

All redacted
information exempt
under b(1) and/or b(3)
except where
otherwise noted.

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U.S. FOREIGN
INTELLIGENCE
SURVEILLANCE COURT

UNITED STATES

PM 1:36

FOREIGN INTELLIGENCE SURVEILLANCE

CLERK OF COURT

WASHINGTON, D.C.

Docket No.: PR/TT

**DECLARATION OF LIEUTENANT GENERAL KEITH B. ALEXANDER,
UNITED STATES ARMY,
DIRECTOR OF THE NATIONAL SECURITY AGENCY**

(U) I, Lieutenant General Keith B. Alexander, depose and state as follows:

(U) I am the Director of the National Security Agency ("NSA" or
"Agency"), an intelligence agency within the Department of Defense ("DoD"),
and have served in this position since 2005. I currently hold the rank of
Lieutenant General in the United States Army and, concurrent with my current
assignment as Director of the National Security Agency, I also serve as the Chief

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Derived From: NSA/CSSM 1-52

Dated: 20070108

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of the Central Security Service and as the Commander of the Joint Functional Component Command for Network Warfare. Prior to my current assignment, I have held other senior supervisory positions as an officer of the United States military, to include service as the Deputy Chief of Staff (DCS, G-2), Headquarters, Department of the Army; Commander of the U.S. Army's Intelligence and Security Command; and the Director of Intelligence, United States Central Command.

(U) As the Director of the NSA, I am responsible for directing and overseeing all aspects of NSA's cryptologic mission, which consists of three functions: to engage in signals intelligence ("SIGINT") activities for the U.S. Government, to include support to the Government's computer network attack activities; to conduct activities concerning the security of U.S. national security telecommunications and information systems; and to conduct operations security training for the U.S. Government. Some of the information NSA acquires as part of its SIGINT mission is collected pursuant to Orders issued under the Foreign Intelligence Surveillance Act of 1978, as amended ("FISA").

(U) PURPOSE AND SUMMARY

~~(TS//SI//NF)~~ This Declaration and the report entitled "Pen Register/Trap and Trace FISA, NSA Review" dated [REDACTED] ("End-to-End Report"), which is incorporated in its entirety herein by reference, respond to the Court's

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Orders of [REDACTED] in docket number PR/TT [REDACTED] concerning NSA's implementation of the Court's authorization to collect certain metadata pursuant to the pen register and trap and trace provisions of FISA, 50 U.S.C. § 1841 et seq., in docket number PR/TT [REDACTED] and previous docket numbers.¹

(~~TS//SI//NF~~) The [REDACTED] Orders in docket number PR/TT [REDACTED] direct that the Government "in connection with the completion of its end-to-end review . . . provide the Court with [(1)] a detailed and complete description of NSA's handling of PR/TT metadata; including but not limited to, a discussion of NSA's practices with regard to sharing query results both within NSA and with other agencies," [REDACTED] Supplemental Order, Docket Number PR/TT [REDACTED] at 4-5, and (2) "a full explanation of why the government has permitted the dissemination outside NSA of U.S. person information without regard to whether such dissemination complied with the clear and acknowledged requirements for sharing U.S. person information derived from the metadata collected pursuant to the [PR/TT Orders]." [REDACTED] Order, Docket Numbers PR/TT [REDACTED] and PR/TT [REDACTED] at 7-8. This Declaration and the End-to-End Report respond to these requirements. In [REDACTED] the NSA completed the end-to-end system engineering and process reviews of its instrumentation

¹ (~~TS//SI//NF~~) NSA refers to the program in which such metadata were acquired and analyzed as the "PR/TT collection" or as the "PR/TT FISA."

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and implementation of the authorities granted by the Court in docket number PR/TT [REDACTED] and previous docket numbers.

(~~TS//SI//NF~~) Additionally, this Declaration sets forth a factual description of the compliance issues first identified in a notice filed with the Court on [REDACTED]

[REDACTED] On [REDACTED] the Government filed a notice with the Court informing it that [REDACTED]

[REDACTED]

[REDACTED] Supplemental Order,

Docket Number PR/TT [REDACTED] at 1 (entered [REDACTED]). On

[REDACTED] the authorization for the PR/TT collection expired.

(~~TS//SI//NF~~) The statements made in this Declaration are based upon: my personal knowledge; information provided to me by my subordinates in the course of my official duties; the advice of counsel; and conclusions reached in accordance with all of the above.

I. (~~S~~) INFORMATION PROVIDED IN RESPONSE TO THE COURT'S ORDERS OF [REDACTED]

A. (~~TS~~) SHARING OF QUERY RESULTS WITHIN NSA

(~~TS//SI//NF~~) Since the initial PR/TT Order in July 2004, NSA permitted the sharing of PR/TT query results with non-PR/TT-cleared analysts. Query results

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could include information provided orally or in writing, and could include a tip or a lead (e.g., "a query on RAS-approved Selector A revealed a direct contact with Selector Z"), a written or electronic depiction of a chain [REDACTED] a compilation or summary of direct or indirect contacts of a RAS-approved seed, a draft or finished report, or any other information that would be returned following a properly predicated PR/TT query.

(~~TS//SI//NF~~) The PR/TT Orders identify [REDACTED] [REDACTED] (collectively the "Foreign Powers"). NSA's collective expertise in these Foreign Powers resides in more than [REDACTED] intelligence analysts, who sit, not only in the NSA's Counterterrorism Analytic Enterprise, but also in other NSA organizations or product lines. Analysts from other product lines also address counterterrorism issues specific to their analytic missions and expertise. For example, the International Security Issues product line pursues foreign intelligence information on [REDACTED] including [REDACTED]

[REDACTED] The mission of the Combating Proliferation product line includes identifying connections between proliferators of weapons of mass destruction and terrorists, including those terrorists associated with the Foreign Powers. The International Crime and Narcotics product line identifies connections between terrorism and human or nuclear smuggling or other forms

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of international crime. [REDACTED]

[REDACTED] Each of

the NSA's ten product lines has some role in protecting the Homeland from terrorists, including these Foreign Powers. Because so many analysts touch upon terrorism information, it is impossible to estimate how many analysts might be served by access to PR/TT query results.

(TS//SI//NF) Less than ten percent of NSA intelligence analysts responsible for tracking and reporting foreign intelligence on counterterrorism matters generally were permitted to query the PR/TT metadata. The PR/TT-cleared analysts are seasoned and experienced analysts. Most of them have extensive knowledge of many of the terrorist targets they track; nonetheless, their collective expertise represents a small fraction of the NSA's collective expertise on Foreign Power targets. Consequently, NSA deemed it critical to the success of the NSA's counterterrorism mission to share unminimized PR/TT query results with analysts across its enterprise.

(TS//SI//NF) Following the entry of the Court's Order on [REDACTED] NSA continued to share the results of authorized queries of the PR/TT metadata with NSA analysts other than the limited number of analysts who were authorized to access the metadata. However, since such time query results were only shared with analysts that have received "appropriate and adequate training

and guidance regarding all rules and restrictions governing the use, storage, and dissemination of such information," as required by the Court's [REDACTED] Order.

B. ~~(TS)~~ SHARING OF QUERY RESULTS OUTSIDE NSA AND A FULL EXPLANATION OF PAST NON-COMPLIANCE

~~(TS//SI//NF)~~ In a [REDACTED] notice to the Court, the Government reported that NSA had provided certain personnel from the Central Intelligence Agency (CIA), Federal Bureau of Investigation (FBI), and National Counter-Terrorism Center (NCTC) with access to a database that contained, among other things, some unminimized results of PR/TT FISA queries. NSA did not make all, or even most, PR/TT FISA query results available via this database. Instead, NSA placed only certain PR/TT FISA query results in the database, generally in response to specific requests for information received from specially-cleared personnel from NSA, CIA, FBI, or NCTC.

~~(S//NF)~~ Use of the Database Prior to Court Orders

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

[REDACTED] By the fall of 2002, the Intelligence Community had grown increasingly concerned about the potential for further attacks on the United States. For example, during 10 to 24 September 2002, the Government raised the homeland security threat condition to "orange," indicating a high likelihood for attack. In this context, in October 2002 the

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Directors of NSA, CIA, and FBI established an Inter-Agency Review Group to examine information sharing [REDACTED] The group's top recommendation was that NSA create a common target knowledge database to allow joint research and information exchanges [REDACTED]

[REDACTED]
~~(TS//SI//NF)~~ In response to this recommendation, NSA began to create a database in October 2002 that allowed specially cleared analysts outside of NSA to access certain data [REDACTED]
[REDACTED] to include contact chaining results and reporting, but not the actual metadata [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] but it appears that only 47 of these 250 external analysts actually queried the database during this timeframe.

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~~(TS//SI//NF)~~ As a condition of access, these analysts were required to comply with special security procedures established by the Executive Branch that sharply restricted [REDACTED] access to the information. Those security procedures, however, differed from the dissemination restrictions that the Government proposed and that would be subsequently required by the Court when it issued the PR/TT FISA Orders.

~~(S//NF)~~ Use of Database Subsequent to Court Orders

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

[REDACTED] With respect to the Internet metadata program, NSA personnel generally only placed the unminimized

results of metadata queries into the database in response to specific requests for information received from appropriately cleared personnel within NSA or from the CIA, FBI, or NCTC. [REDACTED]

[REDACTED] the PR/TT FISA Orders directed that the dissemination of this information outside of NSA was to occur only in accordance with the provisions of United States Signals Intelligence Directive No. SP0018 (USSID 18) but with additional restrictions. The Court's PR/TT FISA Orders further restricted dissemination by requiring NSA not only to apply USSID 18's standard minimization procedures to any U.S. person information acquired under the terms of the Order, but by also requiring that, "Prior to disseminating any U.S. person information outside of the NSA, the Chief of Information Sharing Services² in the NSA's Signals Intelligence Directorate shall determine that the information is related to counterterrorism information and is necessary to understand the counterterrorism information or to assess its importance."³

² (~~TS//SI//NF~~) The Court's Order in docket number PR/TT [REDACTED] identified this official as "the Chief of Customer Response." The title of Chief of Customer Response was later changed to Chief of Policy Services and later still to Chief of Information Sharing Services. The PR/TT Orders reflect this change. Cf. Order and Opinion, Docket Number PR/TT [REDACTED], at 85 with Primary Order, Docket Number PR/TT [REDACTED] at 12. For the sake of simplicity the appropriate approving official will be referred to below as the Chief of Information Sharing Services.

³ (U//~~FOUO~~) In contrast, USSID 18 permits NSA to disseminate outside of NSA information identifying U.S. persons if the U.S. person information is necessary to

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



[REDACTED] In [REDACTED] NSA disabled the hyperlink button used by the FBI, CIA, and NCTC analysts to gain access to this target knowledge database [REDACTED]

(U) Discovery and Response to the Problem

~~(TS//SI//NF)~~ In [REDACTED] during the course of NSA's end-to-end review of the Agency's implementation of the BR FISA Order, NSA identified as a

understand *foreign intelligence* or assess its importance. USSID 18 also permits the Deputy Chief of Information Sharing Services, among others, to approve disseminations of U.S. person identifying information.

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compliance matter the use of the database to make unminimized PR/TT and BR query results available to FBI, CIA, and NCTC. NSA personnel also determined that, despite the disabling of the hyperlink button in [REDACTED] external analysts could have continued accessing the database if they retained the Uniform Resource Locator (URL) address for the database. After this problem was identified on [REDACTED] NSA immediately began terminating individual external customer account access to the target knowledge database. NSA completed this action by [REDACTED]

(TS//SI//NF) To determine why this compliance issue occurred, NSA spoke with the senior analysts and oversight personnel who were aware of the Court-ordered minimization requirements [REDACTED] These conversations revealed NSA personnel generally followed the minimization requirements when the Agency issued formal reports based on queries of the metadata acquired pursuant to the Court's PR/TT FISA Orders.

[REDACTED]

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[REDACTED]

~~(TS//SI//NF)~~ Since identification of this matter, NSA has attempted to determine the actual extent of access to the database and/or use of the PR/TT and BR metadata. As part of that effort, the Agency has conducted a detailed audit of log-in activity of external analysts from each of the participating organizations.⁴

The audit revealed that no external analysts accessed the database after [REDACTED]

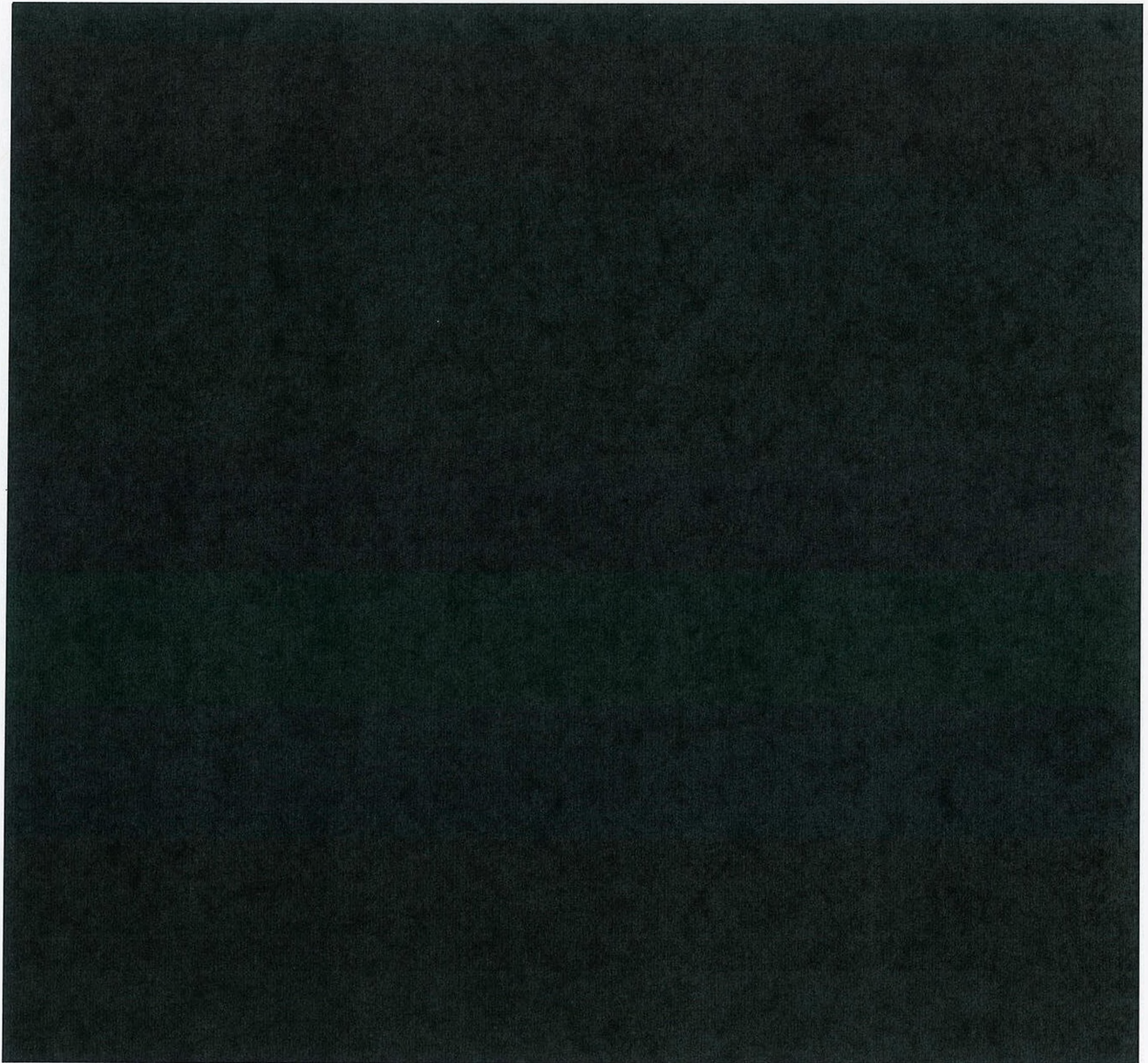
[REDACTED] Prior to that, between [REDACTED] approximately 250 analysts had permission to access the database but only about one-third actually did so. [REDACTED]

[REDACTED] These approximately 47 external analysts appear to have queried the database in the course of their counterterrorism responsibilities and they accessed directories that contained the results of PR/TT and/or BR queries, including unminimized U.S. person-related information. The PR/TT or BR-derived U.S. person information consisted of unmasked telephone numbers or email addresses that were returned in response to RAS-approved queries made of the underlying metadata.

⁴ ~~(S//SI)~~ Although the target knowledge database was created in 2002, NSA's audit of database access covered from [REDACTED] to the present because logs were not able to be retrieved prior to [REDACTED]

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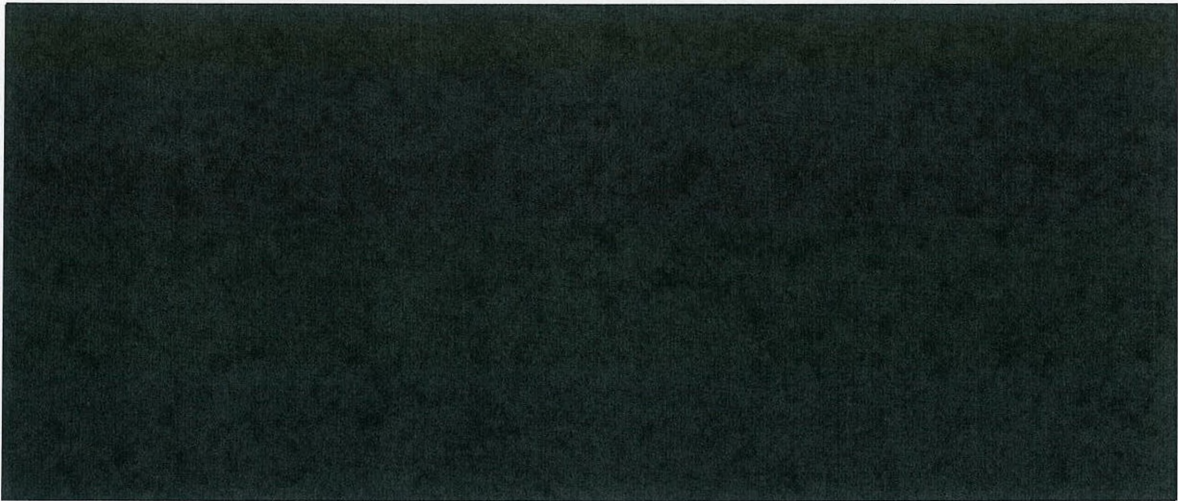
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⁵ ~~(S)~~

⁶ ~~(S//SI)~~

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(~~TS//SI//NF~~) Although it appears little external use was made of the unminimized PR/TT or BR metadata that NSA posted to the target knowledge database, NSA acknowledges that it treated both PR/TT and BR metadata query results in a way that was inconsistent with the Court's PR/TT and BR Orders. There was no deliberate effort to circumvent the requirements of the Court's Orders.



(~~S//SI//NF~~) NSA corrected the problem in this specific instance by terminating all external access to the database in question. Beyond that, the Agency recognizes that the underlying issue is the need to identify all areas of activity that were subject to these Court Orders and/or other legal restrictions

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and conditions, in order to ensure compliance. This requires several elements, including an accurate end-to-end picture of how data is handled -- by technical and operational personnel alike -- from collection through dissemination; ongoing oversight, training, and compliance efforts; and system testing procedures that give assurance that data is actually being handled as required. NSA instituted measures in all these areas, as described in detail in the End-to-End Report. In addition, NSA created the new position of Director of Compliance to ensure that NSA had a comprehensive and effective compliance program and maintained heightened attention in this particular area.

(U) Dissemination of U.S. Person Identifying Information

~~(TS//SI//NF)~~ When an NSA analyst determines that information identifying a U.S. person needs to be included in a report, a designated NSA approving official must authorize the release.⁷ The Information Sharing Services office is generally the responsible entity for approving such releases. Within the context of Executive Order (EO) 12333 collected information, the release

⁷ ~~(TS//SI//NF)~~ The designated approving official does not make a determination to release information in response to requests by Department of Justice or Department of Defense personnel in connection with criminal or detainee proceedings. In the case of such requests, NSA's Litigation Support Team conducts prudential, specific searches of databases that contain both previously disseminated reporting and related analyst notes. The team does not perform queries of the PR/TT metadata. NSA then provides that research to Department of Justice or Department of Defense personnel for their review in connection with criminal or detainee proceedings. This practice of sharing information derived from the PR/TT metadata is now specifically authorized. See Primary Order, Docket Number PR/TT [REDACTED] at 12-13.

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authority includes the Chief and Deputy Chief, Information Sharing Services, SID Director and Deputy Director, Senior Operations Officer (SOO),⁸ DIRNSA, and Deputy DIRNSA. In the EO 12333 context, the approving authority must determine that the information is related to a foreign intelligence purpose, and that the U.S. person information is necessary to understand or assess the value of the information. [REDACTED]

the Court authorized PR/TT dockets, NSA followed USSID 18 procedures for the dissemination of U.S. person identities and did not appropriately implement the additional requirements identified in the Court orders for a determination that the information is related to counterterrorism information. Furthermore, NSA did not implement appropriate procedures reflecting the fact that individuals other than the Chief of Information Sharing Services were not specifically authorized to grant the release of U.S. person information. Although NSA now understands the fact that only a limited set of individuals were authorized to approve these releases under the Court's authorization, it seemed appropriate at the time to allow the Deputy or those acting in the Chief of Information Sharing Services' capacity to be delegated with this authority as well.

⁸ (S) The SOO is the Senior Operations Officer, in charge of the National Security Operations Center, NSA's 24/7 operations center. The SOO acts in place of the DIRNSA, when the DIRNSA is unavailable.

(U) Review of Prior Disseminations

(~~TS//SI//NF~~) NSA reviewed its records of all reports issued prior to [REDACTED] that may have included PR/TT FISA-derived information, including the records of reports written by analysts not specifically authorized to query the PR/TT FISA metadata. Based on that review, NSA identified [REDACTED] PR/TT FISA-derived reports that contained U.S. person identities.⁹

(~~TS//SI//NF~~) On [REDACTED] members of DoJ/NSD's Office of Intelligence Oversight Section completed a review of all [REDACTED] PR/TT FISA disseminations containing U.S. person identities in order to determine who approved the disseminations and what determinations were made, if any, by the approving official. Of the [REDACTED] disseminations, [REDACTED] were approved by the Chief of Information Sharing Services, [REDACTED] were approved by the Deputy Chief of Information Sharing Services, and [REDACTED] were approved by a SOO. The

⁹ (~~TS//SI//NF~~) To identify the total number of reports produced and disseminated that contained PR/TT-derived information, the NSA reviewed all analyst reporting records, including the records of reports written by non-PR/TT-cleared analysts. When drafting reports, all NSA analysts, including both PR/TT-cleared analysts and non-PR/TT-cleared analysts, are trained to include in any reporting record the sources of the information contained in a report. The NSA's review included an examination of these records, including the fields of each record that might include references to PR/TT-derived source information. The NSA then audited the reports that referenced PR/TT-derived information as a source, and excluded those that referenced PR/TT sources but in fact that did not contain PR/TT-derived information. Through this methodology the NSA was able to determine that [REDACTED] reports were produced and disseminated. Admittedly, this methodology would not account for reports issued with PR/TT-derived data that mistakenly failed to reference PR/TT sources.

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disseminations authorized by persons other than the Chief of Information Sharing Services did not occur during any particular time frame. Rather, they were distributed throughout the lifespan of the collection. Each of the waiver forms authorizing the [REDACTED] disseminations did not articulate a specific finding on the purpose of the dissemination.

(U) NSA's Most Recent Practice of Disseminating U.S. Person Information

(TS//SI//NF) On [REDACTED] NSA advised the Office of Information Sharing Services that the chief of that office was the only NSA official authorized to approve the dissemination of any U.S. person identity derived from PR/TT FISA metadata and that the chief must make the required findings and document those findings prior to any such dissemination. On [REDACTED] in docket number PR/TT [REDACTED] the Court increased the numbers of individuals permitted to approve disseminations to include the Chief, Information Sharing Services, the SOO, the SID Director, the Deputy Director of NSA, and the Director of NSA. As indicated by the weekly dissemination reports filed with the Court, since [REDACTED] [REDACTED] NSA has not shared any information obtained or derived from the PR/TT collection outside NSA. All disseminations since that time were in accordance with the Court's Orders. Specifically, disseminations of U.S. person information were only made after the Chief, Information Sharing Services, the SOO, the SID Director, the Deputy Director of NSA, or I determined that the information to be

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disseminated was related to counterterrorism information and was necessary to understand the counterterrorism information or to assess its importance.

II. ~~(S)~~ FACTUAL DESCRIPTION OF THE ISSUES FIRST IDENTIFIED IN THE [REDACTED] NOTICE TO THE COURT

~~(TS//SI//NF)~~ In a [REDACTED] notice to the Court, the Government reported that NSA's [REDACTED] for the PR/TT collection

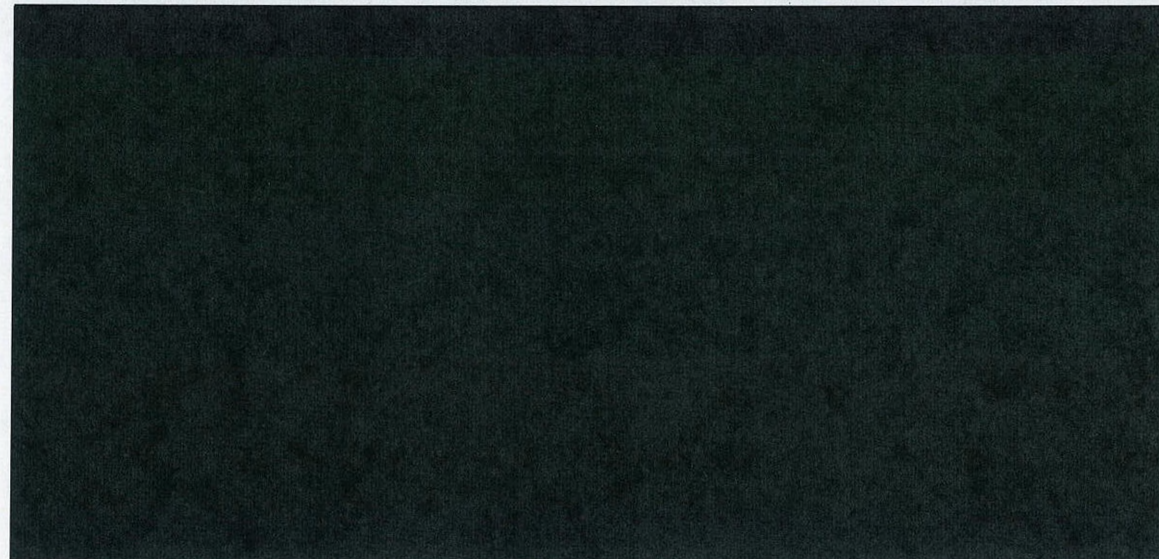
[REDACTED]

[REDACTED] In response to the issues identified in the [REDACTED] notice, NSA undertook to map and fully describe the scope of the PR/TT collection. The product of that undertaking is set forth below.

A. (U) MODERN ELECTRONIC COMMUNICATIONS TRANSMISSION

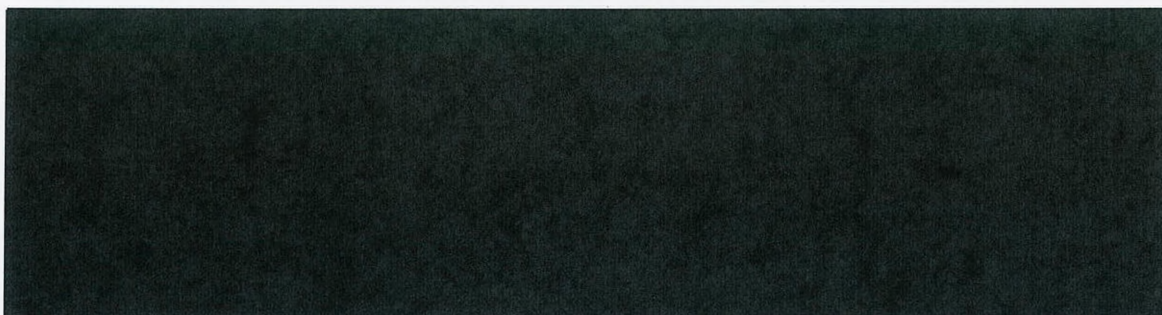
[REDACTED]

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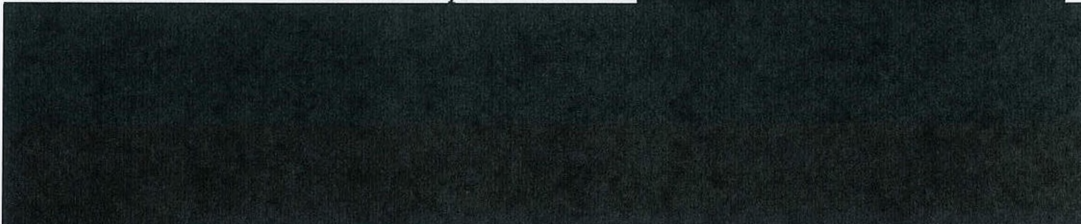


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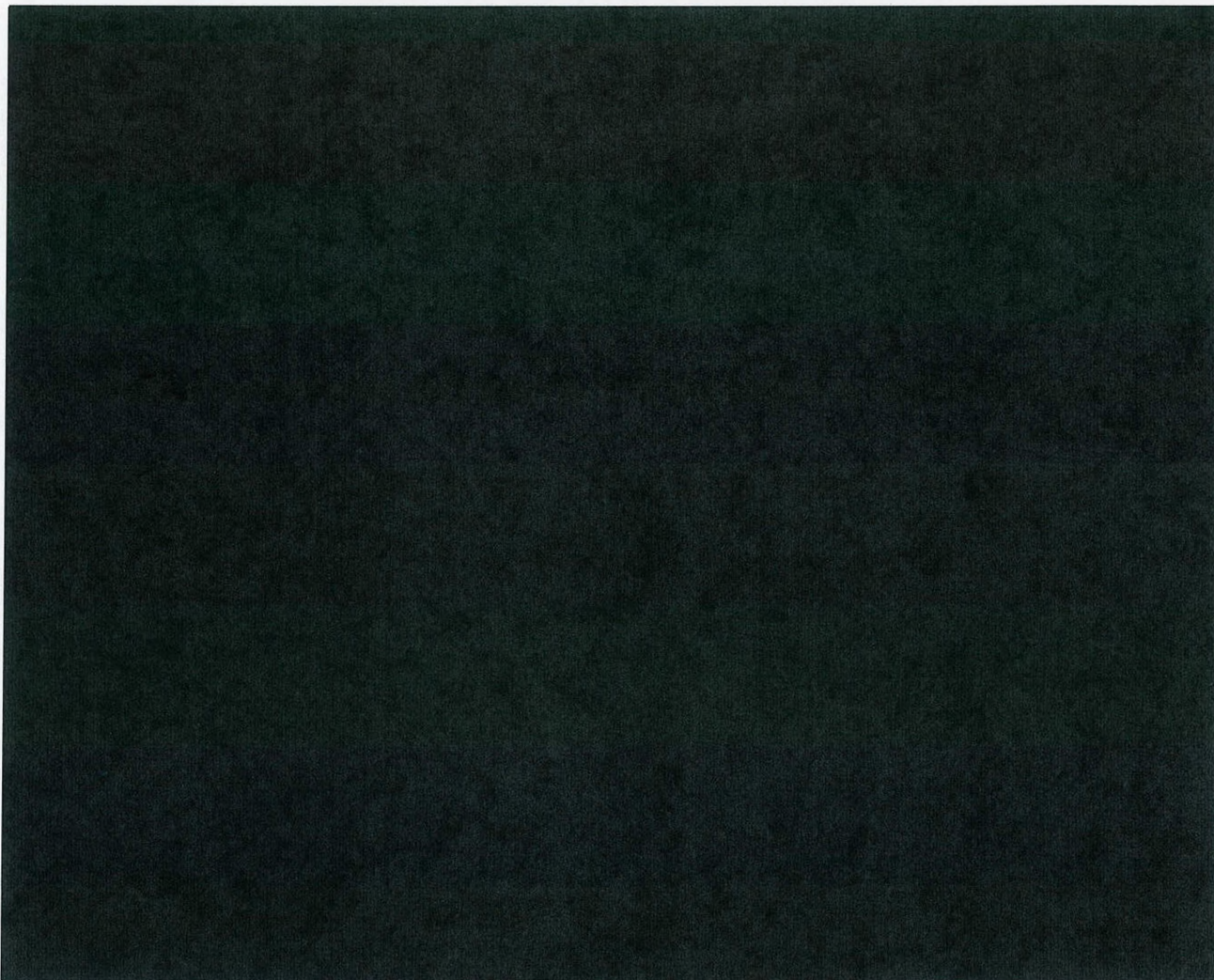
¹⁰ (~~TS//SI//NF~~) The Declaration of Lieutenant General Michael V. Hayden, U.S. Air Force, Director of the National Security Agency in docket number PR/TT [REDACTED] described terrorist use of webmail in relevant part as follows:



[REDACTED] " Declaration of Lieutenant General Michael V. Hayden, U.S. Air Force, Director of the National Security Agency, Docket Number PR/TT [REDACTED] at 2-3 ¶¶ 3-4 (citations omitted).

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B. ~~(TS//SI//NF)~~

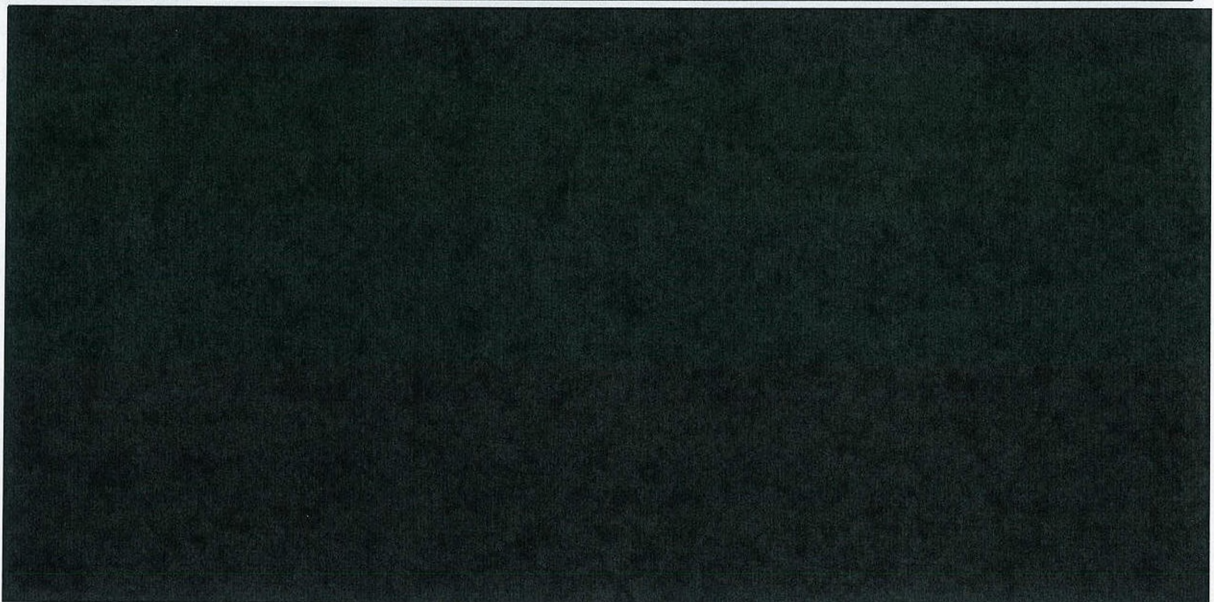
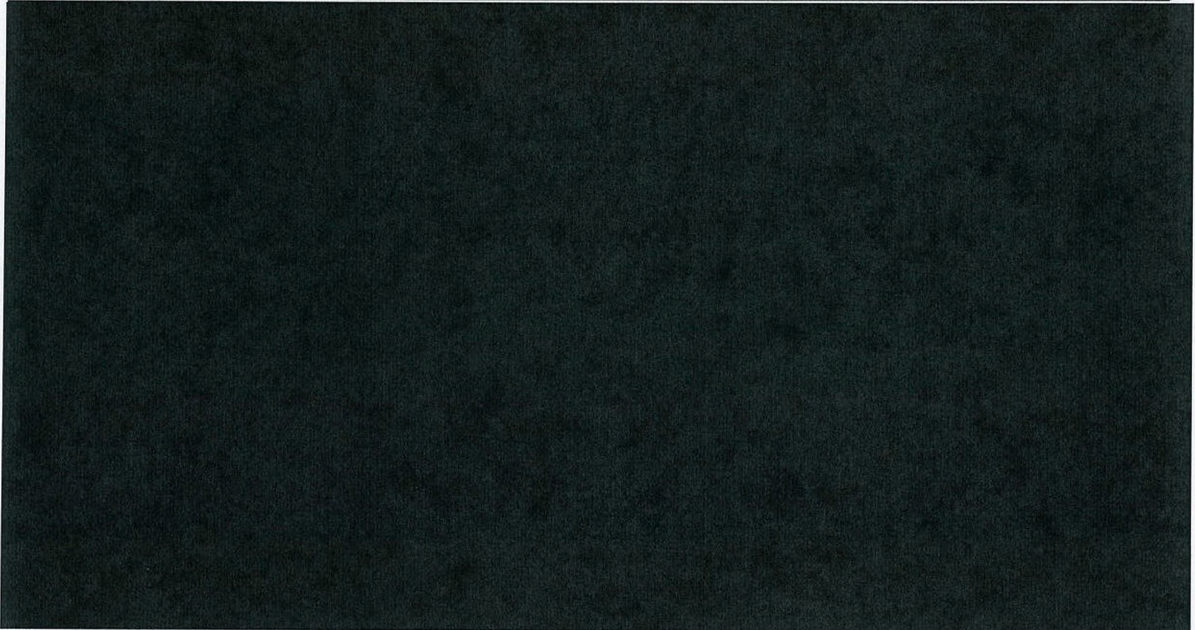
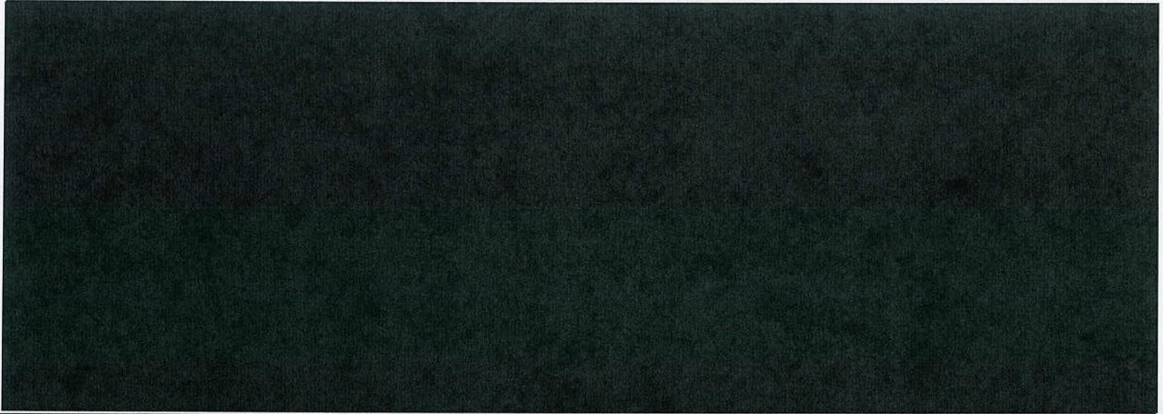


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[REDACTED]

C.

[REDACTED]

[REDACTED]

[REDACTED]

1.

[REDACTED]

[REDACTED]

12

[REDACTED]

13 (S//SI)

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

2.

[REDACTED]

[REDACTED]

14. ~~(TS//SI//NF)~~

[REDACTED]

15. ~~(S)~~

[REDACTED]

16. ~~(TS//SI//NF)~~

[REDACTED]

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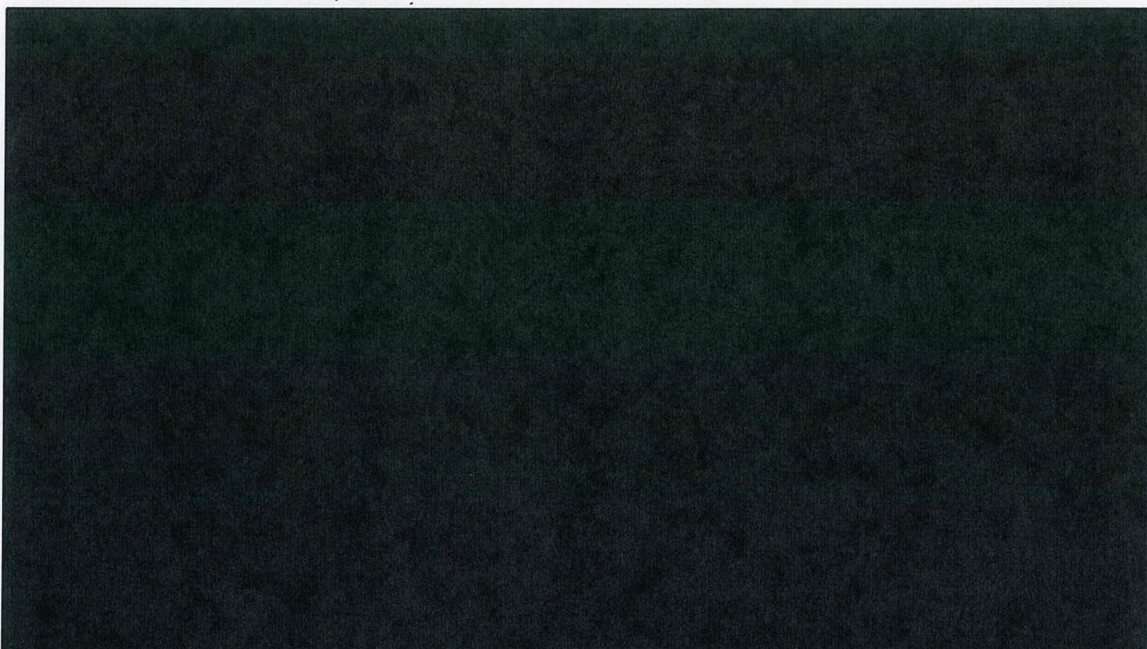
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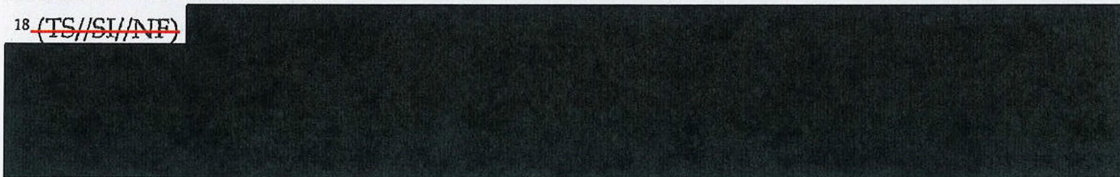


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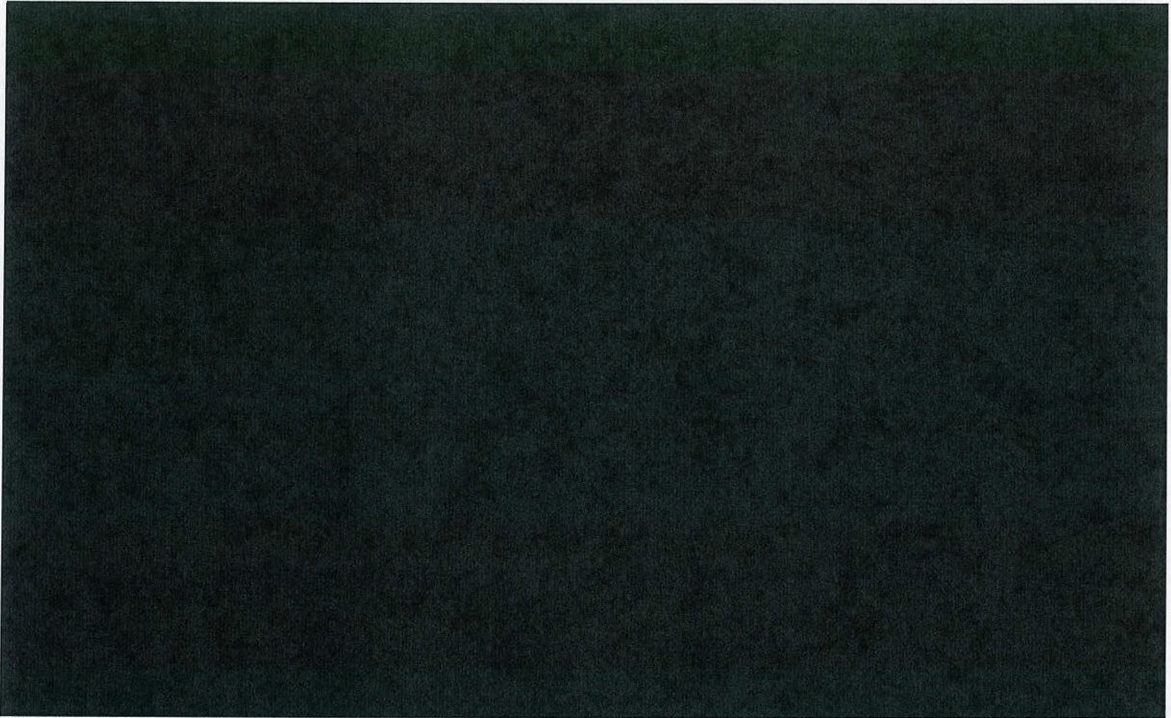


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(U) CONCLUSION

(~~TS//SI//NF~~) My overall assessment of the compliance problems that have come to light regarding NSA's implementation of the PR/TT FISA authority is that, [REDACTED] [REDACTED] there was a failure to translate the technical requirements [REDACTED] into accurate and precise technical descriptions for the Court of the manner in which NSA sought to achieve the operational objectives of the PR/TT metadata program. This assessment is based on the results of the end-to-end review of the PR/TT FISA program as well as discussions with the relevant personnel who were involved in the program's creation. As a consequence, I believe the stand-up of NSA's Office of the Director of Compliance in July 2009 will help NSA ensure that technical requirements are accurately portrayed to the Court and that

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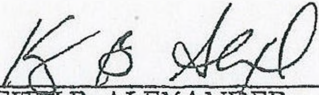
NSA accurately adheres to all resulting Court orders in NSA's technical implementation of the requested authority.

~~(TS//SI//NF)~~ With the remedial steps described above and the processes and procedures proposed in the application seeking re-initiation of the PR/TT FISA program, NSA has taken and proposes to take significant steps to reduce the possibility of future compliance issues. Further, in moving forward, lessons learned as a result of NSA's review of PR/TT FISA practices are being implemented under the guidance of NSA's Director of Compliance, and we will remain constantly vigilant in ensuring that we are in strict compliance with the Court's orders. Although no corrective measures are infallible, NSA has taken significant steps to reduce the possibility of any future compliance issues and to ensure that the mechanisms are in place to detect and respond quickly if a compliance incident were to occur should the Court authorize re-initiation of this vital program. In particular, NSA plans to ensure that there are no disconnects between descriptions to the Court regarding how the authority would be implemented; the technical systems that will perform the collection, nor the Court's orders that permit the collection.

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(U) I declare under penalty of perjury that the facts set forth above are true and correct.



KEITH B. ALEXANDER
Lieutenant General, U.S. Army
Director, National Security Agency

Executed this



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