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OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC 20511

The Honorable Ron Wyden
United States Senate
Washington, DC 20510

JUN 27 2014

Dear Senator Wyden:

The attached information responds to a question you asked during the 5 June 2014 hearing of the Select Committee on Intelligence on the USA FREEDOM Act.

If you have any questions on this matter, please contact the Office of Legislative Affairs at (703) 275-2474.

Sincerely,

A handwritten signature in black ink, appearing to read "Deirdre M. Walsh", with a long horizontal flourish extending to the right.

Deirdre M. Walsh
Director of Legislative Affairs

Enclosure:
Response to Question from the 5 June 2014 Hearing

cc: The Honorable Dianne Feinstein, Chairman
The Honorable Saxby Chambliss, Vice Chairman

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WASHINGTON, DC 20511

During the June 5, 2014 hearing on the USA FREEDOM Act, you asked for the number of queries using U.S. person identifiers of communications collected under Section 702 of the Foreign Intelligence Surveillance Act (FISA). The queries in question are lawful, limited in scope, and subject to oversight as approved by the Foreign Intelligence Surveillance Court (FISC). Contrary to some claims, there is no loophole in the law, nor is the Intelligence Community conducting unlawful or “backdoor searches” of communications of U.S. persons.¹

It is important to accurately define at the outset the nature of the intelligence collection at issue. The Intelligence Community lawfully collects foreign intelligence information under Section 702 by targeting non-U.S. persons reasonably believed to be outside the U.S. at the time of collection. This collection is performed pursuant to targeting procedures determined by the FISC to be consistent with the Fourth Amendment to the United States Constitution. Moreover, non-U.S. persons overseas may be targeted for collection only where there are reasonable grounds to believe that those persons possess or are likely to possess, receive or communicate foreign intelligence within the scope of certifications approved by the FISC. Collection under Section 702 also requires adherence to the express statutory prohibition on “reverse targeting”; that is, the Intelligence Community cannot intentionally target a person reasonably believed to be located outside the U.S. when the purpose is to target a particular, known person reasonably believed to be in the U.S. Of course, the Intelligence Community cannot intentionally target a U.S. person under Section 702 under any circumstances. Thus, collection under section 702 is not bulk collection, but is targeted collection based on specific identifiers.

It is also important to understand what is meant by a Section 702 “query.” To “query” means to take a term, such as a name, phone number or email address, and use it to isolate communications with that term from a larger pool of data that an agency has already lawfully collected. Queries do not result in the additional collection of any information. Rather, they allow an agency to rapidly and efficiently locate foreign intelligence information, such as information potentially related to a terrorism plot against the United States, without having to sift through each and every communication that has been collected.

In accordance with minimization procedures found by the FISC to be consistent with the Fourth Amendment, NSA, FBI, and CIA are permitted, in certain defined circumstances, to query information that has been lawfully collected under Section 702 of FISA. Each agency’s FISC-approved 702 minimization procedures specify the circumstances under which individual U.S. person identifiers can be used to query information lawfully acquired under Section 702. More specifically:

- NSA’s minimization procedures under Section 702 permit queries using U.S. person identifiers only where there is a reasonable basis to expect the query will return foreign

¹ See also *United States v. Mohamud*, No. 3:10-CR-00475-KI-1 at *45 (D. Ore. June 24, 2014) (concluding that “subsequent querying of a § 702 collection, even if U.S. person identifiers are used, is not a separate search and does not make § 702 surveillance unreasonable under the Fourth Amendment.”)

intelligence. Moreover, NSA cannot use U.S. person identifiers to query communications obtained via NSA's upstream collection techniques.²

- CIA and FBI minimization procedures under Section 702 permit queries using U.S. person identifiers that are designed to find and extract foreign intelligence information, and FBI is also allowed to conduct such queries that are designed to find and extract evidence of a crime.

Queries are subject to oversight by the Department of Justice and the Office of Director of National Intelligence, and oversight reports are provided both to Congress and the FISC.

Each IC element has a different mission, which it carries out through different processes and technological systems. Each IC element has, therefore, implemented its FISA Section 702 program in a different way. As a result, it is difficult, if not impossible, to provide uniform metrics to compare query practices across agencies. Instead, a brief explanation of each IC element's querying practices is provided below.

NSA. In accordance with NSA's FISC-approved minimization procedures, NSA has developed separate procedures for, and has separate technical capabilities regarding, U.S. person queries of Section 702 content and U. S. person queries of Section 702 metadata collection.

In calendar year 2013, NSA approved 198 U.S. person identifiers for querying of the *content* of communications that NSA lawfully acquired under Section 702. The approved U.S. person identifiers may have been used to conduct multiple queries, and NSA does not track the actual number of content queries made.

In addition, in calendar year 2013, NSA conducted approximately 9,500 queries of 702-acquired *metadata* using U.S. person identifiers.³ Of this total number, approximately 36% were duplicative or recurring queries conducted at different times using the same identifiers, but counted as separate queries.

CIA. In calendar year 2013, CIA conducted fewer than 1900 queries of Section 702-acquired communications using specific U.S. person identifiers as query terms or other more general query terms if they are intended to return information about a particular U.S. person. Of that total number approximately 40% were conducted as a result of requests for counterterrorism-related information from other U.S. intelligence agencies. Approximately 27% of the total number are duplicative or recurring queries conducted at different times using the same identifiers but that CIA nonetheless counts as separate queries. CIA also uses U.S. person identifiers to conduct metadata-only queries against metadata derived from the FISA Section 702

² Upstream collection refers to court-authorized collection from the Internet backbone. CIA and FBI do not receive communications acquired through upstream collection.

³ The actual number of metadata queries may in fact be smaller because the methodology used to count was over-inclusive and, as a consequence, likely included some queries using non-U.S. person identifiers. Furthermore, unlike NSA's *content* queries, this number represents each instance a United States person selector or name is used to query metadata acquired pursuant to Section 702.

collection. However, the CIA does not track the number of metadata-only queries using U.S. person identifiers.

FBI. The FBI does not track how many queries it conducts using U.S. person identifiers. The FBI is responsible for identifying and countering threats to the homeland, such as terrorism plots and espionage, inside the U.S. Unlike other IC agencies, because of its domestic mission, the FBI routinely deals with information about U.S. persons and is expected to look for domestic connections to threats emanating from abroad, including threats involving Section 702 non-U.S. person targets. To fulfill its mission and avoid missing connections within the information lawfully in its possession, the FBI does not distinguish between U.S. and non-U.S. persons for purposes of querying Section 702 collection. It should be noted that the FBI does not receive all of NSA's Section 702 collection; rather, the FBI only requests and receives a small percentage of NSA's total Section 702 collection and only for those selectors in which the FBI has an investigative interest.

Moreover, because the FBI stores Section 702 collection in the same database as its "traditional" FISA collection, a query of "traditional" FISA collection will also query Section 702 collection. In addition, the FBI routinely conducts queries across its databases in an effort to locate relevant information that is already in its possession when it opens new national security investigations and assessments. Therefore, the FBI believes the number of queries is substantial. However, only FBI personnel trained in the Section 702 minimization procedures are able to view any Section 702 collection that is responsive to any query.

We hope this information is helpful. We would be happy to provide a classified briefing to describe classified aspects of the Government's use of these authorities.