

~~SECRET//NOFORN~~

U.S. FOREIGN INTELLIGENCE SURVEILLANCE COURT

EXHIBIT H

(U) QUERYING PROCEDURES USED IN CONNECTION WITH ACQUISITIONS OF FOREIGN INTELLIGENCE INFORMATION PURSUANT TO SECTION 702 OF THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978, AS AMENDED

MAR 27 11 05 28
FEDERAL BUREAU OF INVESTIGATION
CLERK OF COURT

(U) I. These procedures apply to the querying of unminimized information, acquired pursuant to section 702 of the Foreign Intelligence Surveillance Act of 1978, as amended (“FISA” or “the Act”), by the National Security Agency (“NSA”), Federal Bureau of Investigation (“FBI”), Central Intelligence Agency (“CIA”), and National Counterterrorism Center (“NCTC”) (collectively, “covered agencies”), and apply in addition to separate minimization procedures for the covered agencies adopted pursuant to subsection 702(e) of the Act. These querying procedures should be read and applied in conjunction with those minimization procedures, and nothing in these procedures permits any actions that would otherwise be prohibited by those minimization procedures. Authorized users with access to unminimized section 702-acquired information should process the results of an appropriate query of unminimized section 702-acquired information in accordance with their covered agency’s applicable section 702 minimization procedures.

(U) II. If a covered agency determines that it must take action in apparent departure from these querying procedures to protect against an immediate threat to human life (e.g., force protection or hostage situations) and that it is not feasible to obtain a timely modification of these procedures, such agency may take such action immediately. That agency will make a record of the action taken, to include any query term(s) used, and report the action taken to the Office of the Director of National Intelligence (“ODNI”) and to the Department of Justice’s National Security Division (“NSD”), which will promptly notify the Foreign Intelligence Surveillance Court (“FISC”) of such activity.

(U) III. Nothing in these procedures shall restrict the lawful oversight functions of NSD or ODNI, or the applicable Offices of the Inspectors General, or restrict a covered agency from providing the assistance necessary for these entities to perform their lawful oversight functions. Nothing in these procedures shall restrict a covered agency’s performance of lawful training functions of its personnel, or creating, testing, or maintaining its systems. In addition, nothing in these procedures shall restrict a covered agency’s performance of lawful oversight functions of its personnel or systems, which includes queries performed for the following reasons: in support of a covered agency’s investigation and remediation of a possible compliance incident, including a potential spill of classified information; to identify information subject to destruction, including under a covered agency’s minimization procedures; to ensure the effective application of marking or segregation requirements in relevant agency minimization procedures or federal records requirements; in support of a covered agency’s audit or review, for quality control purposes, of work done by agency personnel; in support of authorized work conducted in systems used solely for audits and oversight; or in support of agency investigations of potential misconduct by an employee that otherwise would not meet the query standards detailed for each

~~SECRET//NOFORN~~

~~Classified by: The Attorney General~~
~~Derived From: DOJ/NSI SCG 1 INT dated 20120701, 1.6~~
~~Declassify On: 20430316~~

~~SECRET//NOFORN~~

agency below. Should a covered agency intend to rely on the provision regarding lawful oversight functions of its personnel or systems, in whole or in part, to deviate from an aspect of these procedures and the purpose of such deviation is not listed above, the covered agency shall consult with NSD and ODNI prior to conducting such a query. NSD shall then report the deviation promptly to the FISC. Each such report shall describe the nature of the deviation from the procedures and identify the specific oversight activity for which the deviation was necessary. Similarly, nothing in these procedures shall prohibit the querying of information necessary to comply with a specific congressional mandate or order of a court within the United States. Moreover, nothing in these procedures shall prohibit the querying of information necessary to comply with the requirements of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a. Additionally, nothing in these procedures shall restrict a covered agency's ability to conduct vulnerability or network assessments using information acquired pursuant to section 702 of the Act in order to ensure that its systems are not or have not been compromised. Covered agencies are permitted to conduct queries designed to identify information that must be produced or preserved in connection with a litigation matter. The covered agencies must keep a record of any United States person query term used for a query of unminimized section 702-acquired information in support of the activities described in this Section.

(U) **IV.** The covered agencies must generate and maintain an electronic record of each United States person query term used for a query of unminimized information acquired pursuant to section 702. Such electronic record must, at a minimum, include the following information: the query term(s) used or approved, the date of the query or approval of query term(s), the identifier of the user who conducted the query or sought approval of the query term(s), and, in the case of NSA content queries, the approving official in NSA's Office of General Counsel and duration of the approval. NSA, CIA, and NCTC shall also maintain records of the statement of facts establishing that the use of any United States person query term is reasonably likely to retrieve foreign intelligence information. In the event it is impracticable for a covered agency system to generate an electronic record, or in the event an unanticipated circumstance arises that prevents the generation of such an electronic record, the covered agency must generate and maintain a written record of each United States person query term that contains the same information required for electronic records, as described above. Before conducting a query in a system that does not generate an electronic record of a query, the covered agency personnel must reasonably determine that conducting that query in a system that generates an electronic record would be insufficient for technical, analytical, operational, or security reasons. For NSA content queries, such records of United States person query terms must be maintained at least five years from the date a United States person query term was approved; for NSA metadata queries and for queries conducted by the FBI, CIA, and NCTC, such records of United States person query terms must be maintained at least five years from the date a United States person query term was used.

~~SECRET//NOFORN~~

(U) V. Definitions and Presumptions**(U) A. Definitions for purposes of these procedures**

(U) These procedures adopt the definitions set forth in 50 U.S.C. § 1801 for the terms “foreign intelligence information,” “person,” “United States,” and “United States person.”

~~(S//NF)~~

~~(U)~~ When used to conduct a query, “United States person query term” means a term that is reasonably likely to identify one or more specific United States persons. United States person query terms may be either a single item of information or information that, when combined with other information, is reasonably likely to identify one or more specific United States persons. Determining whether information is reasonably likely to identify one or more specific United States persons in a particular context may require a case-by-case assessment by a trained intelligence professional. “United States person query term” is not limited to any single category of information or technology. Depending on the context, examples of United States person query terms may include: names or unique titles; government-associated personal or corporate identification numbers

and street address, telephone, and United States person query term does not include a reference to a product by brand or manufacturer’s name (or related nomenclature, including part numbers) or the use of a name in a descriptive sense, as, for example, “Ford Crown Victoria” or “Boeing 737,” so long as such term is not intended to retrieve information concerning a specific United States person (e.g., “Ford Crown Victoria with License Plate Number CBA 321”).

(U) “Query” means the use of one or more terms¹ to retrieve the unminimized contents or noncontents (including metadata) of section 702-acquired information that is located in a covered agency’s system. The term “query” does not include a user’s query of a system that contains unminimized section 702-acquired information, where the user does not receive unminimized section 702-acquired information in response to the query either because the user has not been granted access to the unminimized section 702-acquired information, or because a user who has been granted such access has limited the query such that it cannot retrieve unminimized section 702-acquired information. The term “query” also does not include (1) a system user’s actions subsequent to conducting a query for purposes of sorting the results of that query based upon the attributes of the information retrieved,² or (2) examining or manipulating, including by technical means, communications or documents for the purpose of minimizing such communications or documents.³

¹ ~~(S//NF)~~ Such terms may include the use of keywords, identifiers

² (U) For example, the action of a system user to sort the results of a query (i.e., the information actually returned to a system user from a query) by date, time, etc.

³ (U) For example, an analyst might run a script against a spreadsheet that would find and replace all instances of a known United States person’s name with a generic term, such as a “U.S. Person 1.”

(U) "Contents" means any information concerning the substance, purport, or meaning of a communication.

(U) "Metadata" means the dialing, routing, addressing, or signaling information associated with a communication, but does not include information concerning the substance, purport, or meaning of the communication.

(U) The terms "National Security Agency" and "NSA personnel" refer to any employees of the National Security Agency/Central Security Service ("NSA/CSS" or "NSA") and any other personnel engaged in Signals Intelligence (SIGINT) operations authorized pursuant to section 702 of the Act if such operations are executed under the direction, authority, or control of the Director, NSA/Chief, CSS (DIRNSA).

(U) The terms "Federal Bureau of Investigation" and "FBI personnel" refer to any employees of the FBI, as well as all contractors and others authorized to work under the direction and control of the FBI.

(U) The terms "Central Intelligence Agency," "CIA," and "CIA personnel" refer to any employees of CIA and any other personnel acting under the direction, authority, or control of the Director of the CIA, as well as to employees of other U.S. Government agencies who are physically located at CIA and who are granted access to CIA systems to perform duties in support of CIA operations, but who retain the authorities and responsibilities of their parent organization.

(U) "NCTC employee" means (i) individuals directly employed by NCTC, (ii) personnel detailed to NCTC from other departments or agencies who work under NCTC management and supervision in a manner substantially the same as individuals directly employed by NCTC, and (iii) contractors working under NCTC management and supervision who are authorized to perform services in support of NCTC on FISA-related matters.

(U) **B. Presumptions for purposes of these procedures**

(U) The following guidelines apply in determining whether a person whose status is unknown is a United States person:

- (1) (U) A person known to be currently in the United States will be treated as a United States person unless positively identified as an alien who has not been admitted for permanent residence, or unless the nature or circumstances of the person's communications give rise to a reasonable belief that such person is not a United States person.
- (2) (U) A person known to be currently outside the United States, or whose location is unknown, will not be treated as a United States person unless such person can be positively identified as such, or the nature or circumstances of the person's

communications give rise to a reasonable belief that such person is a United States person.

- (3) (U) A person who at any time has been known to have been an alien admitted for lawful permanent residence is treated as a United States person, unless a determination that such person is no longer a United States person is made in consultation with the covered agency's Office of General Counsel or equivalent.
- (4) (U) An unincorporated association whose headquarters or primary office is located outside the United States is presumed not to be a United States person unless there is information indicating that a substantial number of its members are citizens of the United States or aliens lawfully admitted for permanent residence.

(U) VI. Querying Procedures for the National Security Agency (NSA)

(U) NSA personnel who have received training in these procedures and NSA's section 702 minimization procedures may query NSA systems containing unminimized information acquired in accordance with section 702 of the Act. Except as provided above in Sections II and III, such queries must be reasonably likely to retrieve foreign intelligence information, as defined by FISA. Any United States person query term used to identify and select unminimized section 702-acquired content must first be approved by NSA's Office of General Counsel. NSA personnel seeking such an approval must provide a statement of facts establishing that the use of any such identifier as a selection term is reasonably likely to retrieve foreign intelligence information, as defined by FISA. NSA may approve the use of a United States query term to query unminimized section 702-acquired content for no longer than a period of one year. As provided in Section IV above, NSA will maintain records of all United States person query terms approved for use as selection terms, including the identifier of the approving official in NSA's Office of General Counsel, the duration of such an approval, and the additional information required by Section IV. Any use of a United States person query term to query unminimized section 702-acquired metadata must be accompanied by a statement of facts showing that the use of any such query term is reasonably likely to retrieve foreign intelligence information, as defined by FISA. As provided in Section IV above, NSA will maintain records of all such United States person query terms and the additional information required by Section IV. Internet transactions, as defined in NSA's section 702 minimization procedures, acquired on or before March 17, 2017, will be sequestered in NSA systems to prevent NSA analysts from accessing or using computer selection terms to scan such transactions until such transactions are destroyed. NSA will maintain the above records in a manner that will allow NSD and ODNI to conduct oversight and compliance in an effective manner and such records will be maintained for five years from either the date of the query for queries of unminimized section 702-acquired metadata, or the date of the approval of the U.S. person query term for queries of unminimized section 702-acquired content. NSD and ODNI will conduct oversight of NSA's activities with respect to United States persons that are conducted pursuant to these procedures.

(U) VII. Querying Procedures for the Federal Bureau of Investigation (FBI)

(U) FBI personnel who have received training in these procedures and FBI's section 702 minimization procedures may query FBI systems containing unminimized information acquired in accordance with section 702 of the Act to find, extract, review, translate, and assess whether such information reasonably appears to be foreign intelligence information, to be necessary to understand foreign intelligence information or assess its importance, or to be evidence of a crime. Except as provided above in Sections II and III, such queries must be reasonably likely to retrieve foreign intelligence information, or evidence of a crime.

(U) For queries conducted using United States person query terms that are not designed to find and extract foreign intelligence information, as defined by FISA, the FBI will follow the procedures in subsection 702(f)(2) of FISA before accessing the contents of communications retrieved by such queries in connection with a predicated criminal investigation that does not relate to the national security of the United States, unless there is a reasonable belief that such contents could assist in mitigating or eliminating a threat to life or serious bodily harm. Consistent with subsections 702(f)(2)(F)(ii)-(iii) of the Act, this restriction does not prohibit or limit (1) the FBI's ability to review, without a court order, the results of any query of section 702-acquired information that was reasonably designed to find and extract foreign intelligence information, regardless of whether such foreign intelligence information could also be considered evidence of a crime; and (2) the FBI's ability to access the results of queries that were conducted when evaluating whether to open an assessment or predicated investigation related to the national security of the United States.

(U) As provided in Section IV above, the FBI shall maintain records⁴ of all United States person query terms used for five years from the date the United States person query term was used in a manner that will allow NSD and ODNI to conduct oversight and compliance in an effective manner. NSD and ODNI will review FBI's queries of unminimized section 702-acquired information to ensure that they were reasonably likely to retrieve foreign intelligence information or evidence of a crime, or were otherwise conducted pursuant to one of the exceptions provided above.

(U) Except as provided above in Sections II and III, queries of unminimized section 702-acquired metadata must be reasonably likely to retrieve foreign intelligence information, or evidence of a crime. The FBI shall maintain records of such queries that use United States person query terms for five years from the date the United States person query term was used.

⁴ (U) The FBI intends to satisfy this record-keeping requirement by keeping a record of all queries of unminimized information that is acquired by targeting non-United States persons reasonably believed to be located outside the United States to acquire foreign intelligence information in accordance with section 702.

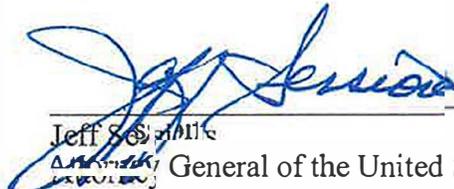
~~SECRET//NOFORN~~**(U) VIII. Querying Procedures for the Central Intelligence Agency (CIA)**

(U) CIA personnel who have received training in these procedures and CIA's section 702 minimization procedures may query CIA systems containing unminimized information acquired in accordance with section 702 of the Act. Except as provided above in Sections II and III, such queries must be reasonably likely to retrieve foreign intelligence information, as defined by FISA. Any use of a United States person query term must be accompanied by a statement of facts showing that the use of any such query term is reasonably likely to retrieve foreign intelligence information. As provided in Section IV above, CIA will maintain records of all such United States person query terms, including the additional information required by Section IV, for five years from the date the United States person query term was used. CIA will maintain these records in a manner that will allow NSD and ODNI to conduct oversight and compliance in an effective manner. NSD and ODNI will review CIA's queries of unminimized section 702-acquired information using any such query terms to ensure that they were reasonably likely to retrieve foreign intelligence information, or were otherwise conducted pursuant to one of the exceptions provided above.

(U) IX. Querying Procedures for the National Counterterrorism Center (NCTC)

(U) NCTC employees who have received training in these procedures and NCTC's section 702 minimization procedures may query NCTC systems containing unminimized information acquired in accordance with section 702 of the Act. Except as provided above in Sections II and III, such queries must be reasonably likely to retrieve foreign intelligence information, as defined by FISA. Any use of a United States person query term must be accompanied by a statement of facts showing that the use of any such query term is reasonably likely to retrieve foreign intelligence information. As provided above in Section IV, NCTC will maintain records of all such United States person query terms, including the additional information required by Section IV, for five years from the date the United States person query term was used. NCTC will maintain these records in a manner that will allow NSD and ODNI to conduct oversight and compliance in an effective manner. NSD and ODNI will review NCTC's queries of unminimized section 702-acquired information using any such query terms to ensure that they were reasonably likely to retrieve foreign intelligence information, or were otherwise conducted pursuant to one of the exceptions provided above.

3/23/18
Date



Jeff Sessions
Attorney General of the United States

~~SECRET//NOFORN~~