

STATISTICAL TRANSPARENCY REPORT
REGARDING USE OF NATIONAL SECURITY AUTHORITIES
FOR CALENDAR YEAR 2016

April 2017

Introduction

In June 2014, the Director of National Intelligence (DNI) began releasing statistics relating to the use of critical national security authorities, including the Foreign Intelligence Surveillance Act (FISA), in an annual report called the *Statistical Transparency Report Regarding Use of National Security Authorities* (hereafter the *Annual Statistical Transparency Report*). Subsequent *Annual Statistical Transparency Reports* were released in 2015 and 2016.

On June 2, 2015, the USA FREEDOM Act was enacted, codifying a requirement to publicly report many of the statistics already reported in the *Annual Statistical Transparency Report*. The Act also expanded the scope of the information included in the reports by requiring the DNI to report information concerning United States person search terms and queries of certain FISA-acquired information, as well as specific statistics concerning information collected pursuant to call detail records. See 50 U.S.C. § 1873(b).

Today, consistent with the USA FREEDOM Act requirements to release certain statistics (codified in 50 U.S.C. § 1873(b)) and the Intelligence Community's (IC) *Principles of Intelligence Transparency*, we are releasing our **fourth** *Annual Statistical Transparency Report* presenting statistics on how often the government uses certain national security authorities.

This fourth report has been reformatted to provide a description of the statistics being reported. Related definitions and additional context to the statistics included in this report are provided throughout. The order in which the statistics are presented remains consistent with last year's report and follows the order set forth in 50 U.S.C. § 1873(b).

Additional public information on national security authorities is available at the Office of the Director of National Intelligence's (ODNI) website, www.dni.gov, and ODNI's public tumblr site, IContheRecord.tumblr.com.

FISA Title I -- Title III -- Title VII Sections 703 & 704

→ *All of these authorities require individual court orders based on probable cause.*

→ *Titles I and III apply to FISA activities directed against persons within the United States.*

→ *Sections 703 and 704 apply to FISA activities directed against U.S. persons outside the United States.*

Both FISA Title I and FISA Title III require a probable cause court order to target individuals within the United States regardless of U.S. person status. Under FISA, Title I permits electronic surveillance and Title III permits physical search in the United States of foreign powers or agents of a foreign power for the purpose of collecting foreign intelligence information. See 50 U.S.C. §§ 1804 and 1823. Title I (electronic surveillance) and Title III (physical search) are commonly referred to as “Traditional FISA.” Both require that the Foreign Intelligence Surveillance Court (FISC) make a probable cause finding, based upon a factual statement in the government’s application, that (i) the target is a foreign power or an agent of a foreign power, as defined by FISA and (ii) the facility being targeted for electronic surveillance is used by or about to be used, or the premises or property to be searched is or is about to be owned, used, possessed by, or is in transit to or from a foreign power or an agent of a foreign power. In addition to meeting the probable cause standard, the government’s application must meet the other requirements of FISA. See 50 U.S.C. §§ 1804(a) and 1823(a).

FISA Title VII Sections 703 and 704 similarly require a court order based on a finding of probable cause for the government to undertake FISA activities targeting U.S. persons located outside the United States. Section 703 applies when the government seeks to conduct electronic surveillance or to acquire stored electronic communications or stored electronic data, in a manner that otherwise requires an order pursuant to FISA, of a U.S. person who is reasonably believed to be located outside the United States. Section 704 applies when the government seeks to conduct collection overseas targeting a U.S. person reasonably believed to be located outside the United States under circumstances in which the U.S. person has a reasonable expectation of privacy and a warrant would be required if the acquisition were conducted in the United States. Both Sections 703 and 704 require that the FISC make a probable cause finding, based upon a factual statement in the government’s application, that

the target is a U.S. person reasonably believed to be (i) located outside the United States and (ii) a foreign power, agent of a foreign power, or officer or employee of a foreign power; additionally, the government's application must meet the other requirements of FISA. See 50 U.S.C. §§ 1881b(b) and 1881c(b).

- **U.S. Person.** As defined by Title I of FISA, a U.S. person is “a citizen of the United States or an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act), an unincorporated association with 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 [50 U.S.C. § 1801(a)(1), (2), or (3)].” 50 U.S.C. § 1801(i). Section 602 of the USA FREEDOM Act, however, uses a narrower definition. Since the broader Title I definition governs how U.S. person queries are conducted pursuant to the relevant minimization procedures, it will be used throughout this report.
- **Target.** Within the IC, the term “target” has multiple meanings. With respect to the statistics provided in this report, the term “target” is defined as the individual person, group, entity composed of multiple individuals, or foreign power that uses the selector such as a telephone number or email address.

The role of the FISC. If the FISC finds that the government's application meets the requirements of FISA and the Constitution, the FISC must issue an order approving the requested authority.

- **Types of Orders.** There are different types of orders that the FISC may issue in connection with FISA cases, for example: orders granting or modifying the government's authority to conduct intelligence collection; orders directing electronic communication service providers to provide any technical assistance necessary to implement the authorized intelligence collection; and supplemental orders and briefing orders requiring the government to take a particular action or provide the court with specific information.
- **Amendments and Renewals.** The FISC may amend an order one or more times after it has been issued. For example, an order may be amended to add a newly discovered account used by the target. This report does not count such amendments separately. The FISC may renew some orders multiple times during the calendar year. Each authority permitted under FISA has specific time limits for the FISA authority to continue (e.g., a Section 704 order against a U.S. person target may last no longer than 90 days

but FISA permits the order to be renewed, *see* 50 U.S.C. § 1881c(c)(4)). Each renewal requires a separate application submitted by the government to the FISC and a finding by the FISC that the application meets the requirements of FISA. Thus, unlike amendments, this report *does count each such renewal* as a separate order. These terms will be used consistently throughout this report.

FISA “Probable Cause” Court Orders and Targets

| <u>Titles I and III and Sections 703 and 704 of FISA</u> | CY2013 | CY2014 | CY2015 | CY2016 |
|--|--------|--------|--------|--------------|
| Total number of orders | 1,767 | 1,519 | 1,585 | 1,559 |
| Estimated* number of targets of such orders | 1,144 | 1,562 | 1,695 | 1,687 |

See 50 U.S.C. § 1873(b)(1).

*Throughout this report, when numbers are *estimated*, the estimate comports with the statutory requirements to provide a “good faith estimate” of a particular number.

How targets are counted. If the IC received authorization to conduct electronic surveillance and/or physical search against the same target in four separate applications, the IC would count one target, not four. Alternatively, if the IC received authorization to conduct electronic surveillance and/or physical search against four targets in the same application, the IC would count four targets. Duplicate targets across authorities are not counted.

FISA “Probable Cause” Targets – U.S. Persons*

| <u>Titles I and III and Sections 703 and 704 -- Targets</u> | CY2016 |
|--|--------------|
| Estimated number of targets who are <i>non</i> -U.S. persons | 1,351 |
| Estimated number of targets who are U.S. persons | 336 |
| Estimated percentage of targets who are U.S. persons | 19.9% |

*While not statutorily required to publicly provide these statistics, the IC is providing them consistent with the commitment to its *Principles of Intelligence Transparency*.

Title VII - FISA Amendment Act (FAA) Section 702

→ Commonly referred to as “Section 702.”

→ Requires individual targeting determinations that the target is (1) a non-United States person who (2) is reasonably believed to be located outside the United States and who (3) has or is expected to communicate or receive foreign intelligence information.

Section 702. Title VII of FISA includes Section 702, which permits the Attorney General and the DNI to jointly authorize the targeting of (i) non-U.S. persons reasonably believed to be (ii) located outside the United States to (iii) acquire foreign intelligence information. See 50 U.S.C. § 1881a. All three elements must be met. Additionally, Section 702 requires that the Attorney General, in consultation with the DNI, adopt targeting procedures and minimization procedures that they attest satisfy the statutory requirements and are consistent with the Fourth Amendment.

- **Section 702 Targets and “Tasking.”** Under Section 702, the government “targets” a particular non-U.S. person, group, or entity reasonably believed to be located outside the United States and who possesses, or who is likely to communicate or receive, foreign intelligence information, by directing an acquisition at – i.e., “tasking” – selectors (e.g., telephone numbers and email addresses) that are assessed to be used by such non-U.S. person, group, or entity, pursuant to targeting procedures approved by the FISC.

Before “tasking” a selector for collection under Section 702, the government must apply its targeting procedures to ensure that the IC appropriately tasks a selector used by a non-U.S. person who is reasonably believed to be located outside the United States and who will likely possess, communicate, or receive foreign intelligence information.

The FISC’s role. Under Section 702, the FISC determines whether *certifications* provided jointly by the Attorney General and the DNI appropriately meet all the requirements of Section 702. If the FISC determines that the government’s certifications and its targeting and minimization procedures meet the statutory requirements of Section 702 and are consistent with the Fourth Amendment, then the FISC issues an order and supporting statement approving the certifications. A recent FISC order and statement approving certifications was publicly released in April 2016 and posted on *IC on the Record*.

- **Certifications.** The certifications are jointly executed by the Attorney General and DNI and authorize the government to acquire foreign intelligence information under Section 702. Each annual certification application package must be submitted to the FISC for approval. The package includes the Attorney General and DNI's certifications, affidavits by certain heads of intelligence agencies, targeting procedures, and minimization procedures. A sample of a certification application package was publicly released on *IC on the Record*. The certifications identify categories of information to be collected, which must meet the statutory definition of foreign intelligence information, through the targeting of non-U.S. persons reasonably believed to be located outside the United States. The certifications have included information concerning international terrorism and other topics, such as the acquisition of information concerning weapons of mass destruction.
- **Targeting procedures.** The targeting procedures detail the steps that the government must take before tasking a selector, as well as verification steps after tasking, to ensure that the user of the tasked selector is being targeted appropriately – specifically, that the user is a non-U.S. person, located outside the United States, who is being tasked to acquire foreign intelligence information. The IC must make individual determinations that each tasked selector meets the requirements of the targeting procedures. As part of the certification package, the FISC reviews the sufficiency of the IC's targeting procedures, which includes assessing the IC's compliance with the procedures.
- **Minimization procedures.** The minimization procedures detail requirements the government must meet to use, retain, and disseminate Section 702 data, which include specific restrictions on how the IC handles non-publicly available U.S. person information acquired from Section 702 collection of non-U.S. person targets, consistent with the needs of the government to obtain, produce, and disseminate foreign intelligence information. As part of the certification package, the FISC reviews the sufficiency of the IC's minimization procedures, which includes assessing the IC's compliance with past procedures. The 2015 minimization procedures have been released on *IC on the Record*.

The IC's adherence to the targeting and minimization procedures is subject to robust internal agency oversight and to rigorous external oversight by the Department of Justice (DOJ), ODNI, Congress, and the FISC. Every identified incidence of non-compliance is reported to the FISC (through individual notices or in reports) and to Congress in semiannual reports. DOJ and ODNI also submit semiannual reports to Congress that assess the IC's overall compliance efforts. Past assessments have been publicly released.

Section 702 Orders

| <u>Section 702 of FISA</u> | CY2013 | CY2014 | CY2015 | CY2016 |
|-------------------------------|--------|--------|--------|--------|
| Total number of orders issued | 1 | 1 | 1 | 0 |

See 50 U.S.C. § 1873(b)(2).

Counting Section 702 orders. As explained above, the FISC may issue a single order to approve more than one Section 702 certification to acquire foreign intelligence information.

Note that, in its own transparency report, which is required pursuant to 50 U.S.C. § 1873(a), the Director of the Administrative Office of the United States Courts (AOUSC) counted each of the Section 702 certifications associated with the FISC's order. Because the number of the government's Section 702 certifications remains a classified fact, the government requested that the AOUSC redact the number of certifications from its transparency report prior to publicly releasing it.

In 2016, the government submitted a certification application to the FISC. Pursuant to 50 U.S.C. § 1881a(j)(2), the FISC extended its review of the 2016 certifications. The FISC may extend its review of the certifications "as necessary for good cause in a manner consistent with national security." See 50 U.S.C. § 1881a(j)(2). Thus, because the FISC did not complete its review of the 2016 certifications during calendar year 2016, the FISC did not issue an order concerning those certifications in calendar year 2016. The 2015 order remained in effect during the extension period.

Section 702 Targets*

| <u>Section 702 of FISA</u> | CY2013 | CY2014 | CY2015 | CY2016 |
|--|--------|--------|--------|---------|
| Estimated number of targets of such orders | 89,138 | 92,707 | 94,368 | 106,469 |

*While there is no statutory requirement to disclose this number, it is provided in this report to foster public understanding of the IC's use of the Section 702 collection authority. The IC is committed to sharing as much information as possible with the public without jeopardizing mission capabilities.

Estimating Section 702 targets. The number of 702 "targets," provided above, reflects an estimate of the number of non-United States persons who are the users of tasked selectors. This estimate is based on information readily available to the IC. Unless and until the IC has information that links multiple selectors to a single foreign intelligence target, each individual

selector is counted as a separate target for purposes of this report. On the other hand, where the IC is aware that multiple selectors are used by the same target, the IC counts the user of those selectors as a single target. This counting methodology reduces the risk that the IC might inadvertently understate the number of discrete persons targeted pursuant to Section 702.

Section 702 Search Terms Used to Query Content

| <u>Section 702 of FISA</u> | CY2015 | CY2016 |
|--|--------|--------------|
| Estimated number of search terms concerning a known U.S. person used to retrieve the unminimized contents of communications obtained under Section 702 (excluding search terms used to prevent the return of U.S. person information)* | 4,672 | 5,288 |

See 50 U.S.C. § 1873(b)(2)(A).

*Consistent with § 1873(d)(2)(A), this statistic does not include queries that are conducted by the Federal Bureau of Investigation (FBI).

The above is the good faith estimate of the number of *search terms* (e.g., email addresses and telephone numbers,) concerning known U.S. persons that the government used to query unminimized (i.e., raw) lawfully acquired Section 702 *content*.

Counting U.S. person search terms used to query Section 702 content. The National Security Agency (NSA) counts the number of U.S. person identifiers it uses to query the content of unminimized Section 702-acquired information. For example, if the NSA used U.S. person identifier “johndoe@XYXprovider” to query the content of Section 702-acquired information, the NSA would count it as one regardless of how many times the NSA used “johndoe@XYXprovider” to query its 702-acquired information. In calendar year 2016, the Central Intelligence Agency (CIA) adopted this same model for counting search terms. In prior calendar years, however, the CIA counted the total number of actual queries it conducted using U.S. person identifiers. For example, if the CIA used the identifier “johndoe@XYXprovider” 7 times, in prior years the CIA would count this as 7 search terms. Now, CIA the counts this as a single search term.

Section 702 Queries of Noncontents

| <u>Section 702 of FISA</u> | CY2013 | CY2014 | CY2015 | CY2016 |
|--|--------|--------|--------|---------------|
| Estimated number of queries concerning a known U.S. person of unminimized noncontents information obtained under Section 702 (excluding queries containing information used to prevent the return of U.S. person information)* | 9500 | 17,500 | 23,800 | 30,355 |

See 50 U.S.C. § 1873(b)(2)(B).

*Consistent with § 1873(d)(2)(A), this statistic does not include queries that are conducted by the FBI.

The above is a good faith estimate of the number of *queries* concerning a known U.S. person that the government conducted of unminimized (i.e., raw) lawfully acquired Section 702 *metadata*.

Counting *queries* using U.S. person identifiers of noncontents collected under Section 702.

This estimate represents the number of times a U.S. person identifier is used to query the noncontents (i.e., metadata) of unminimized Section 702-acquired information. For example, if the U.S. person identifier telephone number “111-111-2222” was used 15 times to query the noncontents of Section 702-acquired information, the number of queries counted would be 15.

As with last year’s transparency report, one IC element remains currently unable to provide the number of queries using U.S. person identifiers of unminimized Section 702 noncontent information. Under 50 U.S.C. § 1873(d)(3)(A), if the DNI concludes that this good-faith estimate cannot be determined accurately because not all of the relevant elements of the IC are able to provide this good faith estimate, then the DNI is required to (i) certify that conclusion in writing to the relevant Congressional committees; (ii) report the good faith estimate for those relevant elements able to provide such good faith estimate; (iii) explain when it is reasonably anticipated that such an estimate will be able to be determined fully and accurately; and (iv) make such certification publicly available on an Internet web site. Because one IC element remains unable to provide such information, the DNI made a certification, pursuant to § 1873(d)(3)(A) to the relevant Congressional committees.

As required by statute, this certification is being made publicly available as an attached appendix to this current report (see Appendix A).

Required Section 702 Query Reporting to the FISC

| <u>Section 702 of FISA</u> | CY2016 |
|--|----------|
| Per the FISC Memorandum Opinion and Order dated November 6, 2015: Each instance in which FBI personnel <i>received and reviewed</i> Section 702-acquired information that the FBI identified as concerning a U.S. person in response to a query that was designed to return evidence of a crime unrelated to foreign intelligence. | 1 |

On November 6, 2015, the FISC granted the government’s application for renewal of the 2015 certifications and, among other things, concluded that the FBI’s U.S. person querying provisions in its minimization procedures, “strike a reasonable balance between the privacy interests of the United States persons and persons in the United States, on the one hand, and the government’s national security interests, on the other.” *Memorandum Opinion and Order* dated November 6, 2015, at 44 (released on *IC on the Record* on April 19, 2016). The FISC further stated that the FBI conducting queries, “designed to return evidence of crimes unrelated to foreign intelligence does not preclude the Court from concluding that taken together, the targeting and minimization procedures submitted with the 2015 Certifications are consistent with the requirements of the Fourth Amendment.” *Id.*

Nevertheless, the FISC ordered the government to report in writing, “each instance after December 4, 2015, in which FBI personnel *receive and review* Section 702-acquired information that the FBI identifies as concerning a United States person in response to a query that is not designed to find and extract foreign intelligence information.” (Emphasis added). *Id.* at 44 and 78. The FISC directed that the report contain details of the query terms, the basis for conducting the query, the manner in which the query will be or has been used, and other details. *Id.* at 78. In keeping with the *IC’s Principles of Transparency*, the DNI declassified the number of each instance such queries occurred in calendar year 2016.

**ADDITIONAL SECTION 702 STATISTICS
PROVIDED IN
RESPONSE TO PCLOB RECOMMENDATION 9(5)**

In July 2014, the Privacy and Civil Liberties Oversight Board (PCLOB or Board) issued a report on Section 702 entitled, “Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act” (*PCLOB’s Section 702 Report*), which contained 10 recommendations. Recommendation 9 focused on “accountability and transparency,” noting that the government should implement measures, “to provide insight about the extent to which the NSA acquires and utilizes the communications involving U.S. persons and people located in the United States under the Section 702 program.” *PCLOB’s Section 702 Report* at 145-146. Specifically, the PCLOB recommended that “the NSA should implement processes to annually count [...] (5) the number of instances in which the NSA disseminates non-public information about U.S. persons, specifically distinguishing disseminations that includes names, titles, or other identifiers potentially associated with individuals.” *Id.* at 146. This recommendation is commonly referred to as Recommendation 9(5). In response to Recommendation 9(5), NSA previously publicly provided (in the *Annual Statistical Transparency Report* for calendar year 2015) and continues to provide the following additional information regarding the dissemination of Section 702 intelligence reports that contain U.S. person information.

NSA has been providing similar information to Congress per FISA reporting requirements. For example, FISA Section 702(l)(3) requires that NSA annually submit a report to applicable Congressional committees regarding certain numbers pertaining to the acquisition of Section 702-acquired information, including the number of “disseminated intelligence reports containing a reference to a United States person identity.” *See* 50 U.S.C. § 1881(l)(3)(A)(i). Additionally, NSA provides this number to Congress as part of Attorney General and Director of National Intelligence’s joint assessment of compliance. *See* 50 U.S.C. § 1881(l)(1).

Prior to the PCLOB issuing its *Section 702 Report*, NSA’s Director of Civil Liberties and Privacy Office published *NSA’s Implementation of Foreign Intelligence Surveillance Act Section 702*,” on April 16, 2014, (hereinafter “NSA DCLPO Report”), in which it explained NSA’s dissemination processes. *NSA DCLPO Report* at 7-8. NSA “only generates classified intelligence reports when the information meets a specific intelligence requirement, regardless of whether the proposed report contains U.S. person information.” *NSA DCLPO Report* at 7.

- **Dissemination.** In the most basic sense, dissemination refers to the sharing of minimized information. As it pertains to FISA (including Section 702), if an agency (in this instance NSA) lawfully collects information pursuant to FISA and wants to share (i.e., disseminate) that information, the agency must first apply its minimization procedures to that information.

Section 702 only permits the targeting of non-U.S. persons reasonably believed to be located outside the United States to acquire foreign intelligence information. Such targets, however, may communicate information to, from, or about U.S. persons. NSA minimization procedures (publicly released on August 11, 2016) permit the NSA to disseminate U.S. person information if the NSA masks the information that could identify the U.S. person. The minimization procedures permit NSA to disseminate the U.S. person identity only if doing so meets one of the specified reasons listed in NSA's minimization procedures, including that the U.S. person consented to the dissemination, the U.S. person information was already publicly available, the U.S. person identity was necessary to understand foreign intelligence information, or the communication contained evidence of a crime and is being disseminated to law enforcement authorities. Even if one of these conditions applies, as a matter of policy, NSA may still mask the U.S. person information and will include no more than the minimum amount of U.S. person information necessary to understand the foreign intelligence or to describe the crime or threat. *Id.* In certain instances, however, NSA makes a determination prior to releasing its original classified report that the U.S. person's identity is appropriate to disseminate in the first instance using the same standards discussed above.

- **Masked U.S. Person Information.** Information about a U.S. person is masked when the identifying information about the person is not included in a report. For example, instead of reporting that Section 702-acquired information revealed that non-U.S. person "Bad Guy" communicated with U.S. person "John Doe" (i.e., the actual name of the U.S. person), the report would mask "John Doe's" identity, and would state that "Bad Guy" communicated with "an identified U.S. person," "a named U.S. person," or "a U.S. person."

Recipients of NSA's classified reports, such as other Federal agencies, may request that NSA provide the true identity of a masked U.S. person referenced in an intelligence report. The requested identity information is released only if the requesting recipient has a legitimate "need to know" the identity of the U.S. person and has the appropriate security clearances, and if the dissemination of the U.S. person's identity would be consistent with NSA's minimization procedures (e.g., the identity is necessary to understand foreign intelligence information or assess its importance). Furthermore, per NSA policy, NSA is allowed to unmask the identity for

the specific requesting recipient only where specific additional controls are in place to preclude its further dissemination and additional approval has been provided by a designated NSA official.

As part of their regular oversight reviews, DOJ and ODNI review disseminations of information about U.S. persons that NSA obtained pursuant to Section 702 to ensure that the disseminations were performed in compliance with the minimization procedures.

| <u>Section 702 – U.S. person (USP) information disseminated by NSA</u> | CY2016 |
|---|---------------|
| Total number of NSA disseminated §702 Reports containing USP identities | 3,914 |
| Of those NSA disseminated §702 Reports containing USP identities (from the first row in this chart), the USP identity was originally <i>masked</i> in this many reports | 2,964* |
| Of those NSA disseminated §702 Reports containing USP identities (from the first row in this chart), the USP identity was originally <i>revealed</i> in this many reports | 1,200* |
| Of those NSA disseminated §702 Reports containing USP identities where the USP identities was originally masked (from the second row in this chart), the number of USP identities that NSA later released in response to specific requests to unmask a USP identity** | 1,934 |

*A single report may contain both masked and unmasked U.S. person identities.

**For this statistic, last year’s Annual Statistical Transparency Report provided the number of approved *requests* (i.e., 654) for unmasking of U.S. person identities, rather than the number of U.S. person identities that were released. A single request may contain multiple U.S. person identities. This year’s report provides the number of U.S. person identities referred to by name or title released in response to specific requests to unmask those identities. The number of U.S. person identities that NSA released during calendar year 2015 in response to specific requests to unmask an identity was 2,232, which was the number that should have been reported in last year’s report.

FISA Title IV – USE of PEN REGISTER and TRAP and TRACE (PR/TT) DEVICES

→ Commonly referred to as the “PR/TT” provision.

→ Bulk collection is prohibited.

→ Requires individual FISC order to use PR/TT device to capture dialing, routing, addressing, or signaling (DRAS) information.

→ Government request to use a PR/TT device on U.S. person target must be based on an investigation to protect against terrorism or clandestine intelligence activities and that investigation must not be based solely on the basis of activities protected by the First Amendment to the Constitution.

Pen Register/Trap and Trace Authority. Title IV of FISA authorizes the use of pen register and trap and trace (PR/TT) devices for foreign intelligence purposes. Title IV authorizes the government to use a PR/TT device to seek and capture dialing, routing, addressing or signaling (DRAS) information. The government may submit an application to the FISC for an order approving use of a PR/TT device (i.e., PR/TT order) for (i) “any investigation to obtain foreign intelligence information not concerning a United States person or” (ii) “to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a U.S. person is not conducted solely upon the basis of activities protected by the First Amendment to the Constitution.” 50 U.S.C. § 1842(a). If the FISC finds that the government’s application sufficiently meets the requirements of FISA, the FISC must issue an order for the installation and use of a PR/TT device.

PR/TT Statistics

| <u>Title IV of FISA</u> <i>PR/TT FISA</i> | CY2013 | CY2014 | CY2015 | CY2016 |
|---|--------|--------|-----------|----------------|
| Total number of orders | 131 | 135 | 90 | 60 |
| Estimated number of targets of such orders | 319 | 516 | 456 | 41 |
| Estimated number of unique identifiers used to communicate information collected pursuant to such orders* | - | - | 134,987** | 125,378 |

See 50 U.S.C. §§ 1873(b)(3), 1873(b)(3)(A), and 1873(b)(3)(B).

*Pursuant to §1873(d)(2)(B), this statistic does not apply to orders resulting in the acquisition of information by the FBI that does not include electronic mail addresses or telephone numbers.

**This number represents information the government received from provider(s) electronically for the entire 2015 calendar year. The government does not have a process for capturing unique identifiers received by other means (such as hard-copy or portable media).

Counting orders. Similar to how orders were counted for Titles I and III and Sections 703 and 704, this report only counts the orders *granting authority to conduct intelligence collection* -- the order for the installation and use of a PR/TT device. Thus, renewal orders are counted as a separate order; modification orders and amendments are not counted.

Estimating the number of targets. The government's methodology for counting PR/TT targets is similar to the methodology described above for counting targets of electronic surveillance and/or physical search. If the IC received authorization for the installation and use of a PR/TT device against the same target in four separate applications, the IC would count one target, not four. Alternatively, if the IC received authorization for the installation and use of a PR/TT device against four targets in the same application, the IC would count four targets.

Estimating the number of unique identifiers. This statistic counts (1) the targeted identifiers and (2) the non-targeted identifiers (e.g., telephone numbers and e-mail addresses) that were in contact with the targeted identifiers. Specifically, the House Report on the USA FREEDOM Act states that "[t]he phrase 'unique identifiers used to communicate information collected pursuant to such orders' means the total number of, for example, email addresses or phone numbers that have been collected as a result of these particular types of FISA orders--not just

the number of target email addresses or phone numbers." [H.R. Rept. 114-109 Part I, p. 26], with certain exceptions noted.

FISA PR/TT Targets – U.S. Persons*

| <u>PR/TT Targets</u> | CY2016 |
|--|--------------|
| Estimated number of targets who are <i>non</i> -U.S. persons | 23 |
| Estimated number of targets who are U.S. persons | 18 |
| Estimated percentage of targets who are U.S. persons | 43.9% |

*While not statutorily required to publicly provide these statistics, the IC is providing them consistent with the *Principles of Intelligence Transparency*.

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FISA Title V – BUSINESS RECORDS

→ Commonly referred to as “Business Records” provision.

→ Bulk collection is prohibited.

→ Call Detail Records (CDR) may be obtained from a telephone company if the FISC issues an individual court order for target’s records.

→ Request for records in an investigation of a U.S. person must be based on an investigation to protect against terrorism or clandestine intelligence activities and provided that the investigation is not conducted solely upon activities protected by the First Amendment to the Constitution.

Business Records FISA. Under FISA, Title V authorizes the government to submit an application for an order requiring the production of any tangible things for (i) “an investigation to obtain foreign intelligence information not concerning a U.S. person or” (ii) “to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a U.S. person is not conducted solely upon the basis of activities protected by the First Amendment to the Constitution.” 50 U.S.C. § 1861. Title V is commonly referred to as the “Business Records” provision of FISA.

In June 2015, the USA FREEDOM Act was signed into law and, among other things, amended Title V, including prohibiting bulk collection. See 50 U.S.C. §§ 1861(b), 1861(k)(4). The DNI is required to report various statistics about two Title V provisions – traditional business records and call detail records (discussed further below).

On November 28, 2015, in compliance with amendments enacted by the USA FREEDOM Act, the IC terminated collection of bulk telephony metadata under Title V of the FISA (the “Section 215 Program”). Solely due to legal obligations to preserve records in certain pending civil litigation, including *First Unitarian Church of Los Angeles, et al. v. National Security Agency, et al.*, No. C 13-03287-JSW (N.D. Cal.) and *Jewel, et al. v. National Security Agency, et al.*, No. C 08-04373-JSW (N.D. Cal.), the IC continues to preserve previously collected bulk telephony metadata. Under the terms of a FISC order dated November 24, 2015, the bulk telephony metadata cannot be used or accessed for any purpose other than compliance with preservation obligations. Once the government’s preservation obligations are lifted, the government is

required to promptly destroy all bulk metadata produced by telecommunications providers under the Section 215 Program.

As noted in last year’s *Annual Statistical Transparency Report*, on November 30, 2015, the IC implemented certain provisions of the USA FREEDOM Act, including the call detail records provision and the requirement to use a specific selection term. Accordingly, only one month’s worth of data for calendar year 2015 was available with respect to those provisions. Any statistical information relating to a particular FISA authority for a particular month remains classified. Therefore, the Title V data specifically associated with December 2015 was only released in a classified annex provided to Congress as part of the report for CY2015. For this CY 2016 report, statistical information was collected for an entire year under the USA FREEDOM Act Title V provisions. As a result, those statistics are included in this report.

Statistics related to *traditional business records* under Title V Section 501(b)(2)(B) are provided first pursuant to 50 U.S.C. § 1873(b)(4). Statistics related to *call detail records* under Title V Section 501(b)(2)(C) are provided second pursuant to 50 U.S.C. § 1873(b)(5).

“Traditional” Business Records – Section 501(b)(2)(B)

Business Record (BR) requests for tangible things include books, records, papers, documents, and other items pursuant to 50 U.S.C. §1861(b)(2)(B), also referred to as Section 501(b)(2)(B) . These are commonly referred to as “Traditional” Business Records.

“Traditional” Business Records Statistics

| Business Records “BR” – Section 501(b)(2)(B) | CY2016 |
|--|---------------|
| Total number of orders issued pursuant to applications under Section 501(b)(2)(B) | 84 |
| Estimated number of targets of such orders | 88 |
| Estimated number of unique identifiers used to communicate information collected pursuant to such orders | 81,035 |

See 50 U.S.C. §§ 1873(b)(4), 1873(b)(4)(A), and 1873(b)(4)(B).

Estimating the number of unique identifiers. This is an estimate of the number of (1) targeted identifiers (e.g., telephone numbers and email addresses) and (2) non-targeted identifiers that were in contact with the targeted identifiers. This metric represents unique identifiers received

electronically from the provider(s). The government does not have a process for capturing unique identifiers received by other means (i.e., hard-copy or portable media).

Explaining how we count BR statistics. As an example of the government’s methodology, assume that in 2016, the government submitted a BR request targeting “John Doe” with email addresses john.doe@serviceproviderX, john.doe@serviceproviderY, and john.doe@serviceproviderZ. The FISC found that the application met the requirements of Title V and issued orders granting the application and directing service providers X, Y, and Z to produce business records pursuant to Section 501(b)(2)(B). Provider X returned 10 non-targeted email addresses that were in contact with the target; provider Y returned 10 non-targeted email addresses that were in contact with the target; and provider Z returned 10 non-targeted email addresses that were in contact with the target. Based on this scenario, we would report the following statistics: A) one order by the FISC for the production of tangible things, B) one target of said orders, and C) 33 unique identifiers, representing three targeted email addresses plus 30 non-targeted email addresses.

Call Detail Records – Section 501(b)(2)(C)

Call Detail Records (CDR) – commonly referred to as “call event metadata” – may be obtained from telecommunications providers pursuant to 50 U.S.C. §1861(b)(2)(C). A CDR is defined as session identifying information (including an originating or terminating telephone number, an International Mobile Subscriber Identity (IMSI) number, or an International Mobile Station Equipment Identity (IMEI) number), a telephone calling card number, or the time or duration of a call. *See* 50 U.S.C. §1861(k)(3)(A). CDRs do not include the content of any communication, the name, address, or financial information of a subscriber or customer, or cell site location or global positioning system information. *See* 50 U.S.C. §1861(k)(3)(B). CDRs are stored and queried by the service providers. *See* 50 U.S.C. §1861(c)(2).

Call Detail Record (CDR) Statistics

| Call Detail Records “CDR” – Section 501(b)(2)(C) | CY2016 |
|---|-----------|
| Total number of orders issued pursuant to applications under Section 501(b)(2)(C) | 40 |
| Estimated number of targets of such orders | 42 |

See 50 U.S.C. §§ 1873(b)(5) and 1873(b)(5)(A).

Estimating the number of targets of CDR orders. A “target” is the person using the selector. For example, if a target uses four selectors that have been approved, the number counted for purposes of this report would be one target, not four. Alternatively, if two targets are using one selector that has been approved, the number counted would be two targets.

The estimated number of Call Detail Records received from providers. This metric represents the number of *records received* from the provider(s) and stored in NSA repositories (records that fail at any of a variety of validation steps are not included in this number). CDRs covered by § 501(b)(2)(C) include call detail records created before, on, or after the date of the application relating to an authorized investigation. While the USA FREEDOM Act directs the government to provide a good faith estimate of “the number of unique identifiers used to communicate information collected pursuant to” orders issued in response to CDR applications (see § 1873(b)(5)(B)), the statistic below does *not* reflect the number of unique identifiers contained within the call detail records received from the providers. As of the date of this report, the government does not have the technical ability to isolate the number of unique identifiers within records received from the providers. As explained in the 2016 NSA’s public report on the USA FREEDOM Act, the metric provided is over-inclusive because the government counts each record *separately even if the government receives the same record multiple times* (whether from one provider or multiple providers). Additionally, this metric includes duplicates of unique identifiers – i.e., because the government lacks the technical ability to isolate unique identifiers, the statistic counts the number of records even if unique identifiers are repeated. This statistic includes records that were received from the providers in CY2016 for all orders active for any portion of the year, which includes orders that the FISC approved in 2015.

Call Detail Record (CDR) Statistics

| Call Detail Records “CDR” – Section 501(b)(2)(C) | CY2016 |
|--|--------------------|
| Estimated number of call detail records received from providers and stored in NSA repositories | 151,230,968 |

As an example, assume an NSA intelligence analyst learns that phone number (202) 555-1234 is being used by a suspected international terrorist. This is the “specific selection term” or “selector” that will be submitted to the FISC (or the Attorney General in an emergency) for approval using the “reasonable articulable suspicion” (RAS) standard. Assume that one provider (provider X) submits to NSA a record showing (202) 555-1234 had called (301) 555-4321 on May 1, 2016. This is the “first hop” and would count as one record. If the provider submits records showing additional calls between those same telephone numbers, each would count as an

additional record. Thus, if over the course of 2016, (202) 555-1234 was in contact with (301) 555-4321 once each day, then that would count as 365 records obtained from provider X. If another provider (provider Y) also submits records showing direct contact between those two telephone numbers (assume the same number of contacts), then those would add to the count.

In turn, assume that NSA submits the “first-hop” number above – (301) 555-4321- to the providers, and finds that it was used to call (410) 555-5678. This is the “second-hop” result. Each contact between the first-hop and second-hop numbers would count as a separate record, as would each such contact submitted by other providers. More information on how NSA implements this authority can be found in the DCLPO report.

Call Detail Record (CDR) Statistics

| Call Detail Records “CDR” – Section 501(b)(2)(C) | CY2016 |
|--|---------------|
| Estimated number of search terms that included information concerning a U.S. person that were used to query any database of call detail records obtained through the use of such orders* | 22,360 |

See 50 U.S.C. § 1873(b)(5)(C).

*Consistent with § 1873(d)(2)(A), this statistic does not include queries that are conducted by the FBI.

The number of search terms associated with a U.S. person used to query the CDR data. Each unique query is counted only once. The same term queried 10 times, still counts as one search term. Similarly, a single query with 20 terms counts as 20.

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NATIONAL SECURITY LETTERS (NSLs)

→ Not authorized by FISA but by other statutes.

→ Bulk collection is prohibited, however, by the USA FREEDOM Act.

→ FBI may only use NSLs if the information sought is relevant to international counterterrorism or counterintelligence investigation.

National Security Letters. In addition to statistics relating to FISA authorities, we are reporting information on the government's use of National Security Letters (NSLs). The FBI is statutorily authorized to issue NSLs for specific records (as specified below) only if the information being sought is relevant to a national security investigation. NSLs may be issued for four commonly used types of records:

- 1) telephone subscriber information, toll records, and other electronic communication transactional records, see 18 U.S.C. § 2709;
- 2) consumer-identifying information possessed by consumer reporting agencies (names, addresses, places of employment, institutions at which a consumer has maintained an account), see 15 U.S.C. § 1681u;
- 3) full credit reports, see 15 U.S.C. § 1681v (only for counterterrorism, not for counterintelligence investigations); and
- 4) financial records, see 12 U.S.C. § 3414.

Counting NSLs. Today we are reporting (1) the total number of NSLs *issued* for all persons, and (2) the total number of requests for information (ROI) contained within those NSLs. When a single NSL contains multiple requests for information, each is considered a "request" and each request must be relevant to the same pending investigation. For example, if the government issued one NSL seeking subscriber information from one provider and that NSL identified three e-mail addresses for the provider to return records, this would count as one NSL issued and three ROIs.

- **The Department of Justice's Report on NSLs.** In April 2017, the Department of Justice released its *Annual Foreign Intelligence Surveillance Act Report* to Congress. That report, which is available online, reports on the *number of requests* made for certain

information concerning different U.S. persons pursuant to NSL authorities during calendar year 2016. The Department of Justice’s report provides the number of individuals subject to an NSL whereas the ODNI’s report provides the number of NSLs issued. Because one person may be subject to more than one NSL in an annual period, the number of NSLs issued and the number of persons subject to an NSL differs.

Why we report the number of NSL requests instead of the number of NSL targets. We are reporting the annual number of requests for multiple reasons. First, the FBI’s systems are configured to comply with Congressional reporting requirements, which do not require the FBI to track the number of individuals or organizations that are the subject of an NSL. Even if the FBI systems were configured differently, it would still be difficult to identify the number of specific individuals or organizations that are the subjects of NSLs. One reason for this is that the subscriber information returned to the FBI in response to an NSL may identify, for example, one subscriber for three accounts or it may identify different subscribers for each account. In some cases this occurs because the identification information provided by the subscriber to the provider may not be true. For example, a subscriber may use a fictitious name or alias when creating the account. Thus, in many instances, the FBI never identifies the actual subscriber of a facility. In other cases, this occurs because individual subscribers may identify themselves differently for each account (e.g., inclusion of middle name, middle initial, etc.) when creating an account.

We also note that the actual number of individuals or organizations that are the subject of an NSL is different than the number of NSL requests. The FBI often issues NSLs under different legal authorities, e.g., 12 U.S.C. § 3414(a)(5), 15 U.S.C. §§ 1681u(a) and (b), 15 U.S.C. § 1681v, and 18 U.S.C. § 2709, for the same individual or organization. The FBI may also serve multiple NSLs for an individual for multiple facilities (e.g., multiple e-mail accounts, landline telephone numbers and cellular phone numbers). The number of requests, consequently, is significantly larger than the number of individuals or organizations that are the subjects of the NSLs.

NSL Statistics

| <u>National Security Letters (NSLs)</u> | CY2013 | CY2014 | CY2015 | CY2016 |
|--|--------|--------|--------|---------------|
| Total number of NSLs issued | 19,212 | 16,348 | 12,870 | 12,150 |
| Number of Requests for Information (ROI) | 38,832 | 33,024 | 48,642 | 24,801 |

See 50 U.S.C. § 1873(b)(6).

APPENDIX A

DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC 20511

APR 28 2017

The Honorable Richard Burr
Chairman
Select Committee on Intelligence
United States Senate

The Honorable Chuck Grassley
Chairman
Committee on the Judiciary
United States Senate

The Honorable Devin Nunes
Chairman
Permanent Select Committee on Intelligence
U.S. House of Representatives

The Honorable Robert W. Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives

Dear Messrs. Chairmen:

Section 603(b)(2)(B) of the *Uniting and Strengthening America by Fulfilling Rights and Ensuring Effective Discipline Over Monitoring Act of 2015*, (P.L.114-23), 129 Stat. 268 (hereinafter “USA FREEDOM Act”), requires the Director of National Intelligence (“DNI”) to make publicly available for the preceding 12-month period a good faith estimate of the number of queries concerning a known United States person of unminimized non-content information relating to electronic communications or wire communications obtained through acquisitions authorized under Section 702 of the Foreign Intelligence Surveillance Act (“FISA”), excluding the number of queries containing information used to prevent the return of information concerning a United States person.

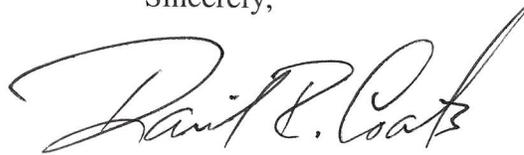
If the DNI concludes that this good faith estimate cannot be determined accurately because some, but not all, of the relevant elements of the Intelligence Community (“IC”) are able to provide such good faith estimate, the USA FREEDOM Act requires him to (i) certify that conclusion in writing to the committees identified above; (ii) report the good faith estimate for those relevant elements able to provide such good faith estimate; (iii) explain when it is reasonably anticipated that such an estimate will be able to be determined fully and accurately; and (iv) make such certification publicly available on an Internet website.

I conclude that the good faith estimate required under section 603(b)(2)(B) of the USA FREEDOM Act cannot be determined accurately because some but not all of the relevant elements of the IC are able to provide such good faith estimate. The enclosed report includes the good faith estimate for those relevant IC elements that were able to provide such good faith estimate. Based on the information provided to me by the relevant elements, I reasonably anticipate that such an estimate will be able to be determined fully and accurately by the end of calendar year 2018.

The Honorable Richard Burr
The Honorable Chuck Grassley
The Honorable Devin Nunes
The Honorable Robert W. Goodlatte

If you have any questions regarding this matter, please contact the Office of DNI Director of Legislative Affairs, Deirdre M. Walsh, at (703) 275-2474.

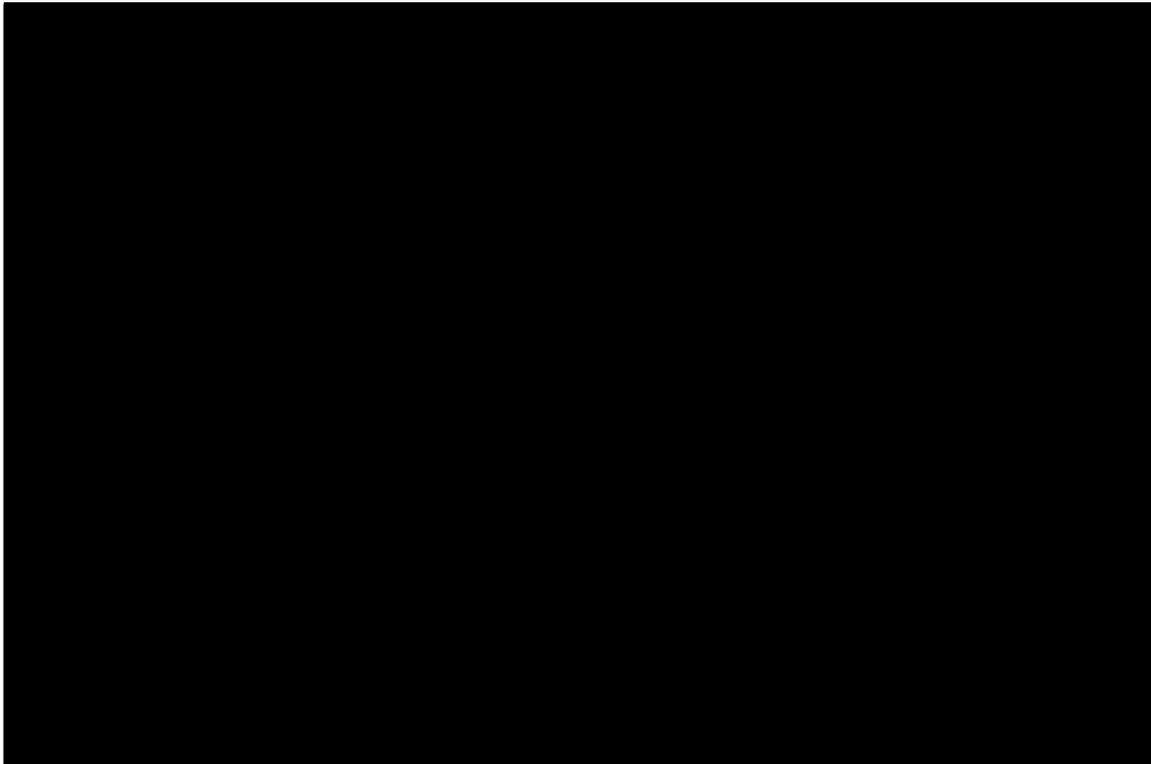
Sincerely,

A handwritten signature in black ink, appearing to read "Daniel R. Coats". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Daniel R. Coats

Enclosure:
Statistical Transparency Report

cc:



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