

U.S. Department of Justice

U.S. FOREIGN INTELLIGENCE INVENTIONANCE COURT

National Security Division SURVEILLANCE COURT

2014 JUL 30 PM 4: 47.

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Washington, D.C. 20530

LEEANN FLYNN HALL CLERK OF COURT

July 30, 2014

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

Re:

(S)-Update Regarding Compliance Incidents

Reported in the December 2013, March 2014, and

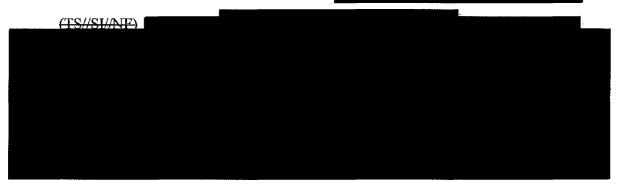
June 2014 Section 702 Quarterly Reports

Dear Judge Hogan:

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

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

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



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Classified by: Tashina Gauhar, Deputy Assistant

Attorney General, NSD, DOJ

Reason:

1.4(c)

Declassify on: 30 July 2039

 (S//NF)_	The June	2014 Quarte	erly Report	also identif	ied a simila	r issue with 1	espect to
(S//NF)				-			
(S//NF)							
¹ (S)							

justification was sufficient, that potential incident is closed. If, however, the pre-tasking reco was incomplete (a documentation error) or the pre-tasking checks were not properly conduct (a tasking error), the incident will be reported/documented to the Court.	
(S//NF)	
2. (S)	
(18//84/NF)	
(TS//SI/NF)	
² (S)	

	(S) Subsequent to the June 2014 Quarterly Report, NSA advised
3.	(U) Notification Delays
	(S) NSA's targeting procedures require NSA to report certain incidents to NSD and even if these incidents do not involve noncompliance with the targeting procedures. ically, NSA is required to terminate acquisition and notify NSD and ODNI if
informa Specifi Govern NSD as covered there w subject	(S) During the July 17, 2014, meeting with the Court, it was noted that there had been a cant improvement in the timeliness of NSA reporting of these incidents. The below ation responds to the Court's request for certain metrics regarding the notification delays. Ically, in the December 2013, March 2014, and June 2014 Quarterly Reports, the ment identified instances, respectively, in which NSA did not provide and ODNI the required notification within During the time periods d by the December 2013. March 2014, and June 2014 Section 702 Quarterly Reports, were approximately matters, respectively, reported to NSD that were to the reporting period. For the time periods covered by the December 2014, and June 2014 Section 702 Quarterly Reports, NSA exceeded the notification requirement in 42%, 17%, and 3% of those matters, respectively.
4.	(U) Unauthorized Access to Section 702-Acquired Data
had gai training matters	(S//NF) On June 17, 2014, in a notice filed with the Court, and in the June 2014 Quarterly, the Government advised the Court of an incident involving certain NSA personnel who ined access to unminimized Section 702-acquired information without the appropriate g. More specifically, NSA reported that on personnel had been an e-mail distribution list that regularly received unminimized Section 702-acquired
Quarterly example	or additional context, during the time periods covered by the December 2013, March 2014, and June 2014 y Reports, NSD and ODNI received incident reports, respectively. This means, for that of the matters reported to NSD and ODNI during the period of time covered by the June 2014 y Report, (80%) were properly reported within the required the

information. Some personnel had not received the appropriate training to permit access to unminimized Section 702 data. As of the June 2014 Quarterly Report, NSA advised that it was difficult to assess the scope of information provided to personnel given the passage of time and NSA also advised, however, that as of sall personnel were removed from the e-mail distribution list. NSA further advised that all personnel have been instructed to delete the relevant e-mails. Given the operational practices of NSA assessed that it is unlikely that personnel further disseminated any unminimized Section 702 data.
(S//NF)—Subsequent to the June 2014 Quarterly Report, and in response to questions from the Court, NSA advised that certain NSA offices supporting targets have an email distribution list for Section 702-trained personnel. NSA employees were inadvertently added to the distribution list in the above incident in approximately December 2012. NSA further advises that although Section 702-trained personnel who were on the distribution list recognized the information as Section 702-acquired, the e-mail distributions in this case did not specifically identify the collection as Section 702. Of the personnel NSA has identified non-Section 702-trained individuals who had access to the e-mail distribution list. All individuals have confirmed that all relevant e-mails have been deleted from their systems. As these individuals advised that they did not read any of the e-mail messages containing unminimized Section 702 information, NSA remains confident that no improper dissemination of the Section 702-acquired data resulted from this incident.
5. (S) Review of Section 702 Collection Without the Use of a Required Review Team
(S//NF) Section III.E.1. of the Minimization Procedures Used by the Federal Bureau of Investigation (FBI) in Connection with Acquisitions of Foreign Intelligence Information Pursuant to Section 702 of the Foreign Intelligence Surveillance Act of 1978, As Amended, requires that FBI "implement procedures that ensure that the target's attorney-client privilege is protected." Specifically, Section III.E.1.a. provides for "[e]stablishment of a review team of one or more monitors and/or reviewers, who have no role in the prosecution of the charged criminal matter, to initially access and review information or communications acquired from a
⁴ (S//NF) The distribution list was developed to encourage collaboration among NSA analysts working similar targets, and was not accessible to non-NSA personnel.
⁵ (U) In the June 2014 notice and Quarterly Report, the Government incorrectly identified this date as
6 (S) As noted above, NSA advised that it is difficult to assess the full scope of information provided to personnel including the total number of e-mails received, given the passage of time and

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⁷ (S)-A Section 702-training analyst recognized the issue in

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

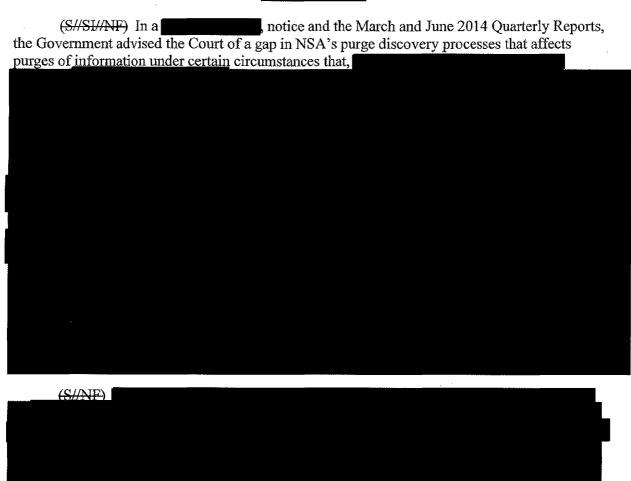
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additional training on Section 702 issues, and specifically address possible attorney-client issues. Finally, whenever any compliance incident arises, FBI ensures that the relevant personnel receive the necessary reminders. While there have been isolated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

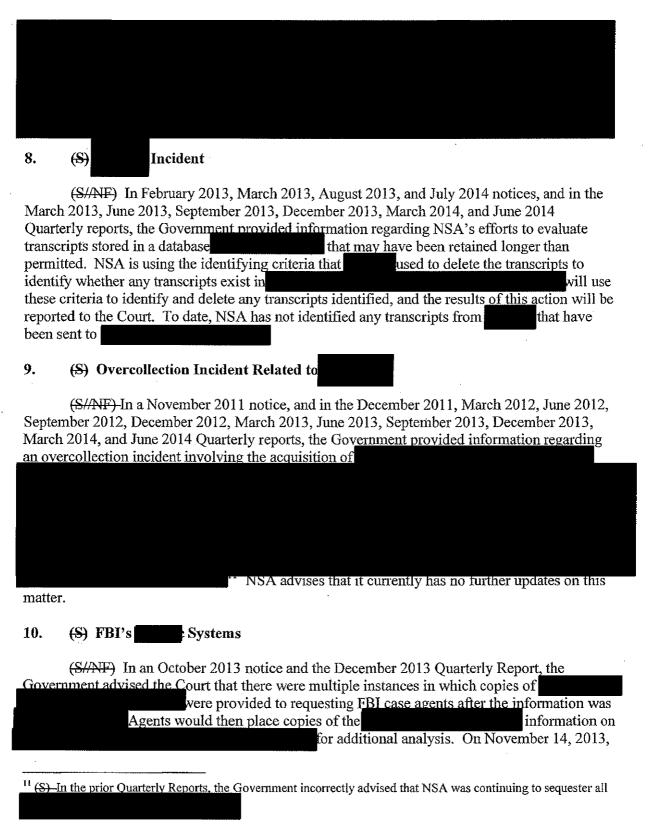
6. (U) FBI Incomplete Purges

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

7. (S) NSA Incomplete Purges of



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

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

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

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

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

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

Respectfully submitted,

Kevin J. O'Connor

Chief, Oversight Section

Office of Intelligence, NSD

U.S. Department of Justice