting period, four incidents, or just under 2 percent of all FBI compliance incidents, involved potential violations of Section 702(f)(2)(A).[95]

~~(S//NF)~~ The system that was involved with all [redacted] incidents was configured, at the time, to preview content of responsive results for users when they executed a query, giving the user access to a portion of the results without obtaining a FISC order. The users who executed these queries were unaware of the particular requirements of Section 702(f)(2), and of an option provided by the system to indicate that their queries were being run solely to extract evidence of a crime in support

94 [redacted]

95 [redacted]

of a predicated criminal investigation. If the users had been aware of the Section 702(f)(2) requirement and had properly indicated that their queries were subject to this requirement, they would not have been able to view the preview of the results. Even though the results were not ultimately opened, because the appropriate indication was not made, NSD had to presume, because of this system design issue, that FBI personnel reviewed the Section 702-acquired preview information without first obtaining an order from the FISC. NSD, therefore, reported these incidents to the FISC as potential violations of Section 702(f)(2)(A) of FISA. In these incidents, NSD reminded the personnel about the query requirements in FBI's Section 702 query procedures and Section 702(f)(2)(A) of FISA, and discussed these requirements with other personnel during NSD's training conducted for the field offices. Subsequent to when these queries were conducted, FBI reconfigured the system at issue so that it no longer presents a preview of the content of unminimized Section 702-acquired information in response to a query using a United States person query term.

~~(S//NF)~~ In addition to the reconfiguration of the system at issue as noted above, if the user seeks to access Section 702-acquired content returned from a query using a United States person query term, the user must view it in another FBI system. That other FBI system requires the user to confirm whether the query is being done only to retrieve evidence of a crime. An information icon also provides the user with information relating to the requirements of Section 702(f)(2) of FISA. If the user answers "No," they are able to select from a series of pre-populated justifications for their query, or select "other." Regardless of whether the user selects from one of the pre-populated common justifications, the user must also provide their own, written justification for the query. Once the system receives that justification from the user, it allows the user to access the contents of the Section 702-acquired information. If, however, the user answers "Yes" to the question as to whether it is a query being done to retrieve evidence of a crime, the user is provided with four justification options for their query: "Query not connected to a predicated criminal investigation," "FISC order pursuant to 702(f)(2) (NOT a "traditional" FISA order or 702 cert.)," "FISC order exception (only for threat to human life or serious bodily harm)," or "None of the above." If a user selects "Query not connected to a predicated criminal investigation," "FISC order,"[96] or "FISC order exception," the user is allowed to proceed to access the contents of the Section 702-acquired information after providing a written justification for the query. At that same time, an alert is sent to FBI's NSCLB, which then conducts additional research into the nature of the query, and coordinates as necessary with NSD. If the user selects "None of the above," they are prevented from accessing the contents of the Section 702-acquired information. Subsequent to this reporting period, FBI made further changes to the system design, as it relates to queries being done only to retrieve evidence of a crime. The system has now been reconfigured to eliminate the default answer, so that FBI personnel must affirmatively indicate whether or not a query is being conducted solely to retrieve evidence of a crime before they may proceed to conduct a query. FBI has also redesigned its systems that contain unminimized Section 702-acquired information to require that users write free-text, case-specific justifications (in addition to choosing from prepopulated justifications) for United States person queries that return Section 702 contents if they want to access the contents.

(U)[96] ~~(U//FOUO)~~ Users select "FISC order" when a FISC order was required and one has been obtained.

~~(S//NF)~~ With regard to the second requirement, since October 2018, the FISC has mandated quarterly reporting of all United States person queries not designed to find and extract foreign intelligence information, whether or not they involve predicated criminal investigations.[97] During an internal investigation, FBI discovered one query conducted by an analyst in November 2020 using a United States person query term solely to find and extract evidence of a crime that was not reported to the FISC in the relevant quarterly report.[98] The query ran against Section 702-acquired information, and the analyst indicated that the query term was a presumed United States person query term. The analyst further indicated that the query was being conducted solely to retrieve evidence of a crime, and indicated that there were "exigent circumstances," which would allow the analyst to access the results of the query. The query returned two products, which the analyst reviewed. However, because FBI was still investigating the circumstances surrounding the query, FBI did not inform NSD about this query until 29 December 2020. Therefore, because FBI did not inform NSD about this query until after the Government had filed its December 2020 Section 702 quarterly report, the Government was unable to report the query to the FISC in the December 2020 702 quarterly report, as required by the 2020 Opinion.

(U) *(5) Other FBI Errors*

(U) During this reporting period, there was one incident that involved non-compliance with the provisions of FBI's minimization procedures concerning establishment of a review team for a target charged with a crime pursuant to the United States Code.[99] As soon as FBI knows that a target is charged with such a crime, FBI's minimization procedures require that FBI follow certain steps, including establishing a review team of monitor(s). The member(s) of the review team must be individuals who have no role in the prosecution, and the monitor(s) initially assess and review the Section 702-acquired information to determine whether the communications are attorney-client privileged. Failure to timely establish such a review team constitutes a compliance incident. The joint oversight team assesses that the above incident was the result of competing mission demands. Specifically, it took the relevant FBI personnel several days to begin the process of establishing the review team and to determine which of the relevant targets' accounts remained tasked pursuant to Section 702 and, accordingly, needed to have their collection routed through the review team. In this incident, the relevant personnel have been reminded about the requirements in FBI's Section 702 minimization procedures regarding attorney-client communications, including the review team requirements.

(U) **C. Remedial Steps Taken to Address Query Errors**

(U) The joint oversight team has worked with FBI to address the query compliance issues through training, guidance, and system changes. **All of the above-described non-compliant queries were conducted prior to the remedial measures put in place in 2021 that are detailed below.**

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[97] (U) This particular requirement is not contained in FBI's querying procedures. Rather, it was contained in the FISC's opinion approving the 2020 Section 702 Certifications. *See* 2020 Opinion, at 63.

[98] [redacted]

[99] [redacted]

(U) *(1) Historical Remedial Measures*

(U) In June 2018, FBI, in consultation with the joint oversight team, issued guidance on the query standard and how to apply it to all components where personnel had access to unminimized FISA-acquired information. The guidance also discussed compliance issues involving the application of the query standard, including issues relating to queries conducted using the batch job query function. Additional emphasis was provided concerning issues involving queries run against unminimized 702-acquired information to find and extract only evidence of a crime (and not foreign intelligence information). Each FBI field office was instructed to train personnel on the June 2018 guidance. In January 2019, FBI and NSD conducted joint training for all FBI NSCLB personnel and all field office legal personnel, on FBI's querying procedures. FBI field office legal personnel were instructed to provide this training to all personnel with access to unminimized FISA-acquired information. In fall 2019, FBI, in consultation with NSD, developed and deployed mandatory training for FBI personnel on the query standard and on the system changes FBI made to address the query issues. All personnel with access to unminimized FISA-acquired information were required to complete the training by mid-December 2019, and all personnel who subsequently require such access must first complete this training prior to being granted access. In addition, prior to the temporary suspension of NSD query reviews in March 2020, NSD generally conducted query training during field office query reviews. This training occurred during one-on-one sessions with the individuals whose queries were being reviewed and as part of a larger group training at the field office. This training included, among other things, multiple hypothetical examples derived from actual query incidents, as well as guidance on how to use FBI's systems to allow FBI to better track and comply with requirements involving queries run against unminimized 702-acquired information.

(U) FBI's Section 702 querying procedures as amended in 2019 instituted recordkeeping and documentation requirements for United States person queries. In response to those changes, the FISC ordered the Government to periodically provide updates on FBI's implementation of the new requirements. Between September and November 2019, FBI implemented changes to FBI systems storing unminimized FISA-acquired information that were necessary to comply with the amended procedures. Among other things, these changes require FBI personnel to provide a justification, explaining how their query meets the query standard when running queries of United States person query terms and when they seek to access Section 702-acquired contents returned by such queries. All query terms and justifications are logged for oversight purposes. In addition, FBI, in consultation with NSD, developed and deployed mandatory training in 2019 for FBI personnel on the query standard and on the system changes.

(U) *(2) Recent Training and Guidance*

(U) As noted above, in 2021, NSD resumed remote query reviews at multiple FBI field offices as well as FBI Headquarters. Those reviews have sampled queries conducted in 2020 and 2021 and have revealed additional query compliance incidents. As a result of the findings from NSD's reviews and observations of the FISC related to these query incidents, NSD, in consultation with ODNI, developed guidance on the query standard for FBI personnel. This guidance document is designed to supplement existing and planned training on the querying standard; provides a fulsome explanation of the query standard; and explains the specific requirements imposed by

Section 702(f)(2). The guidance document also includes multiple examples of the application of the guidance to particular factual scenarios. In November 2021, NSD provided this guidance document to FBI, and FBI made this guidance document available to all users with access to unminimized FISA-acquired information. Additionally, FBI referenced this guidance in its updated mandatory FISA query training. NSD anticipates that this additional guidance document will help to facilitate the correct application of the querying standard. Additionally, based on the above guidance regarding the querying standard, FBI provided additional training for FBI personnel focused specifically on querying requirements in combination with the below-described changes to FBI's systems used to query unminimized Section 702-acquired information in order to more adequately address the query compliance issues. FBI deployed relevant training at the end of calendar year 2021 and required all personnel with access to unminimized FISA-acquired information to verify that they completed the required training in order to maintain access.

(U) *(3) Recent Technical Changes*

(U) As detailed above, in June 2021, FBI took additional steps to address the batch job query compliance incidents and instances where users do not intend to query unminimized FISA-acquired information but fail to opt out of such datasets. In addition, starting in October 2021, FBI redesigned its systems that contain unminimized Section 702-acquired information to include a requirement that users write a case-specific justification for United States person queries that return Section 702 contents if they want to access the contents. Historically, users have been able to choose prepopulated justifications from a drop-down menu in lieu of entering a free text justification in certain circumstances. The joint oversight team assesses that user understanding of the querying standard can be enhanced if users are required to write their own case-specific justification for a Section 702 query in addition to choosing from a drop-down menu, because the user will be required to demonstrate how the query standard applies to that set of facts. The joint oversight team also assesses that reviewing these case-specific justifications will enable both internal FBI overseers and external overseers at NSD and ODNI to better determine whether FBI personnel understand the querying standard.[100] Because some of FBI's remedial measures did not come into effect until the end of June 2021 or later, the joint oversight team, however, is unable, at this time, to assess the overall effectiveness of FBI's recent remedial measures, including the recently deployed training and guidance. The joint oversight team will provide updates on its assessment in future joint assessments.

(U) IV. Review of Compliance Incidents – CIA Minimization and Querying Procedures

(U) During this reporting period, there were a small number of incidents involving non-compliance with CIA's minimization and querying procedures.[101] All but one of these incidents

(U) [100] ~~(U//FOUO)~~ In addition, in March 2022, FBI put in place requirements for users to obtain pre-approval from senior FBI officials prior to conducting certain sensitive queries.

[101] ~~(S//NF)~~ CIA receives unminimized communications from selectors that it nominates to NSA for targeting [redacted]

involved queries of Section 702-acquired information that were not reasonably likely to retrieve foreign intelligence information.[102]

[redacted]

(U) **V. Review of Compliance Incidents – NCTC Minimization and Querying Procedures**

(U) During the reporting period, there were a small number of incidents involving violations of NCTC's minimization procedures.

~~(S//NF)~~ [redacted] of the incidents involved NCTC's improper disclosure of Section 702-acquired information in a manner that was not consistent with NCTC's Section 702 minimization procedures.

[redacted]

[102] ~~(S//NF)~~ During this reporting period, there were [redacted] incidents of non-compliance with CIA's minimization and querying procedures.

[redacted]

[103]

NCTC's minimization procedures require that disclosures of unminimized Section 702-acquired information by NCTC to NSA "be conducted in a manner that clearly indicates to [NSA] that the disclosed information is unminimized [S]ection 702-acquired information."

[redacted]

(U) VI. Review of Compliance Incidents – Provider Errors

~~(S//NF)~~ During the reporting period, there were a small number of reported instances of non-compliance by a "specified person" (*i.e.*, a provider) to whom the Attorney General and DNI have issued directives pursuant to Section 702(i) of FISA.[107] [redacted]

104 [redacted]

105

106

107

[redacted]

[redacted]

108 [redacted]

(U) SECTION 5: CONCLUSION

(U) During this reporting period, the joint oversight team found that the agencies continued to implement the procedures and follow the guidelines in a manner that reflects a focused and concerted effort by agency personnel to comply with the requirements of Section 702. Nevertheless, a continued focus is needed to address the underlying causes of the incidents that did occur, especially those incidents relating to improper queries. The joint oversight team assesses that such focus should emphasize maintaining close monitoring of collection activities and continued personnel training. Additionally, as part of its ongoing oversight responsibilities, the joint oversight team and the agencies' internal oversight regimes will continue to monitor the efficacy of measures implemented to address the causes of compliance incidents during the next reporting period.

(U) APPENDIX

(U) APPENDIX

(U) IMPLEMENTATION OF SECTION 702 AUTHORITIES – OVERVIEW

(U) I. Overview – NSA

(U) The National Security Agency (NSA) seeks to acquire foreign intelligence information concerning specific targets under each Section 702 certification from or with the assistance of electronic communication service providers, as defined in Section 701(b)(4) of the Foreign Intelligence Surveillance Act of 1978, as amended (FISA).[1] As required by Section 702, those targets must be non-United States persons[2] reasonably believed to be located outside the United States.

~~(S//NF)~~ [redacted] Certifications 2020-A, [redacted] Certifications 2020-B, [redacted] Certifications 2020-C, [redacted]

[1] (U) Specifically, Section 701(b)(4) provides:

> The term 'electronic communication service provider' means – (A) a telecommunications carrier, as that term is defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153); (B) a provider of electronic communication service, as that term is defined in section 2510 of title 18, United States Code; (C) a provider of a remote computing service, as that term is defined in section 2711 of title 18, United States Code; (D) any other communication service provider who has access to wire or electronic communications either as such communications are transmitted or as such communications are stored; or (E) an officer, employee, or agent of an entity described in subparagraph (A), (B), (C), or (D).

[2] (U) Section 101(i) of FISA defines "United States person" as follows:

> a citizen of the United States, an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act [8 U.S.C. § 1101(a)(20)]), an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in subsection (a)(1), (2), or (3).

[3] [redacted]

[4] [redacted]

(U) As affirmed in affidavits filed with the FISC, NSA believes that the non-United States persons reasonably believed to be outside the United States who are targeted under these certifications will either possess foreign intelligence information about the persons, groups, or entities covered by the certifications or are likely to receive or communicate foreign intelligence information concerning these persons, groups, or entities. This requirement is reinforced by the Attorney General's Acquisition Guidelines, which provide that an individual may not be targeted unless a significant purpose of the targeting is to acquire foreign intelligence information that the person possesses, is reasonably expected to receive, and/or is likely to communicate.

(U) Under NSA's FISC-approved targeting procedures, NSA targets a particular non-United States person reasonably believed to be located outside the United States by "tasking" facilities used by that person who possesses or who is likely to communicate or receive foreign intelligence information. A facility (also known as a "selector") is a specific communications identifier tasked to acquire foreign intelligence information that is to, from, or about a target. A "facility" could be a telephone number or an identifier related to a form of electronic communication, such as an e-mail address.[5] In order to acquire foreign intelligence information from or with the assistance of an electronic communication service provider, NSA first uses the identification of a facility to acquire the relevant communications. Then, after applying its targeting procedures (further discussed below) and other internal reviews and approvals, NSA "tasks" that facility in the relevant tasking system. The facilities are in turn provided to electronic communication service providers who have been served with the required directives under the certifications.

(U) After information is collected from those tasked facilities, it is subject to FISC-approved minimization procedures. NSA's minimization procedures set forth specific measures NSA must take when it acquires, retains, or disseminates non-publicly available information about United States persons. All collection of Section 702 information is routed to NSA. However, NSA's minimization procedures also permit the provision of unminimized communications to the Central Intelligence Agency (CIA), Federal Bureau of Investigation (FBI), and the National Counterterrorism Center (NCTC) relating to targets identified by these agencies that have been the subject of NSA acquisition under the certifications. The unminimized communications sent to CIA, FBI, and NCTC, in accordance with NSA's targeting and minimization procedures, must in turn be processed by CIA, FBI, and NCTC in accordance with their respective FISC-approved Section 702 minimization procedures.[6]

(U) NSA's targeting procedures address, among other subjects, the manner in which NSA will determine that a person targeted under Section 702 is a non-United States person reasonably

5 [redacted]

6 [redacted]

believed to be located outside the United States, the post-targeting analysis conducted on the facilities, and the documentation required.

(U) A. Pre-Tasking Location

(U) 1. Telephone Numbers

~~(S//SI//NF)~~ For telephone numbers, NSA analysts [redacted]

(U) 2. Electronic Communications Identifiers

~~(S//SI//NF)~~ For electronic communications identifiers, NSA analysts [redacted]

[7] [redacted]

[8] (U) Analysts also check this system as part of the "post-targeting" analysis described below.

[9] [redacted]

(U) **B. Pre-Tasking Determination of United States Person Status**

[redacted]

(U) **C. Post-Tasking Checks**

[redacted]

~~(S~~ [redacted]) NSA also requires that tasking analysts review information collected from the facilities they have tasked. With respect to NSA's review of [redacted] a notification e-mail is sent to the tasking team upon initial collection for the facility. NSA analysts are expected to review this collection within five business days to confirm that the user of the facility is the intended target, that the target remains appropriate to the certification cited, and that the target remains outside the United States. Analysts are then responsible to review traffic on an on-going basis to ensure that the facility remains appropriate under the authority. [redacted] Should traffic not be viewed at least once every 30 business days, a notice is sent to the tasking team and their management, who then have the responsibility to follow up.

(U) **D. Documentation**

~~(S//NF)~~ ~~(U//FOUO)~~ The procedures provide that analysts will document in the tasking database a citation to the information leading them to reasonably believe that a targeted person is located

[redacted]

10 [redacted]

outside the United States. The citation is a reference that includes the source of the information, [redacted] enabling oversight personnel to locate and review the information that led the analyst to his/her reasonable belief. Analysts must also identify the foreign power or foreign territory about which they expect the proposed targeting will obtain foreign intelligence information.

~~(S//NF)~~ NSA [redacted] an existing database tool, for use by its analysts for Section 702 tasking and documentation purposes. [redacted] to assist analysts as they conduct their work. This tool has been modified over time to accommodate the requirements of Section 702, to include, for example, certain fields and features for targeting, documentation, and oversight purposes. Accordingly, the tool allows analysts to document the required citation to NSA records on which NSA relied to form the reasonable belief that the target was located outside the United States. [redacted] The tool has fields for the certification under which the target falls, and for the foreign power as to which the analyst expects to collect foreign intelligence information. Analysts fill out various fields [redacted] for each facility, as appropriate, including the citation to the information on which the analyst relied in making the foreignness determination.

(U) NSA's targeting procedures also require analysts to identify the foreign power or foreign territory about which they expect the proposed targeting will obtain foreign intelligence information and provide a written explanation of the basis for their assessment, at the time of targeting, that the target possesses, is expected to receive, and/or is likely to communicate foreign intelligence information concerning that foreign power or foreign territory.

(U) NSA also includes the targeting rationale (TAR) in the tasking record, which requires the targeting analyst to briefly state why targeting for a particular facility was requested. The intent of the TAR is to memorialize why the analyst is requesting targeting, and provides a linkage between the user of the facility and the foreign intelligence purpose covered by the certification under which it is being tasked. The joint oversight team assesses that the TAR has improved the oversight team's ability to understand NSA's foreign intelligence purpose in tasking facilities.

~~(S//NF)~~ [redacted] Entries are reviewed before a tasking can be finalized. Records from this tool are maintained and compiled for oversight purposes. For each facility, a record can be compiled and printed showing certain relevant fields, such [redacted] e citation to the record or records relied upon by the analyst, [redacted] the analyst's foreignness explanation, the targeting rationale, [redacted] These records, referred to as "tasking sheets," are reviewed by the Department of Justice's National Security Division (NSD), and also provided to the Office of the Director of National Intelligence (ODNI), as part of the oversight process.

~~(S//NF)~~ The source records cited on these tasking sheets are contained in a variety of NSA data repositories. These records are maintained by NSA and, when requested by the joint team, are

produced to verify determinations recorded on the tasking sheets. Other source records may consist of "lead information" from other agencies, such as disseminated intelligence reports or lead information [redacted]

[redacted]

(U) **F. Internal Procedures**

(U) NSA has instituted internal training programs, access control procedures, standard operating procedures, compliance incident reporting measures, and similar processes to implement the requirements of the targeting procedures. Only analysts who have received certain types of training and authorizations are provided access to the Section 702 program data. These analysts must complete an NSA OGC and OCCO training program; review the targeting, minimization, and querying procedures as well as other documents filed with the certifications; and pass a competency test. The databases NSA analysts use are subject to audit and review by OCCO. For guidance, analysts consult standard operating procedures, supervisors, OCCO personnel, and NSA OGC attorneys.

(U) NSA's targeting and minimization procedures also require NSA to conduct oversight activities and make any necessary reports, including those relating to incidents of non-compliance, to NSA's Office of the Inspector General (OIG) and NSA OGC. NSA's OCCO reviews all Section 702 taskings and conducts spots checks of disseminations based in whole or in part on Section 702-acquired information. The Directorate of Operations Information and Intelligence Analysis organization also maintains and updates an NSA internal website regarding the implementation of, and compliance with, the Section 702 authorities.

(U) NSA has established standard operating procedures for incident tracking and reporting to NSD and ODNI. Compliance officers work with NSA analysts and CIA and FBI points of contact, as necessary, to compile incident reports that are forwarded to both NSA OGC and OIG. NSA OGC forwards the incidents to NSD and ODNI.

(U) On a more programmatic level, under the guidance and direction of the Compliance Group, NSA has implemented and maintains a Comprehensive Mission Compliance Program (CMCP) designed to effect verifiable conformance with the laws and policies that afford privacy protections during NSA missions. The Compliance Group complements and reinforces the intelligence oversight program of NSA's OIG and oversight responsibilities of NSA OGC.

(U) A key component of the CMCP is an effort to manage, organize, and maintain the authorities, policies, and compliance requirements that govern NSA mission activities. This effort, known as "Rules Management," focuses on two key components: (1) the processes necessary to better govern, maintain, and understand the authorities granted to NSA; and (2) technological solutions to support (and simplify) Rules Management activities. The Authorities Integration Group coordinates NSA's use of the Verification of Accuracy process originally developed for other FISA programs to provide an increased level of confidence that factual representations to the FISC or other external decision makers are accurate and based on an ongoing, shared understanding among operational, technical, legal, policy, and compliance officials within NSA. NSA has also developed a Verification of Interpretation review to help ensure that NSA and its external overseers have a shared understanding of key terms in Court orders, minimization procedures, and other documents that govern NSA's FISA activities. The Compliance Group conducts the Mission Compliance Risk Assessment (MCRA) that assesses the risk of non-compliance with the rules designed to protect privacy and to safeguard information. Risks are assessed annually by authority and/or function for SIGINT and cybersecurity missions. The results are used to inform management decisions, priorities, and resource allocations regarding the NSA/CSS Comprehensive Mission Compliance Program (CMCP).

(U) II. Overview – CIA

(U) A. CIA's Role in Targeting

~~(S//NF)~~ Although CIA does not target or acquire communications pursuant to Section 702, CIA has put in place a process, in consultation with NSA, FBI, NSD, and ODNI, to identify foreign intelligence targets to NSA. Based on its foreign intelligence analysis, CIA may "nominate" a facility to NSA for potential acquisition under one of the Section 702(h) certifications. The nomination provides NSA with the basis for CIA's assessment [redacted]

~~(S//NF)~~ In addition to nominations, CIA may also request unminimized data from Section 702 facilities already tasked by NSA, a process referred to as "dual-routing."[11] CIA applies its Section 702 minimization procedures to both the Section 702 nominated and dual-routed data.

[11] ~~(TS//SI//NF)~~ Dual-routing is the process whereby CIA, FBI, or NCTC may request that NSA route already tasked Section 702-acquired information (for specified facilities) to CIA, FBI, or NCTC respectively. [redacted] NSA does not dual-route upstream collection to CIA, FBI, or NCTC.

~~(S//NF)~~ [redacted] Nominations are reviewed and approved by a targeting officer's first line manager, a component legal officer, a senior operational manager, and the FISA Program Office prior to export to NSA.[12] [redacted]

~~(S//NF)~~ The FISA Program Office was established in December 2010 [redacted] nd is charged with providing strategic direction for the management and oversight of CIA's FISA collection programs, including the retention and dissemination of foreign intelligence information acquired pursuant to Section 702. This group is responsible for overall strategic direction and policy, programmatic external focus, and interaction with counterparts of NSD, ODNI, NSA, and FBI. In addition, the office leads the day-to-day FISA compliance efforts [redacted] The primary responsibilities of the FISA Program Office are to provide strategic direction for data handling and management of FISA/702 data, as well as to ensure that all Section 702 collection is properly tasked and that CIA is complying with all compliance and purge requirements.

(U) **B. Oversight and Compliance**

(U) CIA's FISA compliance program is managed by its FISA Program Office in coordination with CIA OGC. CIA provides small group training to personnel who nominate facilities to NSA and/or minimize Section 702-acquired communications. Access to unminimized Section 702-acquired communications is limited to trained personnel. CIA attorneys embedded with operational elements that have access to unminimized Section 702-acquired information also respond to inquiries regarding nomination, minimization, and querying questions. Identified

[12] (U) This nomination approval process was the one in place during the reporting period. However, on 21 October 2021, CIA's nominations process was revised to require approval by only the targeting officer's first line manager and the FISA Program Office. Throughout the process, both component legal officers and CIA's FISA attorneys are available for consultation regarding whether the nomination is in compliance with Section 702 of FISA and NSA's targeting procedures. The Government assesses this change eliminates redundancy in CIA's nomination process.

incidents of non-compliance with CIA's minimization and querying procedures are generally reported to NSD and ODNI by CIA OGC.

(U) III. Overview – NCTC

(U) A. NCTC's Handling of Section 702 data

~~(S//NF)~~ NCTC does not target or acquire communications pursuant to Section 702. In addition, NCTC does not currently have a process in place to identify or nominate foreign intelligence targets to NSA. However, like CIA and FBI, NCTC may request to be dual-routed on unminimized data (pertaining to counterterrorism) from Section 702 facilities already tasked by NSA. NCTC applies its Section 702 minimization and querying procedures to Section 702 dual-routed data.

~~(S//NF)~~ NCTC, in consultation with NSD, developed an electronic and data storage system, known as [redacted] to retain and process unminimized FBI-collected FISA-acquired information in accordance with NCTC's Standard Minimization Procedures for Information Acquired by the Federal Bureau of Investigation Pursuant to Title I, Title III, or Section 704 or 705(b) of FISA. In consultation with NSD, ODNI, NSA, and FBI, NCTC modified [redacted] to (i) provide additional compliance capabilities in support of dual-routing FISA Section 702-acquired counterterrorism data and (ii) monitor compliance with NCTC's minimization and querying procedures for Section 702-acquired counterterrorism data. In addition to documenting compliance with the Section 702 minimization and querying procedures requirements, [redacted] also documents the requests for dual-routing of Section 702-acquired information. This documentation includes the foreign intelligence justification (pertaining to counterterrorism) for dual-routing the facility and supervisory concurrence with an analyst's request.

~~(S//NF)~~ Dual-routed unminimized communications from Section 702 tasked facilities are stored within [redacted] where only properly trained and authorized analysts are able to query them. As a supplement to the requirements of NCTC's minimization procedures and querying procedures, NCTC's internal business process requires that NCTC analysts provide a written justification for each query, as well as a written justification for each minimization action to mark a product as meeting the retention standard in order to document how the query or minimization was compliant with the standards in NCTC's minimization procedures or querying procedures, as applicable. By internal policy, all dual-route requests and minimization actions must be reviewed and approved within [redacted] by the analyst's supervisor.

(U) NCTC personnel may disseminate Section 702-acquired information of or concerning an unconsenting United States person if that information meets the standard for dissemination pursuant to Section D of NCTC's minimization procedures.

~~(S//NF)~~ [redacted] NCTC's Compliance and Transparency Group (hereinafter, "NCTC Compliance") within the Office of Enterprise Services (OES) conducts periodic reviews of Section 702 query logs and minimization logs, as well as NCTC Section 702 disseminations in order to verify compliance with NCTC's minimization procedures and identify the need for system modifications, enhancements, or improvements to training materials or analyst work aids.

(U) B. Oversight and Compliance

(U) NCTC's FISA compliance program is managed by NCTC Compliance in coordination with NCTC Legal. NCTC provides training to all NCTC personnel who may access unminimized FISA-acquired information. Access to unminimized Section 702-acquired communications is limited to trained personnel. NCTC compliance personnel and attorneys also respond to inquiries regarding minimization and querying questions. Identified incidents of non-compliance with NCTC's minimization and querying procedures are reported to NSD and ODNI generally by NCTC Compliance or NCTC Legal personnel.

~~(S//NF)~~ NCTC Compliance was established in the fall of 2014 and is charged with providing strategic direction for the management and oversight of NCTC's access to and use of all datasets pursuant to executive order, statute, interagency agreement, applicable IC policy, and internal policy. This includes management and oversight of NCTC's FISA programs, including the retention and dissemination of foreign intelligence information acquired pursuant to Section 702. This group is responsible for overall strategic direction and policy, programmatic external focus, and interaction with counterparts of NSD, ODNI, NSA, FBI, and CIA. In addition, the office leads the day-to-day FISA compliance efforts within NCTC. NCTC Compliance is responsible for providing strategic direction and internal oversight for data handling and management of Section 702 data, as well as administering and implementing NCTC Section 702 training, ensuring that all NCTC Section 702 collection is properly dual-routed, minimized and disseminated, and that NCTC is complying with all minimization and querying procedures requirements.

(U) IV. Overview – FBI

(U) A. FBI's Role in Targeting – Nomination for Acquiring In-Transit Communications

~~(S//NF)~~ Like CIA, FBI has developed a formal nomination process to identify foreign intelligence targets to NSA for the acquisition o communications. [redacted] Like CIA, FBI may be dual-routed the unminimized data from Section 702 facilities already tasked by NSA. FBI applies its Section 702 minimization procedures to both the Section 702 nominated and dual-routed data.

~~(S//NF)~~ [redacted] FBI targeting procedures require that NSA first apply its own targeting procedures to determine that the user of the Designated Account is a person reasonably believed to be outside the United States and is not a United States person. NSA is also responsible for determining that a significant purpose of the acquisition it requests is to obtain foreign intelligence information. After NSA designates accounts as being appropriate for [redacted] FBI must then apply its own, additional

procedures, which require FBI to review NSA's conclusion of foreignness [redacted]

~~(S//NF)~~ More specifically, after FBI obtains the tasking sheet from NSA, it reviews the information provided by NSA regarding the location of the person and the non-United States person status of the person. [redacted]

~~(S//NF)~~ Unless FBI locates information indicating that the user is a United States person or is located inside the United States, [redacted]

[redacted]

~~(S//NF)~~ If FBI identifies information indicating that NSA's determination that the target is a non-United States person reasonably believed to be outside the United States may be incorrect, FBI provides this information to NSA and does not approve [redacted]

(U) **C. Documentation**

~~(S//NF)~~ The targeting procedures require that FBI retain the information [redacted] in accordance with its records retention policies [redacted] FBI uses a multi-page checklist for each Designated Account to record the results of its targeting process, as laid out in its standard operating procedures, commencing with [redacted] extending through [redacted] and culminating in approval or disapproval of the acquisition. In addition, FBI's standard operating procedures call for [redacted] depending on the circumstances, which are maintained by FBI with the applicable checklist. FBI also retains with each checklist any relevant communications [redacted] and other government agencies regarding its review of NSA's information and the information discovered in FBI databases. Additional checklists have been created to capture information on requests withdrawn [redacted] or not approved by FBI.

(U) **D. Implementation, Oversight, and Compliance**

~~(S//NF)~~ FBI's implementation and compliance activities are overseen by FBI OGC, particularly the National Security and Cyber Law Branch (NSCLB), as well as FBI's Technology and Data Innovation Section (TDI) [redacted] and FBI's Inspection Division. [redacted] DI has the lead responsibility in FBI for [redacted] requests [redacted] TDI personnel are trained on FBI's targeting procedures and FBI's detailed set of standard operating procedures that govern its processing of requests [redacted] also has the lead responsibility for facilitating FBI's nominations to NSA [redacted] TDI, NSCLB, NSD, and ODNI have all worked on training FBI personnel to ensure that FBI nominations and post-tasking review comply with NSA's targeting procedures. With respect to minimization, FBI has created a mandatory online training that all FBI agents and analysts must complete prior to gaining access to unminimized Section 702-acquired information in FBI's [redacted]

In addition, NSD conducts training on the Section 702 minimization procedures at multiple FBI field offices each year.[13]

(U) FBI's application of its targeting procedures requires periodic targeting reviews by NSD and ODNI at least once every 60 days. FBI must also report incidents of non-compliance with FBI targeting procedures to NSD and ODNI within five business days of learning of the incident. TDI and NSCLB are the lead FBI elements in ensuring that NSD and ODNI received all appropriate information with regard to these two requirements.

(U) V. Overview – Minimization and Querying

(U) After a facility has been tasked for collection, non-publicly available information collected as a result of these taskings that concerns United States persons must be minimized; if the Government queries that collection, it must follow specific query rules. The FISC-approved minimization procedures require such minimization in the acquisition, retention, and dissemination of foreign intelligence information. The FISC-approved querying procedures set rules for using United States person and non-United States person identifiers to query unminimized Section 702-acquired information.

(U) As a general matter, minimization procedures under Section 702 are similar in most respects to minimization under other FISA orders. For example, the Section 702 minimization procedures, like those under certain other FISA court orders, allow for sharing of certain unminimized Section 702 information among NSA, FBI, CIA and NCTC. Similarly, the procedures for each agency require special handling of intercepted communications that are between attorneys and clients, as well as foreign intelligence information concerning United States persons that is disseminated to foreign governments.

(U) Section 702 minimization procedures do, however, impose additional obligations or restrictions as compared with the minimization procedures associated with authorities granted under Titles I and III of FISA. For example, the Section 702 minimization procedures require, with limited exceptions, the purge of any communications acquired through the targeting of a person who at the time of targeting was reasonably believed to be a non-United States person located outside the United States, but is in fact located inside the United States at the time the communication is acquired, or was in fact a United States person at the time of targeting.

(U) NSA, CIA, NCTC, and FBI have created systems to track the purging of information from their systems. CIA, NCTC, and FBI receive incident notifications from NSA to document when NSA has identified Section 702 information that NSA is required to purge according to its procedures, so that CIA, NCTC, and FBI can meet their respective obligations.

[13] (U) As noted above, onsite field office reviews were suspended in March 2020. NSD resumed field office reviews remotely in February 2021. Thus, NSD only conducted onsite training at field offices for only a little more than three months during this reporting period.

(U) Querying procedures under Section 702, which are adopted by the Attorney General, in consultation with the DNI, and approved by the FISC, govern how NSA, CIA, NCTC, and FBI conduct queries of Section 702 collection. Section 702(f)(1) requires that the querying procedures be consistent with the Fourth Amendment and that they include a technical procedure whereby a record is kept of each United States person term used for a query. Further, under Section 702(f)(2)(A), an order from the FISC is required before FBI can review the contents of a query using a United States person query term when the query was not designed to find and extract foreign intelligence information and was performed in connection with a predicated criminal investigation that does not relate to national security.

(U) Queries may be conducted in two types of unminimized Section 702-acquired information: (i) Section 702-acquired *content* and (ii) Section 702-acquired *metadata*. Query terms may be date-bound, and may include alphanumeric strings, such as telephone numbers, e-mail addresses, or terms, such as a name, that can be used individually or in combination with one another. Pursuant to FISC-approved procedures, an agency can only query Section 702 information if the query is reasonably likely to retrieve foreign intelligence information or, in the case of FBI, evidence of a crime. This standard applies to all Section 702 queries, regardless of whether the term concerns a United States person or non-United States person.

(U) The agencies have similar querying procedures. For example, the agencies' procedures require a written statement of facts justifying that the use of any such identifier as a query selection term of Section 702-acquired content is reasonably likely to retrieve foreign intelligence information or, in the instance of FBI, evidence of a crime. Some querying rules are unique to individual agencies. For example, NSA's Section 702 querying procedures also require that any United States person query term used to identify and select unminimized section 702-acquired content must first be approved by NSA OGC and that such an approval include a statement of facts establishing that the use of any such identifier as a selection term is reasonably likely to retrieve foreign intelligence information. In addition, with respect to queries of Section 702-acquired metadata using a United States person identifier, NSA's querying procedures require that NSA analysts document the basis for each metadata query prior to conducting the query.