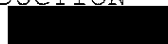



~~TOP SECRET//COMINT//NOFORN//MR~~

UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

IN RE APPLICATION OF THE FEDERAL
BUREAU OF INVESTIGATION FOR AN
ORDER REQUIRING THE PRODUCTION
OF TANGIBLE THINGS FROM 



Docket Number: BR:

08-08

PRIMARY ORDER

A verified application having been made by the Director of the Federal Bureau of Investigation (FBI) for an order pursuant to the Foreign Intelligence Surveillance Act of 1978 (the Act), Title 50, United States Code (U.S.C.), § 1861, as amended, requiring the production to the National Security Agency (NSA) of the tangible things described below, and full consideration having been given to the matters set forth therein, the Court

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

Derived from: Pleadings in the above-captioned docket
Declassify on: Determination of the President

finds that:

1. The Director of the FBI is authorized to make an application for an order requiring the production of any tangible things for an investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism, provided that such investigation of a United States person is not conducted solely on the basis of activities protected by the First Amendment to the Constitution of the United States. [50 U.S.C. § 1861(c)(1)]

2. The tangible things to be produced are all call detail records or "telephony metadata" created by [REDACTED]

[REDACTED] Telephony metadata includes comprehensive communications routing information, including but not limited to session identifying information (e.g., originating and terminating telephone number, International Mobile Subscriber Identity (IMSI) number, International Mobile station Equipment Identity (IMEI) number, etc.), trunk identifier, telephone calling card numbers, and time and duration of call. Telephony metadata does not include the substantive content of any communication, as defined by 18 U.S.C. § 2510(8), or the name,

address, or financial information of a subscriber or customer.¹

[50 U.S.C. § 1861(c)(2)(A)]

3. There are reasonable grounds to believe that the tangible things sought are relevant to authorized investigations (other than threat assessments) being conducted by the FBI under guidelines approved by the Attorney General under Executive Order 12333 to protect against international terrorism, which investigations are not being conducted solely upon the basis of activities protected by the First Amendment to the Constitution of the United States. [50 U.S.C. § 1861(c)(1)]

4. The tangible things sought could be obtained with a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation or with any other order issued by a court of the United States directing the production of records or tangible things. [50 U.S.C. § 1861(c)(2)(D)]

WHEREFORE, the Court finds that the application of the United States to obtain the tangible things, as described in the application, satisfies the requirements of the Act and, therefore,

IT IS HEREBY ORDERED, pursuant to the authority conferred on this Court by the Act, that the application is GRANTED, and

¹ The Court understands that the

it is

FURTHER ORDERED, as follows:

(1) The Custodians of Records of [REDACTED] shall produce to NSA upon service of the appropriate secondary order, and continue production on an ongoing daily basis thereafter for the duration of this order, unless otherwise ordered by the Court, an electronic copy of the following tangible things: all call detail records or "telephony metadata" created by such companies as described above;

(2) With respect to any information the FBI receives as a result of this Order (information that is passed or "tipped" to it by NSA²), the FBI shall follow as minimization procedures the procedures set forth in The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (October 31, 2003).

/

/

/

/

/

² The Court understands that NSA expects that it will continue to provide on average approximately three telephone identifiers per day to the FBI.

(3) With respect to the information that NSA receives as a result of this Order, NSA shall adhere to the following procedures:

A. The Director of NSA shall continue to maintain mandatory procedures to strictly control access to and use of the archived data collected pursuant to this Order. Any search or analysis of the data archive shall occur only after a particular known telephone identifier³ has been

/

/

/

/

/

/

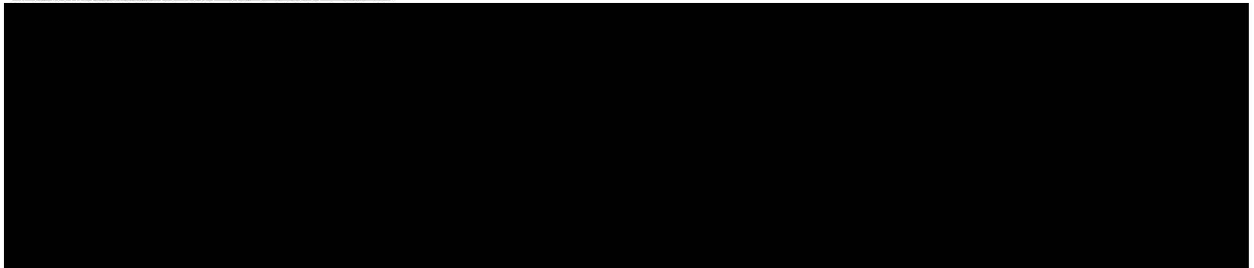
/

/

/

/

/



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

associated with

[REDACTED]

[REDACTED]

/

/

/

/

[REDACTED]

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

[REDACTED] More specifically, access to the archived data shall occur only when NSA has identified a known telephone identifier for which, based on the factual and practical considerations of everyday life on which reasonable and prudent persons act, there are facts giving rise to a reasonable, articulable suspicion that the telephone identifier is associated with [REDACTED]

[REDACTED]
[REDACTED] provided, however, that a telephone identifier believed to be used by a U.S. person shall not be regarded as associated with [REDACTED]

[REDACTED]

[REDACTED]

solely on the basis of activities that are protected by the First Amendment to the Constitution.

B. The metadata shall be stored and processed on a secure private network that NSA exclusively will operate.

C. Access to the metadata archive shall be accomplished through a software interface that will limit access to this data to authorized analysts.⁶ NSA's OGC shall monitor the designation of individuals with access to the archive. Access to the archive shall be controlled by user name and password. When the metadata archive is accessed, the user's login, Internet Protocol (IP) address, date and time, and retrieval request shall be automatically logged for auditing capability. NSA's Office of General Counsel (OGC) shall monitor the functioning of this automatic logging capability. Analysts shall be briefed by NSA's OGC concerning the authorization granted by this Order and the limited circumstances in which queries to the archive are permitted, as well as other procedures and

⁶ The Court understands that for purposes of analytical efficiency a copy of metadata obtained pursuant to the Court's Orders in this matter will be stored in the same database with data obtained pursuant to other NSA authorities and data provided to NSA from other sources. Access to such records shall be strictly limited in accordance with the procedures set forth in paragraphs A-G.

restrictions regarding the retrieval, storage, and dissemination of the archived data. In addition, NSA's OGC shall review and must approve proposed queries of archived metadata based on "seed" telephone identifiers reasonably believed to be used by U.S. persons before any query is conducted.

D. Although the data collected under this Order will necessarily be broad, the use of that information for analysis shall be strictly tailored to identifying terrorist communications and shall occur solely according to the procedures described in the application, including the minimization procedures designed to protect U.S. person information. Specifically, dissemination of U.S. person information shall follow the standard NSA minimization procedures found in the Attorney General-approved guidelines (USSID 18). Before information identifying a U.S. person may be disseminated outside of NSA, a judgment must be made that the identity of the U.S. person is necessary to understand the foreign intelligence information or to assess its importance. Prior to the dissemination of any U.S. person identifying information, the Chief of Information Sharing Services in the Signals Intelligence Directorate must determine that the

information identifying the U.S. person is in fact related to counterterrorism information and that it is necessary to understand the counterterrorism information or assess its importance. A record shall be made of every such determination.

E. Internal management control shall be maintained by requiring that queries of the archived data be approved by one of the following people: the Signals Intelligence Directorate Deputy Program Manager for Counterterrorism Special Projects Analysis and Production; the Chief or Deputy Chief, Homeland Security Analysis Center; or one of the twenty specially-authorized Homeland Mission Coordinators in the Analysis and Production Directorate of the Signals Intelligence Directorate. Telephone identifiers that are the subject of electronic surveillance authorized by the Foreign Intelligence Surveillance Court (FISC) based on the FISC's finding of probable cause to believe that they are used by agents of [REDACTED]

[REDACTED] including those used by U.S. persons, shall be deemed approved for metadata querying without approval of an NSA official. The preceding sentence shall not apply to the telephone

identifiers under surveillance pursuant to any certification of the Director of National Intelligence and the Attorney General pursuant to Section 105B of FISA, as added by the Protect America Act of 2007, or Section 702 of FISA, as added by the FISA Amendments Act of 2008. Nor shall it apply to telephone identifiers under surveillance pursuant to an Order of the FISC issued under Section 703 or Section 704 of FISA, as added by the FISA Amendments Act of 2008. At least once every sixty days, the Department of Justice shall review a sample of NSA's justifications for querying the archived data. In addition, at least twice every sixty days, NSA's OGC shall conduct random spot checks, consisting of an examination of a sample of call detail records obtained, to ensure that NSA is receiving only data as authorized by the Court and not receiving the substantive content of communications.

F. The metadata collected under this Order may be kept online (that is, accessible for queries by cleared analysts) for five years, at which time it shall be destroyed.

G. The Signals Intelligence Directorate Program Manager for Counterterrorism Special Projects; Chief and Deputy Chief, Homeland Security Analysis Center; and the

Homeland Mission Coordinators shall maintain appropriate management controls (e.g., records of all tasking decisions, audit and review procedures) for access to the archived data and shall use the Attorney General-approved guidelines (USSID 18) to minimize the information reported concerning U.S. persons.

H. At least once prior to the expiration of this Order, the NSA Inspector General, the NSA General Counsel, and the Signals Intelligence Directorate Oversight and Compliance Office shall review this program.

I. Within sixty days of the issuance of this Order, NSA will file a report with the Court describing the queries that have been made since the Application was granted. Additionally, any application to renew or reinstate the authority granted herein shall include a report describing: (i) the queries that have been made since the last report filed with the Court; (ii) the manner in which NSA applied the procedures set forth in subparagraph A above; and (iii) any proposed changes in the way in which the call detail records would be received from the carriers.

/

/

Signed 08-19-2008 P04:29 Eastern Time
Date Time

This authorization regarding [REDACTED]

[REDACTED] and unknown persons in the United States and
abroad affiliated with [REDACTED]

[REDACTED] and unknown persons in the United States
and abroad affiliated with [REDACTED]

[REDACTED] expires on 12th day of December, 2008,
at 5:00 p.m., Eastern Time.


JAMES B. ZAGEL

Judge, United States Foreign
Intelligence Surveillance Court