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(U) SEMIANNUAL ASSESSMENT OF COMPLIANCE WITH PROCEDURES AND GUIDELINES ISSUED PURSUANT TO SECTION 702 OF THE FOREIGN INTELLIGENCE SURVEILLANCE ACT, SUBMITTED BY THE ATTORNEY GENERAL AND THE DIRECTOR OF NATIONAL INTELLIGENCE

(U) Reporting Period: 1 June 2021 – 30 November 2021

March 2023

Classified By: [REDACTED]
Derived From: [REDACTED]
Declassify On: [REDACTED]

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March 2023

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(U) Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of the Foreign Intelligence Surveillance Act, Submitted by the Attorney General and the Director of National Intelligence

March 2023

(U) Reporting Period: 1 June 2021 – 30 November 2021

(U) EXECUTIVE SUMMARY

(U) The Foreign Intelligence Surveillance Act of 1978 (FISA), 50 U.S.C. § 1801 *et seq.*, as amended, requires the Attorney General and the Director of National Intelligence (DNI) to assess compliance with certain procedures and guidelines issued pursuant to FISA Section 702 (hereinafter, “Section 702”), and to submit such “joint assessments” to the Foreign Intelligence Surveillance Court (FISC) and relevant congressional committees at least once every six months. As of March 2023, 27 joint assessments have been submitted.

(U) This assessment covers the period from 1 June 2021 through 30 November 2021 (hereinafter, the “reporting period”) and serves as a corollary to the Semiannual Report of the Attorney General Concerning Acquisitions under Section 702 of the Foreign Intelligence Surveillance Act as required by Section 707(b)(1) of FISA (hereinafter, the “Section 707 Report”). The Department of Justice (DOJ) submitted the Section 707 Report in March 2022; it covers the same reporting period as this joint assessment. This report is based on compliance data included in the corresponding Section 707 Report and reflects data prior to the full implementation of system, policy, and training updates by the Federal Bureau of Investigation (FBI) that were completed in January 2022.

(U) The 27th Joint Assessment has been fully restructured to enhance clarity and readability. The new structure is designed to reduce repetition and provide a complete assessment of each agency’s Section 702 activities in one place. The new structure includes a section on program-wide activities such as targeting, as well as organization-specific sections, providing more focused assessments of each agency’s program operations and compliance.

(U) Section 702 authorizes, subject to restrictions imposed by the statute and required targeting, minimization, and querying procedures, the targeting of non-United States persons reasonably believed to be located outside the United States in order to acquire foreign intelligence information. This joint assessment is based upon the compliance assessment activities that have been conducted by a joint oversight team consisting of experts from DOJ’s National Security Division (NSD) and the Office of the Director of National Intelligence (ODNI) (hereinafter, the “joint oversight team”).

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(U) The following tables present two key compliance metrics—the National Security Agency (NSA) targeting compliance incident rate¹ and the FBI query compliance incident rate²—from this reporting period and the four previous reporting periods.

(U) Figure 1A: NSA Targeting Compliance Incident Rate

This table is UNCLASSIFIED.

23 rd Joint Assessment (Jun. '19 - Nov. '19)	24 th Joint Assessment (Dec. '19 - May '20)	25 th Joint Assessment (Jun. '20 - Nov. '20)	26 th Joint Assessment (Dec. '20 - May '21)	27 th Joint Assessment (Jun. '21 - Nov. '21)
0.14 percent	0.10 percent	0.05 percent	0.11 percent	0.11 percent

(U) Figure 1B: FBI Query Compliance Incident Rate

This table is UNCLASSIFIED.

23 rd Joint Assessment (Jun. '19 - Nov. '19)	24 th Joint Assessment (Dec. '19 - May '20)	25 th Joint Assessment (Jun. '20 - Nov. '20)	26 th Joint Assessment (Dec. '20 - May '21)	27 th Joint Assessment (Jun. '21 - Nov. '21)
36.59 percent	0.82 percent	2.23 percent	0.36 percent ³	3.22 percent ⁴

(U) The past several reporting periods were impacted by the coronavirus pandemic, and the joint oversight team observed a general decrease in the total number of reported compliance incidents as compared to periods that occurred prior to the pandemic.⁵ However, while incident rates remained relatively low during this reporting period, the number of *potential* incidents

¹ (U) The targeting compliance incident rate for NSA is calculated as the total number of compliance incidents relating to NSA’s targeting procedures (tasking errors, detasking delays, documentation errors, reporting delays, and other errors) expressed as a percentage of the average number of facilities subject to acquisition on any given day during the reporting period.

² ~~(S//NF)~~ The query compliance incident rate for FBI represents the total number of FBI query compliance incidents reported to the FISC during the reporting period, expressed as a percentage of the total number of FBI queries reviewed by NSD in connection with FBI query reviews during which NSD identified such FBI query compliance incidents. The number of queries reviewed and included in this total are queries contained in query logs provided to NSD by FBI that were run in FBI’s [REDACTED] NSD has, in prior query reviews, found that a small percentage of queries that were included in particular query logs were not run against unminimized FISA-acquired information, to include unminimized Section 702-acquired information.

³ (U) Due to a drafting error, the 26th Joint Assessment reported the FBI query compliance incident rate as 0.40% when the rate was 0.36%.

(U) ⁴ ~~(S//NF)~~ The denominator used in generating this metric (the number of queries audited) reflects the approximate number of queries that NSD made assessments about. NSD did not individually review each query conducted in connection with certain large batch jobs. See the discussion of Figure 14 for more information.

(U) ⁵ ~~(TS//SI//NF)~~ The joint oversight team is unable to determine to what extent the decreases reflected a decrease in the number of compliance incidents that occurred as opposed to difficulties in discovering and reporting compliance incidents as a result of the pandemic. During the course of the pandemic, NSD and ODNI shifted their oversight efforts to include, in some cases, remote, rather than onsite, reviews at certain agencies. In addition, between March 2020 and February 2021, NSD temporarily suspended reviews at FBI field offices. In February 2021, NSD resumed its reviews of queries conducted by FBI personnel; and in mid-2022 (after this reporting period), NSD resumed its FBI field office reviews of compliance with FBI’s Section 702 minimization procedures.

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reported by NSA to the joint oversight team each month surpassed pre-pandemic levels; the number of these potential incidents that, after review, were determined to be *actual* NSA compliance incidents and were reported to the FISC during this reporting period likewise increased. Despite this increase, the NSA targeting compliance incident rate nevertheless remained low.⁶

(U) ~~(S//NF)~~ The number of FBI incidents increased to over 80,000 during this reporting period, largely as a result of one NSD oversight review that identified a few large query errors (specifically, improper batch jobs).⁷ Notwithstanding a focused and concerted effort by FBI personnel to comply with the requirements of Section 702, misapplication of FBI's querying procedures continued to cause a large number of the query errors. In the summer of 2021 and through early 2022, the FBI implemented a number of remedial measures to address the query issues.⁸ **The query incidents discussed in this joint assessment occurred prior to the FBI's implementation of these remedial measures (which are discussed in further detail below).** Further, all of the noncompliant queries discussed in the FBI section of this report occurred during prior reporting periods but were not discovered and reported until this reporting period. The joint oversight team continues to work with FBI to review the efficacy of these measures and assess the need for further action.

(U) Despite the above FBI query issues, the joint oversight team finds that the agencies have continued to implement the procedures and follow the guidelines in a manner that reflects a focused and concerted effort by agency personnel to comply with the requirements of Section 702. The personnel involved in implementing the authorities are appropriately focused on directing their efforts at non-United States persons reasonably believed to be located outside the United States for the purpose of acquiring foreign intelligence information. Processes are in place to implement these authorities and to impose internal controls for compliance and verification purposes.

⁶ ~~(S//REL TO USA, FVEY)~~ A number of factors related to the coronavirus pandemic may have also contributed to the number of compliance incidents reported during this reporting period. 

⁷ (U) The batch job function in a certain FBI system permits users to conduct multiple queries as part of a single batch job; a single noncompliant batch job can result in hundreds or thousands of improper queries. The NSD oversight review resulting in the large increase in FBI query incidents focused on queries involving batch jobs. NSD had not conducted this sort of batch job-focused review prior to this reporting period.

⁸ (U) These remedial measures are discussed below starting on page 51.

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~~TOP SECRET//SI//NOFORN~~**(U) SECTION 1: INTRODUCTION**

(U) Section 702(m)(1) of the Foreign Intelligence Surveillance Act of 1978 (FISA), 50 U.S.C. §1881a(m)(1), requires the Attorney General and the Director of National Intelligence (DNI) to assess compliance with certain procedures and guidelines issued pursuant to Section 702 and to submit such assessments to the Foreign Intelligence Surveillance Court (FISC) and relevant congressional committees at least once every six months. To fulfill this requirement, a team of oversight personnel from the Department of Justice's (DOJ) National Security Division (NSD) and the Office of the Director of National Intelligence (ODNI) (hereinafter, the "joint oversight team") conducts compliance reviews to assess whether the authorities under Section 702 have been implemented in accordance with the applicable procedures and guidelines, discussed herein. This report sets forth NSD and ODNI's 27th joint compliance assessment, based on oversight activities covering the period 01 June 2021 through 30 November 2021 (hereinafter, the "reporting period").⁹

(U) Per subsection (b) of Section 702, collection authorized pursuant to Section 702:

- (1) may not intentionally target any person known at the time of acquisition to be located in the United States;
- (2) may not intentionally target a person reasonably believed to be located outside the United States if the purpose of such acquisition is to target a particular, known person reasonably believed to be in the United States;
- (3) may not intentionally target a United States person reasonably believed to be located outside the United States;
- (4) may not intentionally acquire any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States; and
- (5) shall be conducted in a manner consistent with the Fourth Amendment to the Constitution of the United States.

(U) In addition to these statutory limitations, Section 702 requires that the Attorney General, in consultation with the DNI, adopt targeting, minimization, and querying procedures. To ensure that the statutory requirements are appropriately met, Section 702 requires the adoption of targeting procedures. Targeting is effectuated by tasking communications facilities (such as telephone numbers and electronic communications accounts) to United States electronic communication service providers. Minimization procedures protect any non-public information of United States persons that may be incidentally collected when appropriately targeting non-United States persons abroad for foreign intelligence information. Querying procedures set rules for using United States person and non-United States person identifiers to query unminimized Section 702-acquired

⁹ (U) This report serves as a corollary to the Semiannual Report of the Attorney General Concerning Acquisitions under Section 702, which was previously submitted in March 2022, as required by Section 707(b)(1) of FISA (hereinafter, the "Section 707 Report"). This 27th Joint Assessment covers the same reporting period as the 27th Section 707 Report and uses information included in the Section 707 Report to identify trends in compliance and assess the need for added training and mitigation strategies.

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information. Additionally, the Attorney General and the DNI establish guidelines that provide supplemental constraints on Section 702 collection and use.¹⁰

(U) During this reporting period, the Government acquired foreign intelligence information under Attorney General and DNI authorized Section 702(h) certifications that targeted non-United States persons reasonably believed to be located outside the United States in order to acquire different types of foreign intelligence information. The foreign intelligence information must fall within a specific type of foreign intelligence information that has been authorized pursuant to the Section 702(h) certifications.¹¹ Four agencies are primarily involved in implementing Section 702: the National Security Agency (NSA), the Federal Bureau of Investigation (FBI), the Central Intelligence Agency (CIA), and the National Counterterrorism Center (NCTC) (individually, an “agency,” and collectively, “agencies”). An overview of how these agencies implement the authority appears in the Appendix of this assessment.

(U) New this reporting period, the joint oversight team has restructured the joint assessment. The new structure provides a complete assessment of each agency’s Section 702 activities in one place. This structure is designed to reduce repetition and enhance readability. Following this Introduction, Section 2 discusses general oversight activities, as well as general targeting and compliance trends that are applicable across the Section 702 program. Sections 3 through 6 provide agency-specific discussions of oversight, training, and trends relating to the use of Section 702 and compliance with targeting (when applicable), minimization, and querying procedures, as well as the Attorney General’s Acquisition Guidelines. Each section concludes with the joint oversight team’s assessment of compliance at the relevant agency. Section 7 discusses, when applicable, any incidents by other agencies of the federal government and/or electronic communication service providers. Finally, this joint assessment contains an Appendix, which includes a general description of the internal oversight at each agency.

(U) As with prior joint assessments, this joint assessment takes a broad approach and discusses the trends, patterns, and underlying causes of the compliance incidents reported in the Section 707 Report. The Section 707 Report includes each individual compliance incident and information on applicable remedial and mitigating actions.

¹⁰ (U) The Attorney General’s Guidelines for the Acquisition of Foreign Intelligence Information Pursuant to the Foreign Intelligence Surveillance Act of 1978, as amended (hereinafter, “the Attorney General’s Acquisition Guidelines”) were adopted by the Attorney General, in consultation with the DNI, on 05 August 2008.

¹¹ ~~(TS//SI//NF)~~ These three Section 702(h) certifications, all targeting non-United States persons reasonably believed to be located outside the United States in order to acquire foreign intelligence information, concerned the following topic areas of foreign intelligence information:

- Certification 2020-A’s foreign intelligence information concerned [REDACTED]
- Certification 2020-B’s foreign intelligence information concerned [REDACTED]
- Certification 2020-C’s foreign intelligence information concerned [REDACTED]

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~~TOP SECRET//SI//NOFORN~~**(U) SECTION 2: PROGRAM-WIDE OVERSIGHT AND TARGETING TRENDS**

(U) The implementation of Section 702 is a multi-agency effort. As described in detail in the Appendix, NSA and FBI each acquires certain types of data pursuant to its own Section 702 targeting procedures. NSA, FBI, CIA, and NCTC¹² each handles Section 702-acquired information in accordance with its own minimization and querying procedures.¹³ There are differences in the way each agency implements its procedures resulting from unique provisions in the procedures themselves, differences in how these agencies utilize Section 702-acquired information, and efficiencies gained by leveraging existing agency-specific systems and processes to implement Section 702 authorities. Because of these differences in practices and procedures, there are corresponding differences in each agency's internal compliance programs and in the external NSD and ODNI oversight programs. There are, however, commonalities across agencies in both oversight and data trends that provide helpful context when reviewing the agency-specific discussions below.

(U) I. Joint Oversight

(U) The joint oversight team—consisting of members from NSD, the ODNI Office of Civil Liberties, Privacy, and Transparency (CLPT), the ODNI Office of General Counsel (OGC), and the ODNI Mission Integration Directorate Mission Performance, Analysis, and Collection (MPAC)—conducts independent Section 702 oversight activities. The team members play complementary roles in the review process. NSD reports all compliance incidents to the FISC and works with agencies to investigate larger incidents. ODNI provides support for NSD's efforts, but also focuses on identifying larger trends and facilitating multiagency conversations concerning remediation efforts. This section provides a description of the general oversight conducted during this reporting period. Agency-specific nuances resulting from unique authorities, policies, practices, or procedures are discussed in Sections 3 through 6.

(U) Targeting under Section 702 must be in compliance with individual agency targeting procedures and statutory requirements noted in Section 1. Agencies are responsible for conducting post-tasking checks of all Section 702-tasked facilities¹⁴ once collection begins. NSD reviews the

¹² (U) As discussed herein, CIA, FBI, and NCTC receive Section 702-acquired information from NSA. Additionally, NSA, CIA, and NCTC also receive Section 702-acquired information from FBI.

¹³ (U) Each agency's Section 702 targeting (when applicable), minimization, and querying procedures are approved by the Attorney General and reviewed by the FISC. The targeting, minimization, and querying procedures that were in effect during this assessment's reporting period were those approved as part of the 2020 certifications in October 2020. On 26 April 2021, the DNI released, in redacted form, each of the 2020 minimization procedures and the 2020 querying procedures for NSA, FBI, CIA, and NCTC, as well the 2020 targeting procedures for NSA and FBI. The 2020 procedures are posted on ODNI's *intel.gov* website via the *IC on the Record* database.

¹⁴ (U) *Targeting* is generally effectuated by *tasking* facilities to Section 702 electronic communication service providers. The oversight review process, which is described in this joint assessment, applies to the tasking of every facility, regardless of the type of facility. A fuller description of the Section 702 targeting process is found in the Appendix.

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tasking record for each facility tasked by NSA pursuant to Section 702 and reviews the tasking records for a sample of facilities tasked by FBI pursuant to Section 702.¹⁵

(U) Additionally, agencies must handle United States person information within their Section 702 collection in accordance with their respective minimization procedures, governing the retention and dissemination of Section 702-acquired information. While agencies may not target United States persons pursuant to Section 702, incidental collection of United States person information may occur when a properly targeted non-United States person located overseas is in contact with a United States person or talks about a United States person. NSD reviews dissemination decisions, including disseminated serialized reports containing Section 702-acquired United States person information, disseminated serialized reports containing Section 702-acquired non-United States person information, and disseminations to certain foreign government partners made outside of the serialized reporting process.

(U) Last, queries of Section 702-acquired information (content and metadata) must be reasonably likely to retrieve foreign intelligence information from the unminimized FISA collection being queried, a standard that applies to both United States person and non-United States person queries. Consistent with its law enforcement mission, FBI is also authorized to conduct queries of unminimized Section 702-acquired information that are reasonably likely to retrieve evidence of a crime from the unminimized FISA collection being queried. Queries for foreign intelligence information or evidence of a crime must be supported by an authorized purpose, have a reasonable justification, and be appropriately designed to retrieve the information sought without unnecessarily retrieving other information. The joint oversight team reviews a sample of FBI queries of unminimized Section 702-acquired information, with particular focus on United States person queries, and all queries, or query approvals, identified by NSA, CIA, and NCTC as being United States person queries of unminimized Section 702-acquired information.

(U) The agencies also proactively report potential compliance incidents identified through internal oversight mechanisms to the joint oversight team. The joint oversight team works with the relevant agency or agencies to determine whether the activity represents a compliance incident and, if so, what actions should be taken to correct the error. For example, an improperly tasked facility would be detasked and relevant collection would be purged. Analysts may also require supplemental training or counseling to ensure proper understanding of the procedures and the statutory requirements.

(U) Because the implementation and oversight of the Government's Section 702 authorities are multi-agency efforts, investigations of particular compliance incidents may involve more than one agency. In the cooperative environment the implementing agencies have established, an action by one agency can result in an incident of non-compliance with another agency's procedures. For example, an NSA targeting compliance incident could be caused by typographical errors contained in another agency's nomination to NSA for tasking. The resolution of particular compliance incidents can, therefore, provide lessons learned for all agencies. For those reasons, NSD and ODNI generally lead calls and meetings with representatives from all agencies implementing

¹⁵ (U) CIA and NCTC do not have targeting procedures and may not target. Targeting reviews, therefore, are only conducted at FBI and NSA.

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Section 702 authorities on relevant compliance topics in order to address interagency issues affecting compliance with the statute and applicable procedures.

(U) The joint oversight team's programmatic oversight also involves efforts to proactively minimize the number of incidents of non-compliance. For example, NSD and ODNI have required agencies to demonstrate for the joint oversight team new or substantially revised systems involved in Section 702 targeting, querying, or minimization, prior to implementation. NSD and ODNI personnel also continue to work with the agencies to review and, where appropriate, seek modifications of their targeting, querying, and minimization procedures in an effort to enhance the Government's collection of foreign intelligence information, protection of civil liberties, and compliance efforts.

(U) The joint oversight team, in reviewing existing patterns or trends, seeks to identify the underlying causes of those incidents. The joint oversight team then considers whether and how those underlying causes could be addressed through additional remedial or proactive measures and assesses whether the agency involved has implemented appropriate procedures to prevent recurrences.

(U) All compliance incidents, whether identified through regular reviews, self-reporting by the agencies, or another means, are reported to the FISC through compliance notices and/or quarterly compliance reports. These incidents are also reported to Congress on a semiannual basis through the Section 707 Report.

(U) **II. Trends in Section 702 Targeting**

(U) As noted above, targeting is a multiagency process that relies on substantial and ongoing review of participating agencies. In conducting the above-described oversight, NSD, ODNI, and the agencies have collected a substantial amount of data regarding the implementation of the Section 702 program. This section provides certain statistics relating to trends in Section 702 targeting activities.

(U) **A. Acquisition of In-transit Communications**

(U) Figure 2 presents the classified average number of facilities that were under collection on any given day during the reporting period.¹⁶ Since the inception of the program, the total

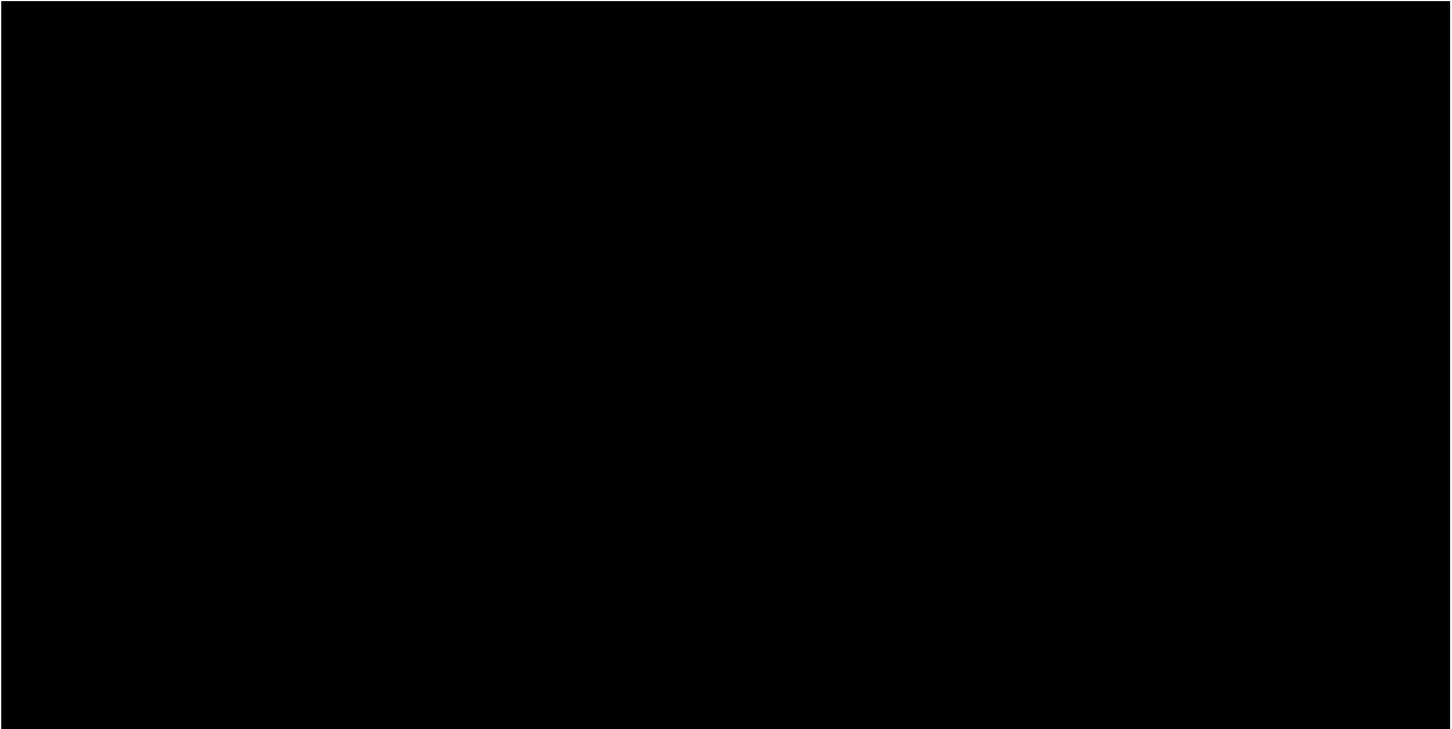
¹⁶ (U) The average number of facilities subject to acquisition during the reporting period remains classified and is different from the unclassified estimated number of Section 702 targets released by ODNI in its *Annual Statistical Transparency Report Regarding the Intelligence Community's Use of National Security Surveillance Authorities* (ASTR). The classified numbers estimate the number of *facilities* subject to Section 702 acquisition, whereas the unclassified numbers provided in the ASTR estimate the number of Section 702 *targets*. As noted in the ASTR, the number of Section 702 "targets" reflects an estimate of the number of known users of particular facilities, however, each "target" may use multiple facilities. The classified number of facilities accounts for the average number of those facilities subject to acquisition under Section 702 *during the current six month reporting period*, whereas the ASTR estimates the number of targets affected by Section 702 *during the calendar year*.

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number of facilities under collection has steadily increased during each reporting period, with the exception of two reporting periods that experienced minor decreases.¹⁷

(U) Figure 2: Average Number of Facilities under Collection



~~(TS//SI//NF)~~ NSA reports that, on average, approximately [REDACTED] facilities¹⁸ were under collection pursuant to Section 702 on any given day during this reporting period. This represents an 8.9 percent increase from the approximately [REDACTED] facilities under collection on any given day in the last reporting period. The 8.9 percent increase is comparable to the 9.4 percent increase in the prior reporting period and continues the upward trend [REDACTED]

~~(S//NF)~~ NSA advises that approximately [REDACTED] of the facilities subject to acquisition in this reporting period were tasked [REDACTED] certification (2020-A); approximately [REDACTED] were tasked [REDACTED] certification (2020-B); and approximately [REDACTED] were tasked [REDACTED] certification (2020-C). NSA further reports that, on average, approximately [REDACTED] of the facilities that were subject to acquisition during this period [REDACTED] while on average, approximately [REDACTED] [REDACTED] In the reporting period covered by the 18th Joint Assessment, December 2016 through May 2017, approximately [REDACTED] of the facilities subject to [REDACTED]

¹⁷ (U) The two previous reporting periods in which the average number of facilities under collection decreased are not captured in Figure 2, as both occurred prior to 2016.

¹⁸ ~~(U//FOUO)~~ The Government counts the tasking of [REDACTED] as a single tasking decision to ensure consistency with how it counts other tasked facilities.

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acquisition were tasked [REDACTED]

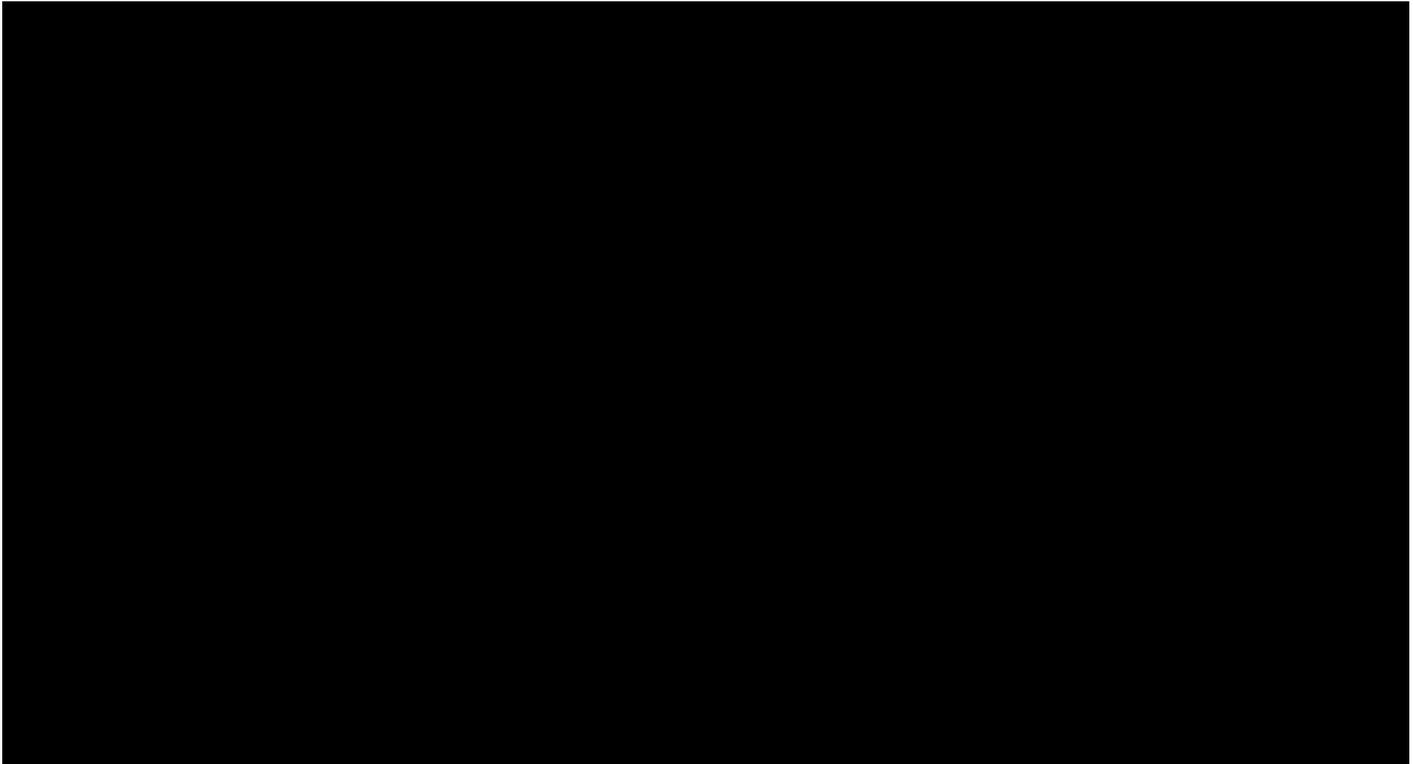
reporting period, those percentages [REDACTED]

In contrast, during this [REDACTED]

As these percentages show, facilities tasked [REDACTED]

(U) Whereas Figure 2 presents the *average* number of facilities under collection at any given time during the reporting period, Figure 3 provides the monthly average of *newly* tasked facilities from 2017 through 2020, and the total numbers of *newly* tasked facilities each month from January 2021 through November 2021.¹⁹

(U) Figure 3: New Taskings by Month



(S//SI//NF) NSA provided documentation for a total of [REDACTED] new taskings during this reporting period. This represents a 1.8 percent increase from the [REDACTED] new taskings from the previous reporting period. When compared to the prior reporting period, the number of newly tasked electronic communication accounts increased 1.4 percent and the number of newly tasked telephony facilities increased 2 percent. As illustrated by Figure 3, the number of new taskings, which decreased during 2020, grew again during 2021, though at a slower pace than would have been expected in the absence of the pandemic.

¹⁹ (U) The term “newly tasked facilities” refers to any facility that was added to collection under a certification pursuant to the Section 702 targeting procedures; some of these newly tasked facilities are facilities that had been previously tasked for collection, were detasked, and then retasked.

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[REDACTED]

(U) Under Section 702, NSA may request that FBI acquire communications from certain designated facilities (hereinafter, “Designated Accounts”) that have been previously approved for Section 702 acquisition under the NSA targeting procedures.²⁰ FBI applies its own targeting procedures with regard to these Designated Accounts. FBI reports to the joint oversight team the number of facilities designated by NSA and the number of Designated Accounts.²¹

(U) Figure 4 compares the number of facilities newly *tasked* by NSA during a given period with the number of accounts *designated* by NSA to FBI for acquisition of communications and the number of accounts *approved* by FBI for acquisition. The monthly average of Designated Accounts approved by FBI increased each year from 2016 through 2019. The yearly average of Designated Accounts approved by FBI decreased in 2020, likely due, at least in part, to the coronavirus pandemic. However, the number of Designated Accounts approved by FBI each month during this reporting period exceeded the monthly average in each prior year of the Section 702 program.

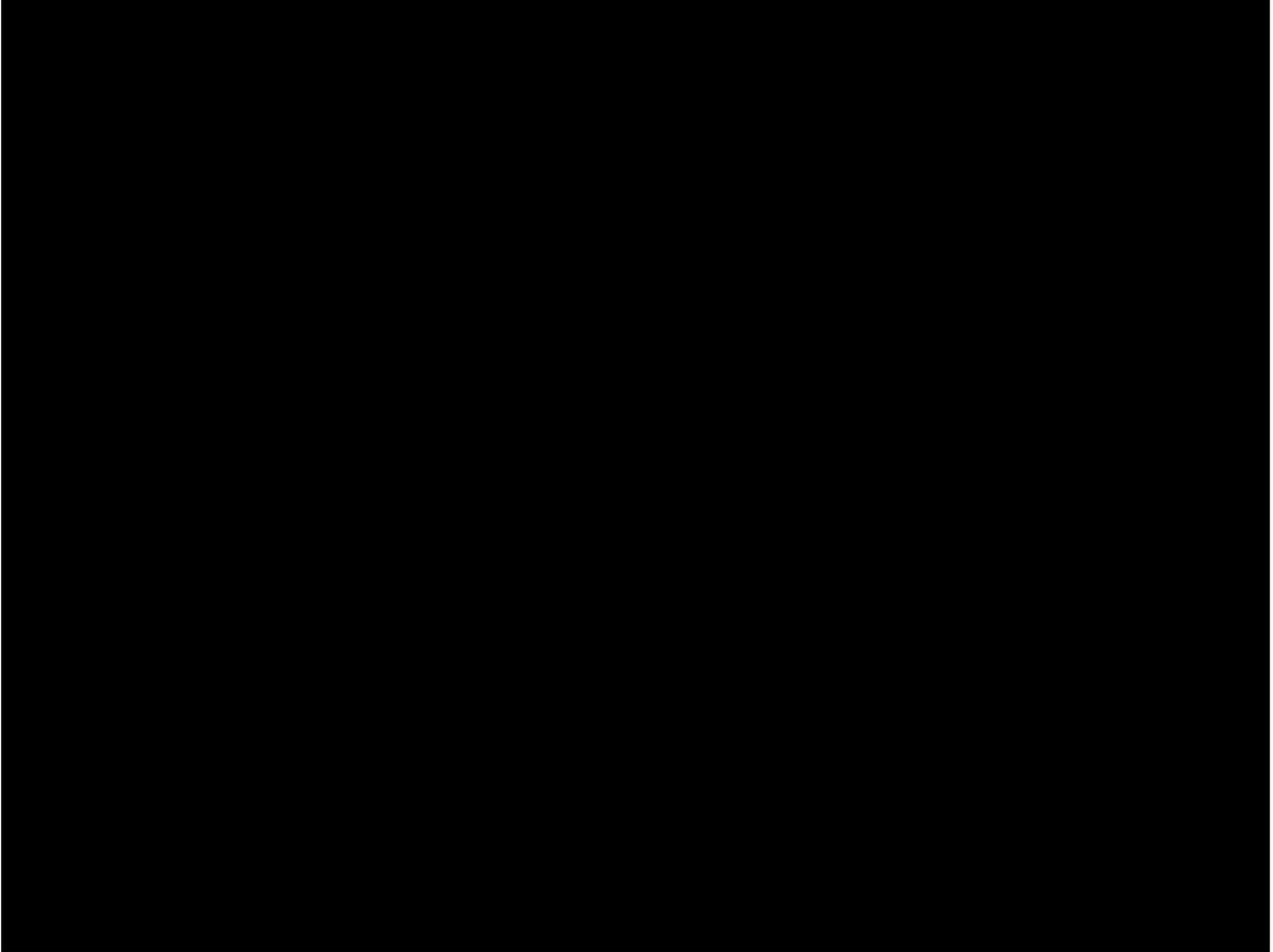
²⁰ (S//NF) The number of facilities designated for acquisition referenced here specifically deals with the acquisition of [REDACTED]

²¹ [REDACTED]

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~~(S//NF)~~ **Figure 4: NSA Taskings, [REDACTED]**
[REDACTED] Approvals by Month (Monthly Average for Years 2017 through 2020)



~~(S//SI//NF)~~ FBI reports that NSA designated [REDACTED] accounts [REDACTED] [REDACTED] during this reporting period—an average of approximately [REDACTED] Designated Accounts per month—a 4.1 percent increase over the prior reporting period when NSA designated [REDACTED]. FBI further reports that it approved approximately [REDACTED]²² requests [REDACTED] during the reporting period, an 11.5 percent increase over the prior period when FBI approved [REDACTED] such requests. Both numbers for this reporting period surpassed pre-pandemic levels.

(U) As Figure 4 illustrates, FBI approves the vast majority of NSA's Designated Accounts and the percentage of approved Designated Accounts has been consistently high across reporting

²² ~~(S//NF)~~ During this reporting period, FBI approved more requests [REDACTED]. This is likely a result of FBI's continued processing of requests submitted by NSA in prior months. In addition, as previously noted, beginning with the joint assessment covering the reporting period December 2017 through May 2018, the Government changed its counting methodology to ensure statistical accuracy for the number of Designated Accounts approved.

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periods. The high rate of approval can be attributed to the fact that the Designated Accounts have already satisfied the NSA targeting procedures. FBI may not approve NSA's request for acquisition of a Designated Account for several reasons, including withdrawal of the request because the potential data to be acquired is no longer of foreign intelligence interest, or because FBI has uncovered information causing NSA and/or FBI to question whether the user or users of the Designated Account are non-United States persons located outside the United States. Historically, only a small portion²³ of Designated Accounts were rejected on the basis that they were ineligible for Section 702 collection.

²³ ~~(S//NF)~~ Historically, only approximately [REDACTED] such accounts has been rejected on the basis that it is ineligible for Section 702 collection.

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~~TOP SECRET//SI//NOFORN~~**(U) SECTION 3: ASSESSMENT OF SECTION 702 ACTIVITIES – NSA**

(U) All Section 702 targeting is initiated pursuant to NSA’s targeting procedures. Accordingly, NSA is responsible for conducting post-tasking checks of all Section 702-tasked facilities once collection begins. NSA must also minimize its collection in accordance with its minimization procedures and conduct queries in accordance with its querying procedures. Given its central role in the Section 702 process, NSA has devoted substantial oversight and compliance resources to monitoring its implementation of the Section 702 authorities; NSA’s internal oversight and compliance mechanisms are further described in the Appendix.

(U) I. Joint Oversight of NSA Activities

(U) The joint oversight team conducts periodic compliance reviews, which NSA’s targeting procedures require. During this reporting period, reviews were conducted at NSA on the dates shown in Figure 5.

(U) Figure 5: NSA Reviews

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Approximate Dates of Review	Targeting, Minimization, and Querying Reviewed
27 August 2021	1 June 2021 – 31 July 2021
29 October 2021	1 August 2021 – 30 September 2021
17 December 2021	1 October 2021 – 30 November 2021

(U) NSA electronically sends the tasking record (known as a tasking sheet) for *each* facility tasked during the reporting period to NSD and ODNI. Members of the joint oversight team review the tasking sheets to determine whether each tasking satisfied the targeting procedures and statutory requirements, including whether the tasking sheet meets the documentation standards required by NSA’s targeting procedures and provides sufficient information to ascertain the basis for NSA’s foreignness determinations. The joint oversight team then identifies the tasking sheets that did not, on their face, provide sufficient information and requests additional information.

(U) The joint oversight team examines the cited documentation underlying these identified tasking sheets, together with NSA’s Office of Compliance for Cyber and Operations (OCCO), NSA attorneys, and other NSA personnel, as required. The joint oversight team works with NSA to answer questions, identify issues, clarify ambiguous entries, and provide guidance on areas of potential improvement. As noted above, an action by one agency can result in an incident of non-compliance with another agency’s procedures. This is true, for example, for targeting incidents where the underlying issue might be caused by typographical or other errors contained in another agency’s nomination to NSA for tasking. For this reason, incident resolution often involves investigation and coordination with other agencies.

(U) The joint oversight team also reviews NSA’s minimization of Section 702-acquired information. NSD currently reviews all (and ODNI reviews a sample) of the serialized reports that

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NSA has disseminated and identified as containing Section 702-acquired United States person information. The joint oversight team also reviews a sample of serialized reports that NSA has disseminated and identified as containing Section 702-acquired *non*-United States person information. The joint oversight team further reviews a sample of NSA disseminations to certain foreign government partners made outside of NSA's serialized reporting process. These disseminations consist of information that NSA has evaluated for foreign intelligence and minimized, but that may not have been translated into English. Reviewers ensure that United States person information is appropriately masked and that any decisions to disseminate United States person information or unmask United States person information are because the United States person identity is necessary to understand the foreign intelligence information included in the dissemination, as required by NSA's minimization procedures.

(U) NSA is authorized to query both Section 702-acquired content and metadata information to retrieve foreign intelligence information. NSA's Section 702 querying procedures provide that any use of United States person identifiers as terms to query unminimized Section 702-acquired information must be accompanied by 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 in FISA. NSA regularly provides NSD and ODNI with documentation related to queries that NSA identifies as using United States person identifiers as query terms. The joint oversight team then reviews the documentation and works with NSA to answer questions, identify issues, clarify ambiguous entries, and provide guidance on areas of potential improvement. With respect to queries of Section 702-acquired *content* using a United States person identifier, NSA's querying procedures require that the United States person identifier first be approved as a query term by NSA OGC. The joint oversight team reviews all approved United States person identifiers to ensure compliance with NSA's querying procedures.²⁴ For each approved identifier, NSA also provides information detailing why the proposed use of the United States person identifier would be reasonably likely to retrieve foreign intelligence information, the date that the United States person identifier was authorized to be used as a query term,²⁵ and any other relevant information. In addition, with respect to queries of Section 702-acquired *metadata* using a United States person identifier, NSA's querying procedures require that NSA analysts document the basis for each such metadata query prior to conducting the query. NSD reviews the documentation for all such metadata queries that NSA provides to NSD.²⁶

²⁴ (U) On 29 April 2022, ODNI publicly released its ninth *Annual Statistical Transparency Report Regarding the Intelligence Community's Use of National Security Authorities* for Calendar Year 2021 (hereinafter, the "CY 2021 ASTR"), which provided the "estimated number of search terms concerning a known United States person used to retrieve the unminimized contents of communications obtained under Section 702" (emphasis added) for the entire calendar year of 2021.

²⁵ (U) NSA's Section 702 querying procedures provide that NSA may approve the use of a United States person identifier to query Section 702-acquired *content* for no longer than a period of one year and that such approvals may be renewed for periods of up to one year.

²⁶ (U) Also pursuant to reporting requirements prescribed by the USA FREEDOM Act (*see* 50 U.S.C. § 1873(b)(2)(C)), the CY 2021 ASTR provided the "estimated number of queries concerning a known United States person used to retrieve the unminimized metadata information obtained under Section 702" (emphasis added) for the entire calendar year of 2021.

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(U) ~~(S//NF)~~ Based on the joint oversight team's findings during these reviews, NSD prepares a detailed report, which it circulates to ODNI, NSA, CIA, and FBI, that documents the relevant time period of the review, the number and types of facilities tasked and also provides a detailed summary of the findings for that review. These reports are provided to the congressional committees with the Section 707 Report.

(U) Additionally, throughout the reporting cycle, the joint oversight team investigates and reports incidents of non-compliance with NSA's targeting, minimization, and querying procedures, as well as with the Attorney General Acquisition Guidelines. While some incidents may be identified during the reviews, most are identified by NSA analysts or by NSA's internal compliance program and proactively reported to NSD. NSA is also required to report certain events that may not be incidents of non-compliance. For example, NSA is required to report *all* instances in which Section 702 acquisition continued while a targeted individual was in the United States, whether or not NSA had any knowledge of the target's travel to the United States.²⁷ The purpose of such reporting is to allow the joint oversight team to assess whether a compliance incident has occurred and to confirm that any necessary remedial action is taken. Investigations of these incidents sometimes result in requests for supplemental information. All compliance incidents identified by these investigations are reported to the congressional committees in the Section 707 Report and to the FISC.

(U) II. NSA Training

(U) In addition to specific instructions to personnel directly involved in certain incidents of non-compliance discussed in Section III, NSA and the joint oversight team have continued their training efforts to ensure compliance with the targeting, minimization, and querying procedures. During this reporting period, NSA continued to administer the compliance training course dated November 2016.²⁸ All NSA personnel who require access to Section 702 data are required to complete this course on an annual basis in order to gain and/or maintain that access. Additionally, NSA continued providing training on a more informal and ad hoc basis by issuing training reminders and compliance advisories to analysts concerning new or updated guidance to maintain compliance with the Section 702 procedures. Those training reminders and compliance advisories are e-mailed to individual analysts and targeting adjudicators and maintained on internal agency

²⁷ (U) If NSA had no prior knowledge of the target's travel to the United States and, upon learning of the target's travel, "detasked" (stopped collection against) the target's facility without delay, as is required by NSA's targeting procedures, the collection while the target was in the United States would not be considered a compliance incident under NSA's targeting procedures, although the collection would generally be subject to purge under the applicable minimization procedures. The joint oversight team carefully considers, and where appropriate, obtains additional facts regarding every reported detasking decision to ensure that NSA's tasking and detasking complied with its targeting procedures.

²⁸ (U) NSA released the transcript associated with this training, dated August 2016, in response to a Freedom of Information Act (FOIA) case filed in the United States District Court, Southern District of New York, ACLU v. National Security Agency, et al. (hereinafter, the "ACLU FOIA"). The transcript was posted, in redacted form, on ODNI's *intel.gov* website via the *IC on the Record* database on 11 April 2017. The transcript is titled, *OVSCI203: FISA Amendments Act Section 702* (Document 17, NSA's Training on FISA Amendments Act Section 702). NSA began administering an updated version of the training course in September 2022.

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websites²⁹ where personnel can obtain information about specific types of Section 702-related issues and compliance matters.

(U) **III. Section 702 Data and Compliance Trends**

(U) As has been true historically, most of the compliance incidents occurring during this reporting period—excluding FBI querying incidents—involved non-compliance with NSA’s targeting, minimization, or querying procedures.³⁰ This largely reflects the centrality of NSA’s role in the Government’s implementation of the Section 702 authority.

(U) The compliance incidents involving NSA’s targeting, minimization, or querying procedures have generally fallen into the categories below.³¹ However, in some instances, an incident may involve more than one category of non-compliance and would typically be reported as multiple errors.

(U) Types of incidents of non-compliance with NSA’s Targeting Procedures:

- (U) *Tasking Issues*. Incidents where non-compliance resulted in an error in the initial tasking of the facility.
- (U) *Detasking Issues*. Incidents in which the facility was properly tasked, but errors in the detasking of the facility caused non-compliance.
- (U) *Overcollection*. Incidents in which NSA’s collection systems, in the process of attempting to acquire the communications of properly tasked facilities, also acquired data regarding untasked facilities, resulting in “overcollection.”
- (U) *Notification Delays*. Incidents in which a notification requirement was not satisfied.³²
- (U) *Documentation Issues*. Incidents where the determination to target a facility was not properly documented.

²⁹ (U) Examples of these documents were posted, in redacted form, on ODNI’s *intel.gov* website via the *IC on the Record* database on 23 August 2017, in response to the aforementioned ACLU FOIA case: *NSA’s 702 Targeting Review Guidance* (Document 10), *NSA’s 702 Practical Applications Training* (Document 11), *NSA’s 702 Training for NSA Adjudicators* (Document 12), and *NSA’s 702 Adjudication Checklist* (Document 13).

³⁰ (U) As is discussed in the Section 707 report and below, some compliance incidents involve more than one agency. Incidents have therefore been grouped not by the agency “at fault,” but instead by the set of procedures that such actions violated.

³¹ (U) While these categories specifically pertain to NSA incidents, the FBI’s targeting incident categories and all agencies’ minimization and querying incident categories generally align to those NSA categories.

³² (U) A compliance incident may involve both a failure to meet the notification requirement and a substantive error (for example, a tasking or detasking error). In those instances, the substantive error was counted separately from the notification delay. For the majority of delayed notification incidents, the only incident of non-compliance was the failure to comply with the notification requirement.

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(U) Types of incidents of non-compliance with NSA’s Minimization Procedures and NSA’s Querying Procedures:

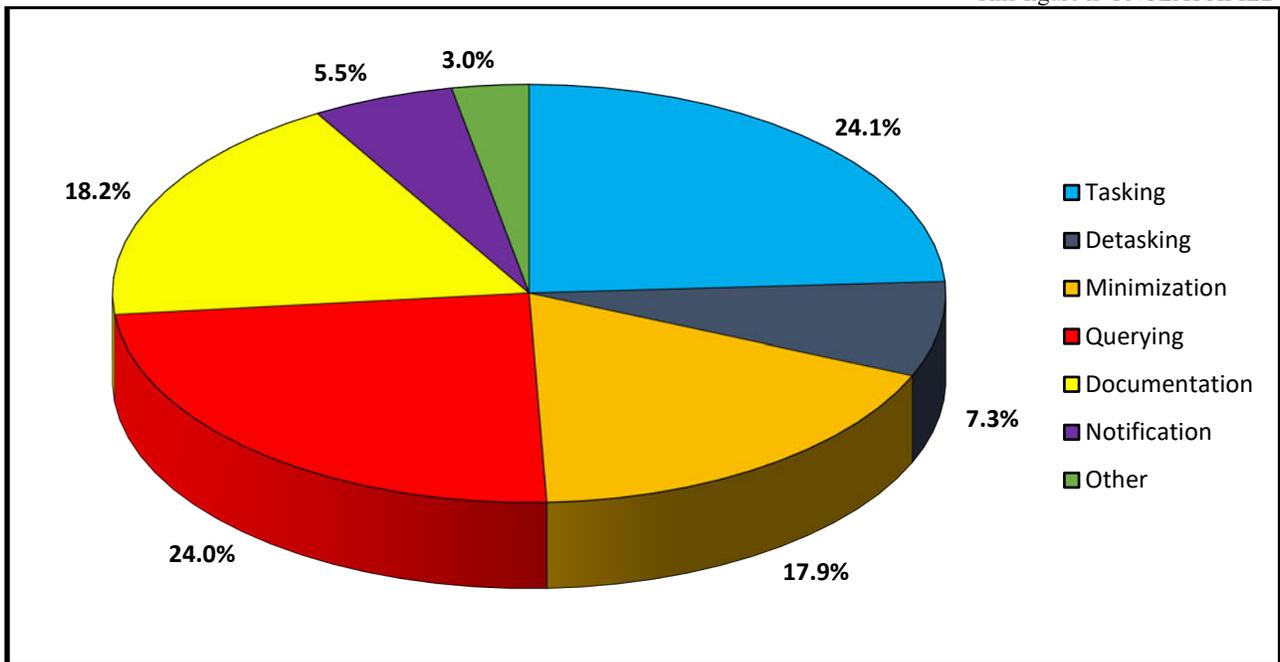
- (U) *Minimization Issues*. Incidents relating to improper acquisition, retention, use or dissemination.
- (U) *Querying Issues*. Incidents relating to improper queries of unminimized Section 702-acquired information—generally, queries that were either (i) not reasonably likely to retrieve foreign intelligence information, or (ii) United States person queries of content that were not pre-approved by NSA OGC, as required by NSA’s querying procedures.

(U) *Other Issues*. This category involves incidents that do not fall into one of the above categories. In these instances, the joint oversight team assesses each incident to determine if it resulted from non-compliance with NSA’s targeting, minimization, or querying procedures and account for those incidents accordingly.

(U) Because the actual number of incidents remains classified, Figure 6A presents the percentage of NSA compliance incidents in each category during this reporting period; Figure 6B presents the classified number of NSA incidents in each category over the last five reporting periods.

(U) **Figure 6A: Percentage Breakdown of Compliance Incidents Involving NSA’s Targeting, Minimization, and Querying Procedures**³³

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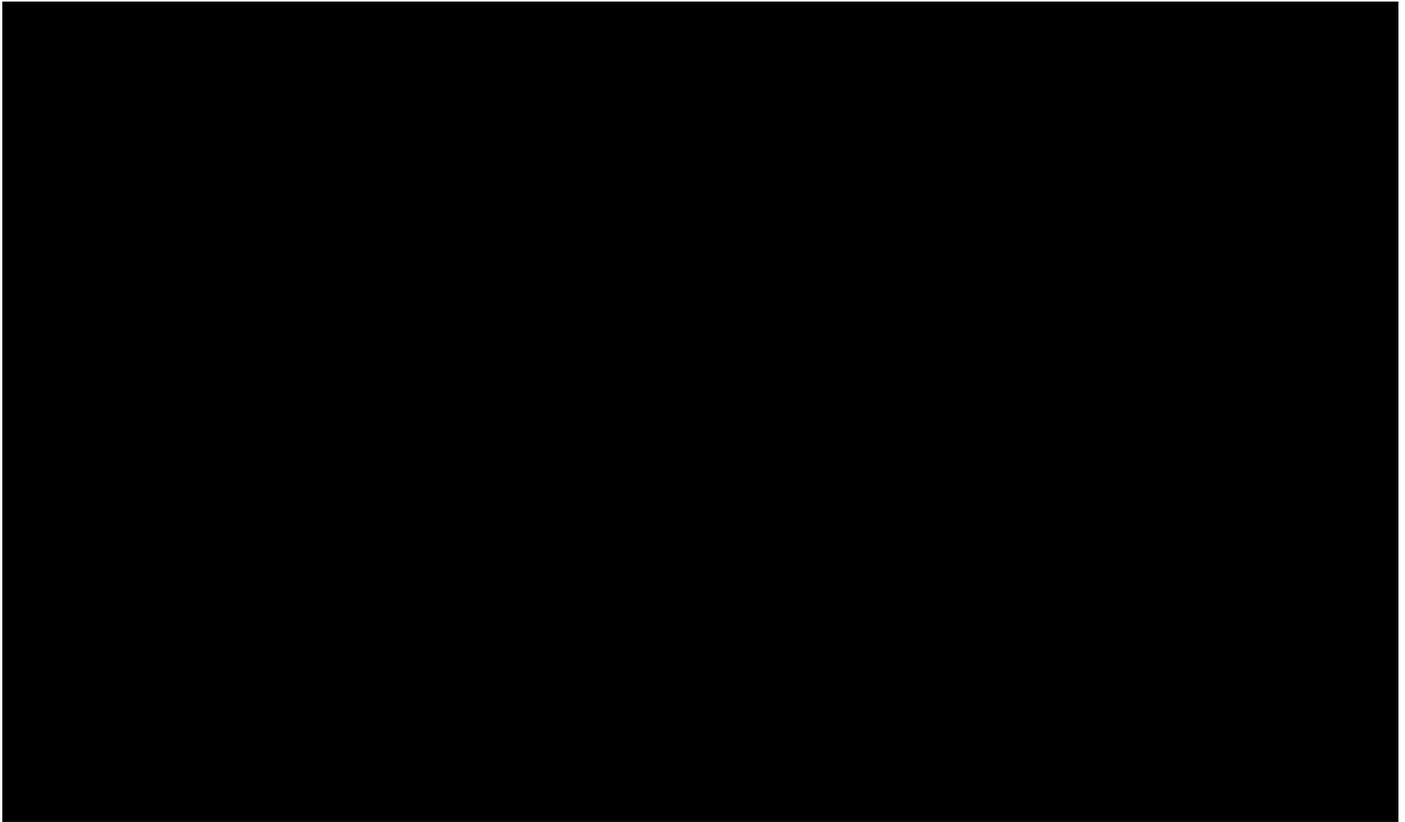


³³ (S//NF) During this reporting period, the number of tasking incidents increased from [redacted] detasking incidents increased [redacted] minimization incidents increased [redacted] querying incidents decreased [redacted]

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(U) Figure 6B: Numerical Breakdown of Compliance Incidents Involving NSA’s Targeting, Minimization, and Querying Procedures



~~(S//NF)~~ As demonstrated by Figure 6B, the number of compliance incidents in each category has varied widely ~~_____~~

~~_____~~ While the joint oversight team has not identified any overarching trends in compliance by incident type, the joint oversight team continues to track this breakdown in case it reveals a need for additional oversight or training.

(U) A. Incidents Involving NSA’s Targeting Procedures

(U) The number of NSA’s “targeting incidents” includes the following categories of incidents that implicate NSA’s targeting procedures: tasking errors, detasking delays, documentation errors, notification delays, overcollection incidents (if any), and any “other” incidents that involve the targeting procedures. Figure 7 provides the NSA targeting compliance

~~(S//NF)~~ ~~_____~~ documentation incidents decreased ~~_____~~ and “other” incidents remained constant ~~_____~~. The number of notification delays increased ~~_____~~. There were no overcollection incidents in this period or the prior period.

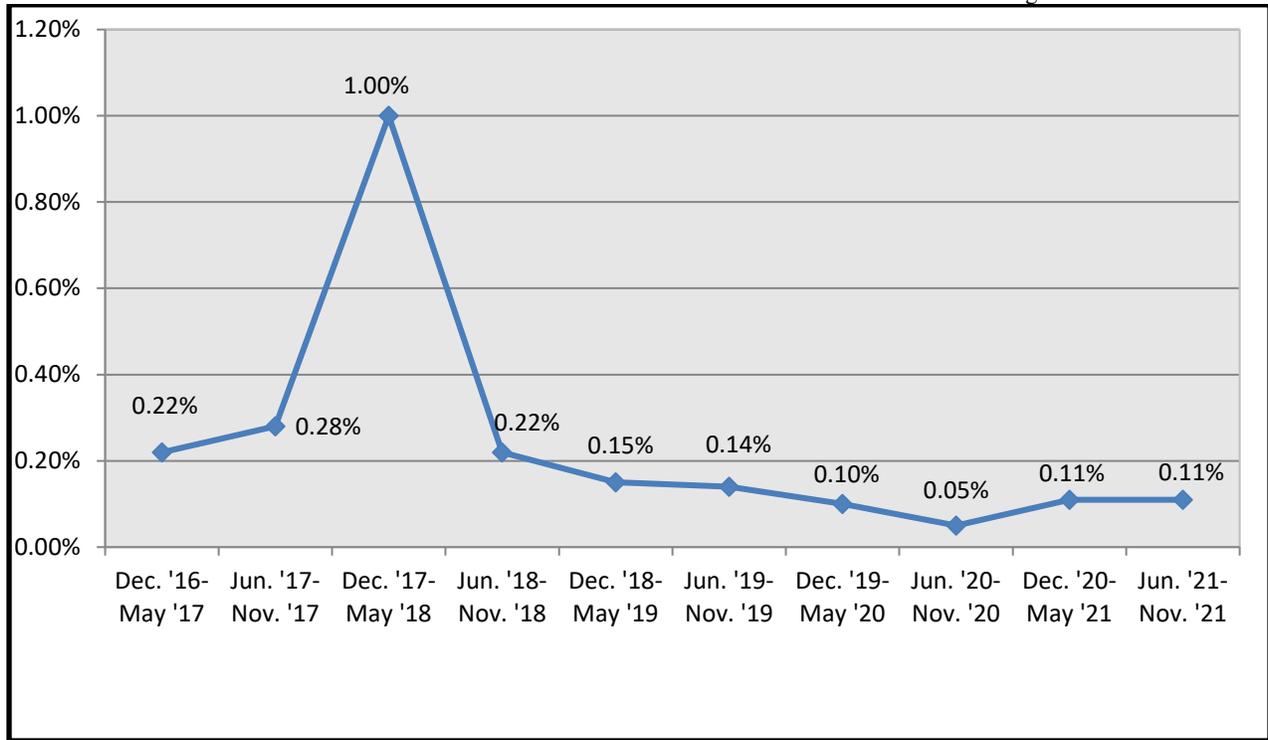
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incident rate for the last ten reporting periods. This metric is calculated as NSA’s number of “targeting incidents,” expressed as a percentage of the average number of tasked facilities.³⁴

(U) **Figure 7: NSA Targeting Compliance Incident Rate**³⁵

This figure is UNCLASSIFIED.



(U) Figure 7 provides a visual representation of trends of non-compliance, but it is important to note that the non-compliance rate is less than 1 percent and has remained at or below 1 percent for over ten reporting periods, varying by only fractions of a percentage point as compared to the average size of the collection. While the NSA targeting compliance incident rate suffers from some limitations—for example, a single targeting incident may involve multiple facilities, and a single action may result in numerous incidents—the joint oversight team has found it to be a useful metric for assessing NSA’s targeting compliance both within this review period and as compared to previous review periods. The joint oversight team assesses that the consistently low NSA targeting compliance incident rate is a result of a focus on compliance, as well as training, internal due diligence processes designed to prevent improper taskings, automated systems designed to provide timely alerts to NSA personnel when facilities need to be detasked, and internal processes for remediating compliance incidents through additional training and counseling.

³⁴ (TS//SI//NF) As noted above, on average, approximately [redacted] facilities were under collection pursuant to Section 702 on any given day during this reporting period.

³⁵ (U) The increase in the NSA targeting compliance incident rate reported in the 20th Joint Assessment (December 2017 to May 2018) was primarily due to a single NSA targeting office misunderstanding how to use a targeting tool.

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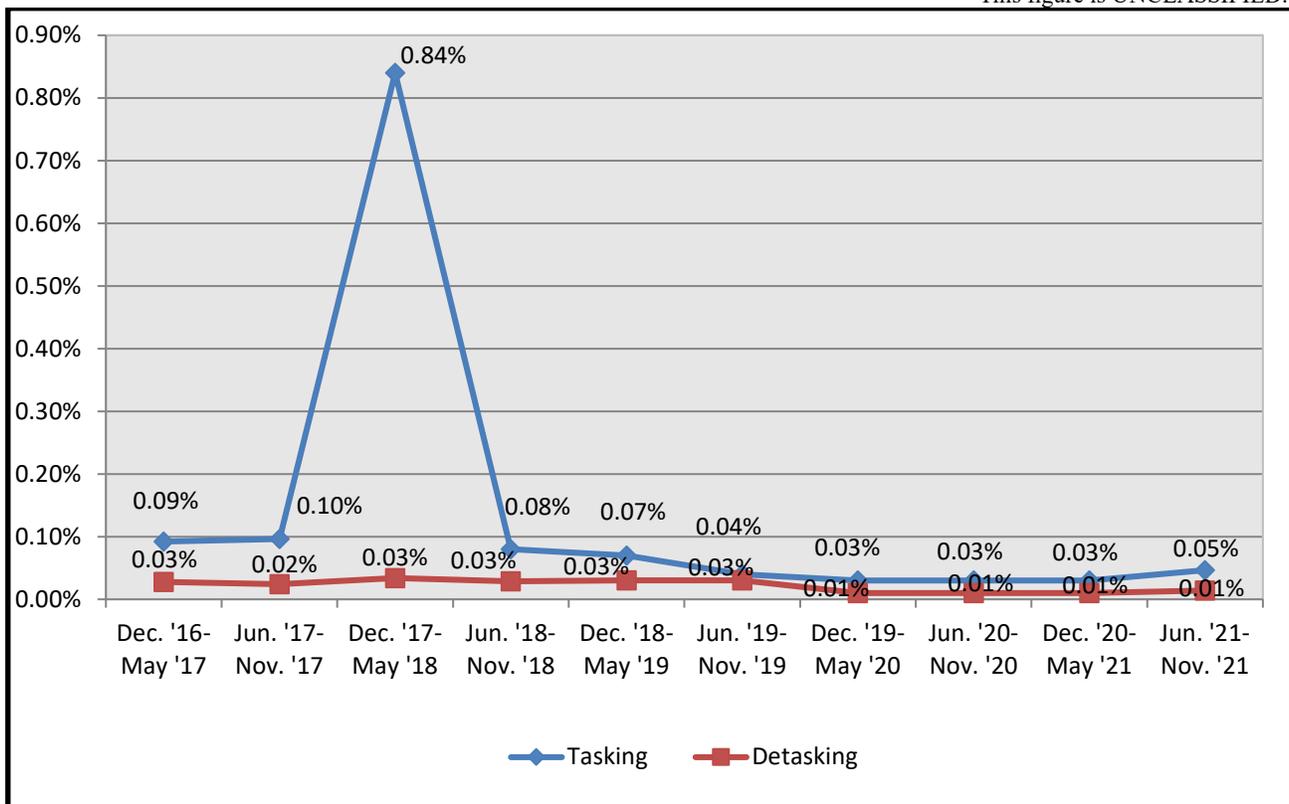
(U) *Tasking and Detasking Incident Trends*

(U) Figure 8 separates out tasking and detasking incidents and presents the compliance incident rate for each, allowing for analysis of their respective trends. The tasking and detasking incident rates compare the number of tasking errors and detasking delays, as applicable, to the average number of facilities tasked for collection on any given day during the reporting period. While these tasking and detasking incidents are grouped in a single chart for comparison, the tasking and detasking incidents are not relational to each other—an increase or decrease in the rate of tasking incidents does not result in an increase or decrease in the detasking incident rate. Tasking and detasking incidents are particularly important because they often involve targeting of United States persons or persons located in the United States.

(U) Tasking errors cover a variety of incidents, ranging from the tasking of an account that the Government reasonably should have known was used by a United States person or a person located in the United States, to typographical errors in the initial tasking of the account that do not affect United States persons or persons located in the United States. Detasking errors more often involve facilities used by United States persons or persons located in the United States, including users who may not have been the intended target. In addition, a single detasking delay may involve multiple facilities that were not timely detasked.

(U) Figure 8: Tasking and Detasking Incident Compliance Rates

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(U) As with Figure 7, Figure 8 provides a visual representation of trends of non-compliance with the tasking and detasking requirements, but it is important to note that the non-compliance rate is less than 1 percent and has remained so for over ten reporting periods. The tasking and detasking compliance incident rates have varied by fractions of a percentage point, as compared to the average size of the collection. During this reporting period, the tasking incident rate increased slightly to 0.05 percent, which generally comports with its historically low rate,³⁶ and the detasking compliance incident rate remained steady at 0.01 percent. The detasking compliance incident rate involving facilities used by United States persons was also close to zero.

(U) Most of the compliance incidents during this reporting period did not involve United States persons. Nevertheless, a primary concern of the joint oversight team is the impact of compliance incidents on United States persons. Accordingly, the following sections separate out tasking and detasking incidents impacting United States persons.

(U) *Tasking Incidents*

(U) (1) *Tasking Incidents Impacting United States Persons*

(U) With respect to tasking incidents, United States persons were primarily impacted by (1) tasking errors that led to the tasking of facilities used by United States persons, and (2) delays in detasking facilities after NSA determined that the user of the facility was a United States person. While the number of incidents involving United States persons remains low, due to their importance, these incidents are highlighted in this subsection.

(U) During this reporting period, 5.2 percent of the total number of tasking errors involved the direct or indirect targeting of United States persons.³⁷ This is a slight decrease from the previous period (5.6 percent). However, the total number of tasking errors involving the targeting of United States persons increased by 75 percent, largely because one set of related errors impacted multiple facilities.

(U) The errors impacting United States persons involved the tasking of facilities where the Government knew or should have known at the time of tasking that at least one user of the tasked facility was a United States person.³⁸ These incidents represent isolated instances of insufficient due diligence, or other oversights, and did not involve an intentional effort to target a United States person. The majority of these tasking errors involved situations where an analyst made an erroneous assessment, overlooked information, and/or conducted insufficient research prior to tasking a facility and, as a result, inadvertently tasked a facility used by a United States person or a

³⁶ (U) The increase in the tasking incident rate reported in the 20th Joint Assessment (December 2017 to May 2018) was primarily due to a single NSA targeting office misunderstanding how to use a targeting tool.

³⁷ ~~(S//NF)~~ There were [REDACTED] tasking errors during this reporting period that involved the direct or indirect targeting of United States persons, [REDACTED] more incidents than the [REDACTED] in the prior reporting period. See NSA Incidents [REDACTED]

³⁸ ~~(U//FOUO)~~ See NSA Incidents [REDACTED].

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facility used by a non-United States person in order to gain intelligence regarding a United States person.



(U) (2) Other Common Tasking Incidents not Impacting United States Persons

(U) As discussed above, most of the compliance incidents during this reporting period did not involve United States persons. During this reporting period, errors in establishing a sufficient basis to assess that a target would possess, receive, or communicate foreign intelligence information accounted for the largest portion of tasking errors (32.2 percent), followed by errors in establishing a sufficient basis to assess that a target was located outside the United States (21 percent). These and other common types and causes of tasking errors not impacting United States persons are discussed below.

- (U) “Foreign intelligence information purpose” errors: Certain tasking errors result from NSA’s failure to establish a valid “foreign intelligence information purpose” for the tasking—*i.e.*, that the targeted user is reasonably expected to possess, receive, and/or is likely communicate foreign intelligence information as defined in 50 U.S.C. § 1801(e), in relation to the categories of foreign intelligence information specified in the Section

³⁹ (U//FOUO) See NSA Incidents [REDACTED].

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702 certifications.⁴⁰ In some cases, this was because the tasking did not relate to one of the specific categories of foreign intelligence information authorized pursuant to the Section 702(h) certifications; in other cases, this was because there was not a sufficient connection between the targeted individual and the Section 702(h) certification, such that the user was not reasonably expected to possess, receive, and/or was not likely to communicate foreign intelligence information. The total number of such tasking errors increased by 28.4 percent, as compared to the prior reporting period. The joint oversight team attributes the increase to a few tasking decisions that involved multiple facilities and accounted for approximately 74 percent of these tasking errors. In all of the instances, at the time of tasking, NSA had sufficiently established that the users were non-United States persons located outside the United States.

- (U) “Foreignness determination” errors: Certain tasking errors result from NSA not properly establishing a sufficient basis to assess that a target was located outside the United States (otherwise referred to as the “foreignness determination”). Certain of these incidents involved the failure to conduct a necessary foreignness check prior to tasking, or involved too long of a delay between the necessary foreignness checks and the tasking of the facility.⁴¹ The total number of foreignness determination tasking errors increased by approximately 166 percent, as compared to the prior reporting period; NSA advises that this increase was due, in part, to misunderstandings regarding under what circumstances the necessary foreignness check mentioned above was required to be conducted prior to tasking.
- (U) Typographical errors: Certain tasking errors result from typographical or similar errors. During this reporting period, the total number of such tasking errors increased by 13.8 percent. In 90.9 percent of these incidents, NSA advised that there was no indication that the relevant facilities were used by a United States person or by someone in the United States.⁴²
- (U) Incorrect providers: Certain tasking errors result from NSA inadvertently tasking a facility to an incorrect provider. During this reporting period, only 2.6 percent of tasking errors involved tasking a facility to an incorrect provider (a slight increase from 1.4 percent in the prior reporting period).
- (U) Administrative updates: Certain tasking errors stem from the incorrect processing of administrative updates to tasking records in NSA systems, which results in NSA retasking the facility pursuant to Section 702 without fully applying its targeting procedures. During this reporting period, the total number of such tasking errors increased by 100 percent.⁴³ The increase was largely attributable to a number of NSA analysts that were incorrectly preparing spreadsheets when requesting administrative

⁴⁰ (U//FOUO) See NSA Incidents [REDACTED]

⁴¹ (U//FOUO) There were [REDACTED] of these types of tasking errors in this reporting period. See, e.g., NSA Incidents [REDACTED]

⁴² (U//FOUO) See NSA Incidents [REDACTED].

⁴³ (U//FOUO) See NSA Incidents [REDACTED].

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updates to large numbers of tasking records, resulting in the incorrect processing of large numbers of administrative updates.

- (U) Inter- and intra-agency miscommunications: Section 702 compliance requires good communication and coordination within and between agencies. During this reporting period, only one tasking error was attributable to miscommunications or delays in communicating relevant facts. The tasking error involved an inter-agency miscommunication that resulted in the tasking of a facility. A nominating agency requested NSA task a facility. While the nomination was pending, the nominating agency learned the user of the facility was no longer an appropriate target and requested the facility be detasked. However, because the facility had not yet been tasked, the request to detask could not be effectuated. As a result, NSA was not aware that the nominating agency had essentially withdrawn its nomination of the facility, and moved forward tasking the facility.⁴⁴

(U) In all of the above tasking incidents, personnel were reminded of the Section 702 tasking requirements, and any applicable collection was purged, or is in the process of being purged, as required by NSA's targeting and minimization procedures.

(U) *Detasking Incidents*

(U) *(1) Detasking Incidents Impacting United States Persons*

(U) During the reporting period, while the total number of detasking incidents increased by 6.6 percent, the number of incidents involving facilities used by a United States person decreased by 30.4 percent, as compared to the prior reporting period.⁴⁵ Detasking incidents involving facilities used by a United States person accounted for 19.8 percent of all detasking incidents, as compared to 30.3 percent in the prior period. The detasking incidents impacting United States persons in this reporting period were caused by unintentional human errors, including oversights and misunderstandings of the detasking requirements. In all of the incidents, personnel were reminded of the Section 702 tasking requirements, any applicable collection was purged, and no reporting was identified based on the collection.

[REDACTED]

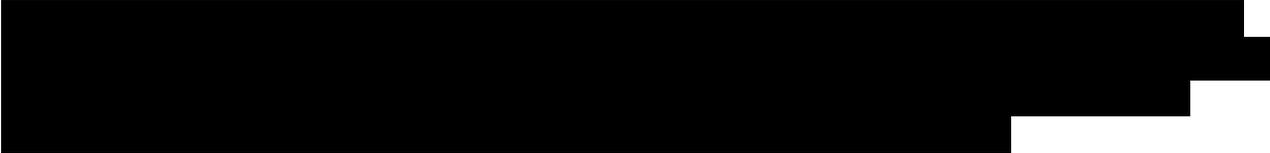
⁴⁴ (U//FOUO) See NSA Incident [REDACTED].

⁴⁵ (S//NF) There were [REDACTED] detasking delays in this reporting period that involved facilities used by United States persons. See NSA Incidents [REDACTED].

⁴⁶ (U//FOUO) There were [REDACTED] such incidents during this reporting period. See NSA Incidents [REDACTED].

⁴⁷ (U//FOUO) See NSA Incidents [REDACTED].

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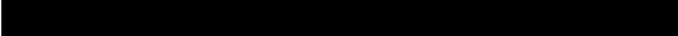
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(U) (2) *Other Common Detasking Incidents not Impacting United States Persons*

(U) The majority of the detasking incidents during this reporting period involved (i) non-United States persons who either traveled to the United States or appeared to have traveled to the United States, or (ii) unexplained indications that a Section 702-tasked facility appeared to have been accessed from within the United States. Some of the common types and causes of detasking errors from this reporting period, along with the corresponding compliance trends, are discussed below.

- (U) Incomplete detaskings: Certain detasking delays result from NSA detasking (or another agency requesting that NSA detask) some, but not all, of a target's facilities. During this reporting period, 9.9 percent of detasking incidents involved such incidents where certain of a target's facilities used by non-United States persons were not timely detasked (a decrease from 14.5 percent in the previous reporting period). The total number of such incidents also decreased by 12.5 percent during this reporting period.⁴⁸
- (U) System errors: Certain detasking errors result from system errors. During this reporting period, the number of detasking errors caused by system errors decreased by 25 percent as compared to the prior reporting period.⁴⁹ Certain of these system errors affected NSA's ability to generate alerts based on information indicating that a Section 702-tasked facility was being accessed from the United States; other system errors affected NSA's ability to timely detask Section 702-tasked facilities after a provider had indicated that the facility did not exist. The Government is continuing to investigate the circumstances surrounding one of these system errors; all of the other system errors have been resolved.
- 
- (U) Inter- and intra-agency miscommunication: As noted above, Section 702 compliance requires good communication and coordination within and between agencies. During

⁴⁸ ~~(S//NF)~~ See NSA Incidents 

⁴⁹ ~~(U//FOUO)~~ See NSA Incidents 

⁵⁰ ~~(U//FOUO)~~ See NSA Incident . This incident occurred during 2020, prior to the relevant agency's  but there was a delay in reporting it to NSD and ODNI.

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this reporting period, 2.5 percent of detasking errors were attributable to miscommunications or delays in communicating relevant facts. The detasking delays caused by such miscommunications involved travel or possible travel of non-United States persons to the United States.⁵¹

(U) B. Minimization Incidents

(U) NSA's minimization procedures detail requirements concerning the circumstances under which Section 702-acquired information may be *disseminated* and rules regarding how long unminimized Section 702-acquired information may be *retained*. During this reporting period, NSA minimization incidents accounted for approximately 18 percent of all NSA incidents of noncompliance, as compared to 2.3 percent in the previous reporting period.⁵² Particular issues of non-compliance with NSA's minimization procedures are detailed below.

(U) (1) Dissemination Data and Incidents

(U) To provide context to the joint oversight team's review of dissemination incidents, Figure 9 presents the classified number of serialized reports and reports identified as containing United States person information over the last ten reporting periods. These disseminations are not compliance incidents but are provided to enhance transparency and understanding of the scope of incidents reported. The overall number of serialized reports identified by NSA as containing Section 702-acquired information increased when compared to the prior reporting period, but remained lower than the number of reports identified in reporting periods prior to the pandemic. In addition, the number of serialized reports NSA has identified as containing United States person information decreased slightly when compared with the previous reporting period.⁵³

⁵¹ ~~(U//FOUO)~~ There were [REDACTED] such incidents in this reporting period. See NSA Incidents [REDACTED].

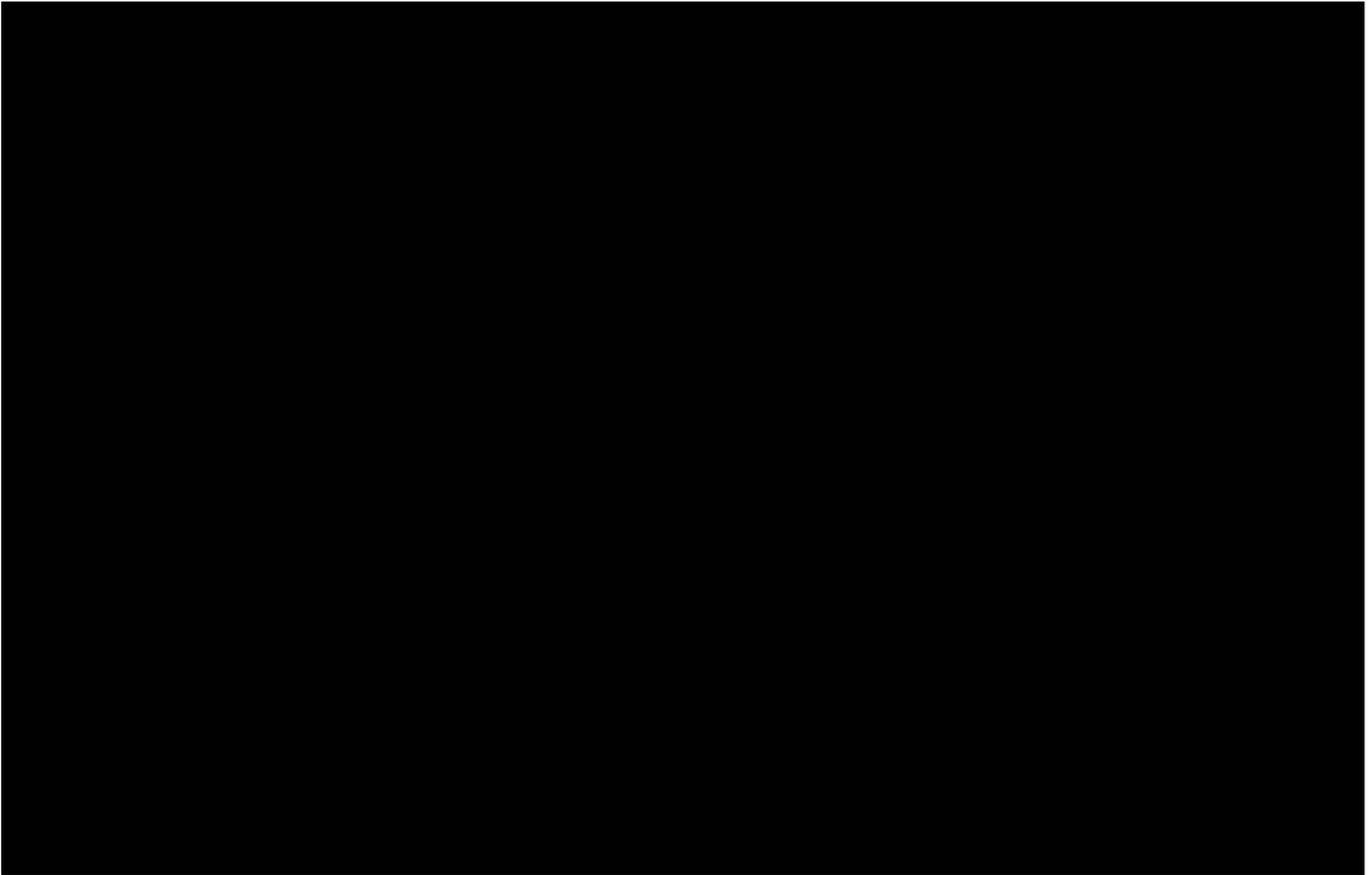
⁵² ~~(S//NF)~~ Minimization incidents increased to [REDACTED] from [REDACTED] incidents in the previous reporting period.

⁵³ (U) NSA does not maintain records that allow it to readily determine, in the case of a report that includes information from several sources, from which source a reference to a United States person was derived. Accordingly, the references to United States person identities may have resulted from collection pursuant to Section 702 or from other authorized signals intelligence activity conducted by NSA that was reported in conjunction with information acquired under Section 702. Thus, the number provided in Figure 9 is assessed to likely be over-inclusive.

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(U) Figure 9: Total Disseminated NSA Serialized Reports Based on Section 702-acquired information and Number of Such Reports NSA Identified as Containing USP Information



(U) NSA’s minimization procedures set forth requirements for the dissemination of United States person information. In most circumstances, NSA initially “masks” United States person information. United States person information is masked by replacing the name or other identifying information of the United States person with a generic term, such as “United States person #1.” Agencies may request that NSA “unmask” the United States person identity. Prior to such unmasking, NSA must determine that the United States person’s identity meets the applicable standards in NSA’s minimization procedures—which generally require that (i) the United States person identity must be, or must be necessary to understand or assess the importance of, foreign intelligence information and (ii) the entity requesting the unmasking must have a need to know the United States person identity.

(U) Incidents involving NSA’s dissemination of United States person information that was not necessary to understand or assess the importance of foreign intelligence information or evidence of a crime represented 17.4 percent of the total number of NSA compliance incidents (compared to

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1.4 percent of NSA incidents during the prior reporting period).⁵⁴ The significant increase in the number of improper disseminations of United States person information is mostly attributable to one large incident, which accounted for 72 percent of the dissemination incidents.⁵⁵

(U) Improper disseminations of United States person information are usually the result of human errors or oversights, generally because United States person information that is not necessary to understand foreign intelligence information is included in the dissemination. For example, 21 percent of the incidents involving the improper dissemination of United States person information during this reporting period were caused by NSA target offices incorrectly using a software tool to redact United States person identities in reports.⁵⁶ The responsible personnel attempted to redact the relevant United States person identity in the dissemination by using a particular feature in a software tool. However, based on the way the software tool was utilized by the target office, it was possible for recipients to remove the redactions and view the United States person identity.

~~(TS//SI//NF)~~ NSA's minimization procedures also set forth specific requirements for the handling and dissemination of attorney-client communications. During this reporting period, there were [REDACTED] incidents in which NSA improperly disseminated Section 702-acquired information in a manner contrary to the requirements of NSA's minimization procedures that govern the handling of attorney-client communications.⁵⁷ [REDACTED]

⁵⁴ ~~(S//NF)~~ There were [REDACTED] incidents involving NSA's dissemination of United States person information that did not meet the dissemination standard in the NSA minimization procedures, compared to [REDACTED] in the previous reporting period.

⁵⁵ [REDACTED]

⁵⁶ [REDACTED]

⁵⁷ ~~(U//FOUO)~~ These incidents correspond to [REDACTED] dissemination incidents reported as NSA Incidents [REDACTED].

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[REDACTED]

(U) As with previous reporting periods, there were no identified NSA incidents of an analyst intentionally violating the dissemination rules.

(U) (2) Improper Retention Incidents

~~(S//NF)~~ During this reporting period, there were [REDACTED] incidents in which NSA improperly retained information acquired pursuant to Section 702 for longer than permitted by NSA's minimization procedures.⁵⁸ These [REDACTED] incidents involved NSA system errors that resulted in information not being aged-off as required by NSA's minimization procedures. NSA advised that, [REDACTED], the system errors have been fixed, and the improperly retained Section 702-acquired information was removed from NSA's systems.

(U) C. Querying Errors

(U) NSA's querying procedures detail requirements governing queries of unminimized Section 702-acquired information, including two principle restrictions.

- 1) (U) NSA's Section 702 querying procedures in effect during this reporting period permitted queries of unminimized Section 702-acquired content using United States person identifiers, provided that such terms must *be approved by NSA OGC* prior to the query being executed. If an NSA analyst uses a United States person identifier that has not been approved by NSA OGC to query Section 702-acquired content, it constitutes a compliance incident.
- 2) (U) NSA's Section 702 querying procedures in effect during this reporting period required that queries of unminimized Section 702-acquired collection *must be "reasonably likely to retrieve foreign intelligence information."* If a query does not meet this standard due to a typographical or comparable error in the construction of the query term,⁵⁹ such an error constitutes a compliance incident, regardless of whether the query term used a non-United States person identifier or a United States person identifier.

(U) During this reporting period, improper queries accounted for 23.8 percent of all NSA incidents of noncompliance, as compared to 37.8 percent in the prior period.⁶⁰ The total number of NSA improper queries also decreased by 30.2 percent, as compared to the prior reporting period.

- (U) Approximately 75.8 percent of the querying errors involved NSA analysts conducting queries of unminimized Section 702-acquired content using a United States

⁵⁸ ~~(U//FOUO)~~ See NSA Incidents [REDACTED].

⁵⁹ (U) For example, this type of query error occurs when an analyst mistakenly inserts an "or" instead of an "and" in constructing a Boolean query, resulting in an improperly tailored query that would potentially receive overly broad results and was unlikely to retrieve foreign intelligence information.

⁶⁰ ~~(S//NF)~~ Querying incidents decreased to [REDACTED] from [REDACTED] incidents in the previous reporting period.

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person identifier without prior NSA OGC approval.⁶¹ Approximately 25.5 percent of these United States person query errors were the result of one NSA analyst misunderstanding one aspect of the due diligence required to be completed prior to executing a query.⁶²

- (U) Approximately 24.2 percent of the querying errors involved queries that were not reasonably likely to retrieve foreign intelligence information.⁶³

(U) The joint oversight team assesses that NSA's training and guidance to its personnel have contributed to its overall compliance with its querying procedures, although individuals continue to make mistakes. The joint oversight team has reviewed the human errors that caused the querying errors during this reporting period and has not identified any discernible patterns in the types or causes of these errors. As with previous reporting periods, there were no identified NSA incidents of an analyst intentionally running improper queries.

(U) D. Other Errors

~~(TS//SI//NF)~~ **Incomplete Purge Errors:** During this reporting period, there were [REDACTED] incidents in which NSA improperly retained information acquired pursuant to Section 702 that was subject to purge as unauthorized collection.⁶⁴ This represents a significant increase over the [REDACTED] such incidents reported during the prior reporting period. The joint oversight team attributes the increase, in part, to NSA's recent efforts to conduct periodic reviews of its purge activities to verify their efficacy. These incidents were typically caused by NSA system errors or human errors that resulted in information subject to purge not being completely removed from NSA's systems.

(U) **Documentation Errors:** The NSA targeting procedures require that for each tasked facility NSA document the source of the "foreignness determination" and identify the foreign power or foreign territory about which NSA expects to obtain foreign intelligence information. The targeting procedures also require a written explanation of the basis for its assessment, at the time of

⁶¹ ~~(S//NF)~~ There were [REDACTED] United States person query incidents involving NSA during this reporting period, compared to [REDACTED] in the previous reporting period. All [REDACTED] incidents involved NSA analysts using United States person identifiers that had not been approved by OGC to query unminimized Section 702-acquired content. [REDACTED]

⁶² [REDACTED]

⁶³ ~~(S//NF)~~ There were [REDACTED] such non-compliant queries during this reporting period, compared to [REDACTED] in the previous reporting period.

⁶⁴ ~~(S//NF)~~ These incidents correspond to [REDACTED] of the [REDACTED] incidents reported as NSA Incidents [REDACTED]

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targeting, that the target is expected to possess, receive, and/or is likely to communicate foreign intelligence information concerning the foreign power or foreign territory that is covered by the certification under which the accounts were tasked (“foreign intelligence purpose”). In all of these incidents, while the actual tasking of each facility was appropriate, the analyst failed to sufficiently document the “foreignness determination” or the “foreign intelligence purpose” on the tasking sheet, or the Section 702(h) certification to which the facility was tasked was not appropriate based on the documented foreign intelligence purpose.

(U) The number of documentation errors decreased by approximately 36 percent during this reporting period.⁶⁵ This decrease in documentation errors was largely attributable to the number of documentation errors being artificially high during the prior reporting period—and artificially low two periods ago—as a result of NSD’s internal process for identifying and reporting documentation errors. The number of documentation errors during this reporting period was generally consistent with the number of documentation errors three reporting periods ago. In each of these incidents, NSA issued reminders to the relevant personnel to review the tasking sheet data thoroughly prior to submission and to select the appropriate certification based on the foreign intelligence they want to receive from the user.

(U) **Notification Delays:** Finally, there were a number of reported incidents where NSA failed to timely provide the required notice to NSD and ODNI after NSA discovered that a tasked facility was used from within the United States or by a United States person. Notification delays accounted for 5.5 percent of NSA compliance incidents in this reporting period, a slight increase from 3.2 percent in the prior reporting period.⁶⁶ However, the total number of notification delays increased 90.6 percent from the prior reporting period.⁶⁷ The significant increase in the number of notification delays during this reporting period had a number of causes, including staffing changes, inadvertent human error, technical issues within NSA’s incident reporting tool, and miscommunication. The total number of notification delays during this reporting period, nevertheless, remained significantly below the number of notification delays reported during the reporting periods preceding the pandemic.

(U) IV. Compliance Assessment

(U) During this reporting period, the joint oversight team found that NSA continued to implement the procedures and follow the guidelines in a manner that reflects a focused and concerted effort by agency personnel to comply with the requirements of Section 702. Additionally, NSA continues to proactively identify, report, and address compliance incidents as

⁶⁵ (S//NF) See NSA Incidents [REDACTED]. During this reporting period, [REDACTED] incidents resulted from documentation errors, representing a significant decrease from the last reporting period, which reported [REDACTED] documentation errors. The number of documentation errors resulting from the tasking of a facility to a different DNI/AG Section 702(h) certification than was appropriate significantly decreased from [REDACTED] in the prior reporting period to [REDACTED] in this reporting period.

⁶⁶ (S//NF) See NSA Incidents [REDACTED]. There were [REDACTED] reporting delays in this reporting period, and in [REDACTED] of the incidents the only violation was a failure to timely provide the required notice to NSD. These reporting delays ranged from one to 299 business days, with an average delay of approximately 100 business days and a median delay of approximately 73 business days.

⁶⁷ (U//FOUO) There were [REDACTED] notification delays in the prior reporting period.

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they arise. In response to compliance incidents, NSA routinely reminds its personnel about the requirements in the Section 702 procedures and to exercise care when completing processes. The joint oversight team assesses that the low NSA targeting compliance incident rate is a result of training, internal processes designed to identify and remediate potential compliance issues, and a continued focus by internal and external oversight personnel to ensure compliance with the applicable procedures. The joint oversight team will continue to be attentive to trends that may indicate that additional training or guidance would be helpful. For example, the joint oversight team recently worked with NSA and the other relevant agencies to provide guidance aimed at addressing misunderstandings regarding the tasking and detasking requirements for facilities determined to be used by current and former United States persons.

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~~TOP SECRET//SI//NOFORN~~**(U) SECTION 4: ASSESSMENT OF SECTION 702 ACTIVITIES – FBI**

(U) FBI fulfills various roles in the implementation of Section 702, which are set forth in further detail in the Appendix.

~~(S//NF)~~ First, FBI is authorized under the certifications to acquire foreign intelligence information. Pursuant to its own authority, FBI is authorized to [REDACTED] from electronic communication service providers by targeting facilities that NSA designates. Those acquisitions must be conducted pursuant to FBI's Section 702 targeting procedures. FBI also conveys [REDACTED] from the electronic communication service providers to NSA – and to itself and CIA and NCTC – for processing in accordance with the agencies' FISC-approved minimization procedures.

~~(S//NF)~~ Second, FBI provides [REDACTED]

(U) ~~(S//NF)~~ Third, as described below, FBI is authorized to receive and use Section 702-acquired information. FBI has a process for nominating to NSA new facilities to be targeted pursuant to Section 702. FBI may also receive dual-routed,⁶⁸ unminimized Section 702-acquired information. FBI is authorized to retain, analyze, and disseminate the information obtained from these taskings in compliance with its minimization procedures, as well as query unminimized Section 702-acquired information, in compliance with its querying procedures.

(U) I. Joint Oversight of FBI Activities

(U) NSD and ODNI's oversight program is designed to ensure FBI's compliance with statutory and procedural requirements for each of the roles described above. During this review period, NSD conducted reviews of FBI's compliance with its targeting procedures approximately every 60 days as well as quarterly reviews of compliance by FBI headquarters components with the FBI's minimization procedures. During this review period, ODNI did not participate in these reviews. NSD also conducts periodic minimization and query reviews of FBI field offices. Reports for each of those reviews have previously been provided to the congressional committees with the Section 707 Report. For this reporting period, the joint oversight team conducted reviews of FBI's application of its targeting, minimization, and querying procedures during the dates shown in Figure 10.

⁶⁸ ~~(S//NF)~~ (U) Dual-routing is the process whereby CIA, FBI, or NCTC requests that NSA route collection to them from already-tasked Section 702 facilities.

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(U) **Figure 10: FBI Reviews**

This table is UNCLASSIFIED.

Approximate Dates of Review	Targeting, Minimization, and Querying Reviewed
August - September 2021	[REDACTED] (querying)
September 2021	[REDACTED] (querying)
September 2021	Agency-wide Batch Jobs (querying)
October – November 2021	1 June 2021 – 31 July 2021 (targeting) 1 June 2021 – 31 August 2021 (minimization)
December 2021	1 August 2021 – 30 September 2021 (targeting)
January – February 2022	1 October 2021 – 30 November 2021 (targeting) 1 September 2021 – 30 November 2021 (minimization)

(S//NF) Upon receipt of a request to acquire the [REDACTED] from a facility, FBI queries its non-FISA databases to ensure that it does not have information indicating that the target is ineligible for tasking pursuant to Section 702.⁶⁹ If those queries return information from the non-FISA databases, then FBI provides a checklist to the joint oversight team that shows the results of its database queries. If FBI’s database queries returned results that FBI identifies as relevant to the target’s location or citizenship status, then FBI also provides the joint oversight team with supporting documentation. Supporting documentation may include, among other things,

[REDACTED]

(S//NF) During this reporting period, NSD reviewed a sample of the targeting checklists completed by FBI analysts and supervisory personnel involved in the targeting process, together with supporting documentation provided by FBI for approved requests for which information is returned by FBI’s database queries.⁷⁰ FBI analysts, supervisory personnel, and attorneys from FBI’s National Security and Cyber Law Branch (NSCLB) are available to answer questions and provide additional documentation. As necessary, the joint oversight team provides guidance on areas of potential improvement.

⁶⁹ [REDACTED]

(U) ⁷⁰ (S//NF) As noted above, FBI may nominate potential Section 702 targets to NSA. As NSA routinely relies on FBI’s lead information to task a number of facilities under Section 702, the joint oversight team may conduct onsite visits at FBI headquarters to review FBI’s original source documentation underlying that lead information. Because those reviews ultimately impact NSA targeting and the application of NSA’s targeting procedures, the results of those visits are included in bimonthly NSA review reports.

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~~(S//NF)~~ Separately, in order to evaluate FBI's [REDACTED] acquisition of [REDACTED] and provision of [REDACTED] the joint oversight team conducts an annual process review with FBI's technical personnel to ensure that those activities comply with applicable Section 702 procedures. The most recent annual process review occurred in June 2022.

(U) In conducting minimization reviews of FBI *headquarters components*, the joint oversight team reviews documents related to FBI's application of its Section 702 minimization procedures. The team reviews a sample of communications that FBI has marked in its systems as both meeting the retention standards and containing United States person information. The team also reviews disseminations by certain FBI headquarters units of information acquired under Section 702 that FBI identified as potentially containing non-publicly available information concerning unconsenting United States persons. During this reporting period, ODNI did not participate in these reviews.

(U) Prior to the start of the pandemic, NSD conducted minimization reviews at FBI *field offices* in order to review retention and dissemination decisions made by field office personnel with respect to Section 702-acquired information. During those reviews, NSD reviewed a sample of retention decisions made by FBI field personnel in connection with investigations involving the acquisition of data pursuant to Section 702 and a sample of disseminations of information acquired pursuant to Section 702 that FBI identified as potentially containing non-publicly available information concerning unconsenting United States persons. NSD temporarily suspended these field office reviews in or around March 2020 in response to the coronavirus pandemic and did not conduct these reviews during this reporting period. Subsequent to this reporting period, NSD re-started these reviews in mid-2022.

(U) During this reporting period, NSD also conducted query reviews of two FBI field offices and one agency-wide review of queries conducted by FBI personnel in an FBI system containing unminimized Section 702-acquired information. ODNI received written summaries regarding all of the reviews from NSD. Those reviews are further discussed in Section III and in the Section 707 Report.

(U) During its query reviews, NSD reviews a sample of the queries conducted by FBI field office personnel in FBI systems that contain unminimized FISA-acquired information, including Section 702-acquired information. NSD evaluates whether queries of Section 702-acquired information complied with the requirements in FBI's Section 702 querying procedures, as well as any court-mandated or statutory requirements. NSD also reviews United States person queries in which the documented justification to access the results of the query indicated an evidence of crime only purpose. Such queries are subject to reporting requirements set forth in the FISC's 18 November 2020 Memorandum Opinion and Order⁷¹ and 21 April 2022 Memorandum Opinion and

⁷¹ (U) The 2020 Opinion approved the 2020 Section 702 Certifications. On 26 April 2021, the DNI, in consultation with the Attorney General, released the 2020 Opinion in redacted form on the ODNI public website *intel.gov* via the "IC on the Record" database.

(U)~~(S//NF)~~ The full title of the 2020 Opinion is *In re DNI/AG 702(g) Certifications 2020-A, 2020-B-, 2020-C, and Predecessor Certifications*. The 2020 Opinion modified query reporting requirements set forth in the 06 December-

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Order, and if conducted in connection with a predicated criminal investigation, may be subject to certain additional requirements set forth in Section 702(f)(2) of FISA. Certain evidence-of-a-crime only queries of United States person identifiers not conducted in connection with a predicated criminal investigation must be reported to the FISC, even if the queries comply with the requirements in FBI's querying procedures. Pursuant to Section 702(f)(2) of FISA, FBI generally must obtain an order from the FISC before accessing the contents of Section 702-acquired communications retrieved by evidence-of-a-crime only queries of United States person identifiers conducted in connection with a predicated criminal investigation, not related to national security; such queries would be reported as compliance incidents if such an order was not obtained.

(U) Throughout the reporting period, the joint oversight team also investigates potential incidents of non-compliance with FBI's targeting, minimization, and querying procedures, the Attorney General's Acquisition Guidelines, or other agencies' procedures in which FBI is involved.⁷² Those investigations are coordinated with FBI OGC and the FBI headquarters component that manages the FBI's Section 702 program and may involve requests for further information; meetings with FBI legal, analytical, and/or technical personnel; or review of source documentation. Compliance incidents identified through those investigations are reported to the congressional committees in the Section 707 Report and to the FISC.

(U) ~~(U//FOUO)~~ Additionally, in order to address recent compliance issues involving FBI queries of unminimized Section 702 information, the joint oversight team leads regular meetings with FBI representatives. Such meetings cover system modifications, compliance trends, training updates and development, and other initiatives to enhance compliance and training.

(U) **II. FBI Training**

(U) During this reporting period, FBI continued implementing its online training programs regarding Section 702 nominations, minimization, querying, and other related requirements. Completion of those FBI online training programs is required of all FBI personnel who request access to Section 702 information. As part of its efforts to address certain issues causing a large number of non-compliant queries, in December 2021, FBI deployed revised query training that was mandatory for its personnel with access to unminimized FISA-acquired information. Current users who did not complete this training by the end of January 2022 had their access to unminimized Section 702-acquired information temporarily suspended until they completed the training. Additional information about FBI's ongoing efforts to avoid non-compliant queries is discussed below. NSD resumed its query training at FBI field offices in 2022.

(U) **III. Section 702 Data and Compliance Trends**

(U) The total number of compliance incidents identified relating to FBI's targeting procedures decreased slightly as compared to the last period. However, the number of incidents

2019 Opinion and Order approving the 2019 Section 702 Certifications. In turn, the 06 December 2019 Opinion and Order modified reporting query requirements first set forth in the 06 November 2015 Opinion and Order approving the 2015 Section 702 Certifications.

⁷² (U) Insofar as FBI nominates facilities for tasking and reviews content that may indicate that a target is located in the United States or is a United States person, some investigations of possible non-compliance with NSA's targeting procedures can also involve FBI.

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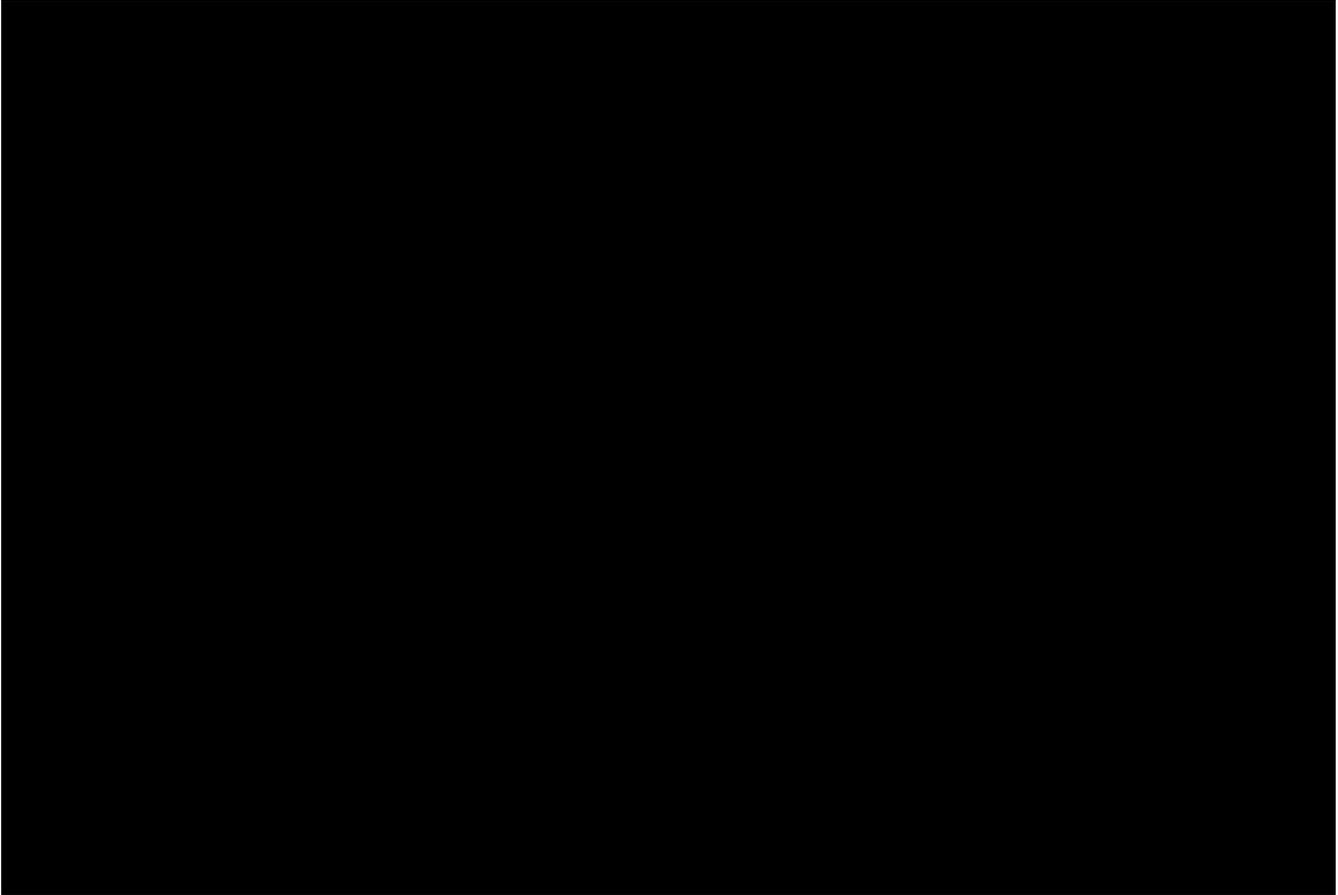
relating to FBI's querying procedures increased significantly this reporting period. The joint oversight team believes that the temporary suspension of NSD's FBI field office query reviews between March 2020 and February 2021, due to the coronavirus pandemic, was a significant factor in the decreased number of FBI compliance incidents reported during the last few periods. NSD resumed conducting query reviews of FBI field offices in February 2021 and resumed conducting minimization reviews of FBI field offices in mid-2022. In recent years, FBI field office reviews have been responsible for discovering a significant portion of FBI's minimization and querying incidents that are reported in each joint assessment. During this reporting period, in addition to FBI field office query reviews, NSD conducted an FBI agency-wide review of a sample of batch jobs conducted between October 2020 and March 2021. **Queries reviewed as part of this agency-wide review were conducted prior to this reporting period and prior to the implementation of the below-described remedial measures designed to enhance compliance.**

~~(S//NF)~~ Figure 11 shows the classified number of FBI targeting and minimization incidents for the last ten reporting periods. [REDACTED], the number of FBI targeting errors has remained in the single digits for each of the last ten reporting periods. The number of FBI minimization errors has also remained relatively low over the last ten reporting periods, though it has typically been higher than the number of targeting errors. While the reverse was true for the three most recent reporting periods, the joint oversight team assesses that this is because it did not conduct reviews of minimization activities by FBI field offices for Section 702-acquired information between March 2020 and mid-2022.

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(U) Figure 11: Number of Compliance Incidents Involving FBI Targeting and Minimization Procedures



(U) Figure 12 shows the classified number of FBI querying incidents for the last ten reporting periods. Figures 11 and 12 have been separated in this joint assessment for ease of reading, as the number of FBI querying incidents is generally orders of magnitude higher than the numbers of targeting and minimization incidents. As noted above, there was a significant increase in the number of incidents involving noncompliance with the FBI querying procedures reported to the FISC during this reporting period, in large part because of the agency-wide review covering queries conducted during prior reporting periods.

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~~TOP SECRET//SI//NOFORN~~**(U) Figure 12: Number of Compliance Incidents Involving FBI Querying Procedures**

(U) The joint oversight team assesses that the increase in FBI errors beginning in the 01 December 2017 through 31 May 2018 reporting period is attributable to various factors—in particular, NSD’s increased focus on reviewing FBI querying practices, which resulted in NSD’s increased experience in evaluating those types of FBI queries and NSD’s increased knowledge of FBI systems storing Section 702-acquired information. The joint oversight team believes that this increased focus and experience, along with other factors, resulted in NSD identifying a larger number of non-compliant queries.

(U) A. Targeting Errors

(S//SI//NF) As noted above, NSA designated [REDACTED] accounts for acquisition of [REDACTED] [REDACTED] during the reporting period, an increase over the prior reporting period when NSA designated [REDACTED] accounts. FBI further reports that it approved approximately [REDACTED] requests for [REDACTED] during the reporting period, which also represents an increase over the prior period when FBI approved [REDACTED] such requests. The number of requests approved is greater than the number of accounts designated during this reporting period because the number of requests approved includes requests for accounts that were designated in prior reporting periods that were still pending at the beginning of this reporting period.

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~~(S//NF)~~ During this reporting period, there were [REDACTED] incidents involving non-compliance with FBI's targeting procedures, compared to [REDACTED] incidents in the previous reporting period.⁷³ The FBI targeting compliance incident rate remained the same (0.01 percent) as the previous reporting period.⁷⁴ Historically, this rate has remained well below one percent. The joint oversight team assesses that FBI's compliance with respect to targeting is a result of its training, systems, and processes.

~~(S//NF)~~ [REDACTED] involved the failure to complete certain diligence checks required by the FBI Section 702 targeting procedures prior to acquiring [REDACTED] from a designated account.⁷⁵ [REDACTED]
[REDACTED]⁷⁶ of these incidents were identified by NSD during its oversight reviews. In general, personnel involved in these compliance incidents were reminded of the requirements under FBI's targeting procedures.

[REDACTED]

(U) B. Minimization Errors

~~(S//NF)~~ During this reporting period, there were no incidents involving non-compliance with FBI's minimization procedures. As noted above, NSD suspended its reviews of minimization activities by FBI field offices in March 2020 due to the pandemic. NSD resumed its minimization reviews in mid-2022. Therefore, during this reporting period, NSD only conducted quarterly reviews of compliance by FBI headquarters with the FBI Section 702 minimization procedures.

(U) C. Querying Data and Errors

(U) *United States Person Querying Data Trends*

⁷³ ~~(U//FOUO)~~ See FBI Incidents [REDACTED].

⁷⁴ ~~(S//NF)~~ The FBI targeting compliance incident rate is calculated as the total number of FBI targeting errors reported during the reporting period, expressed as a percentage of the total number of facilities for which FBI approved a request to acquire [REDACTED] during the reporting period. The joint oversight team does not review all such approved requests. The joint oversight team only reviews checklists and supporting documentation relating to approved requests for which information was returned by FBI's database queries. In addition, during this reporting period, the NSD reviewed checklists and supporting documentation for a sample of such approved requests, as well as a sample of other files to identify any other potential compliance issues. During this reporting period, ODNI did not participate in these reviews.

⁷⁵ ~~(U//FOUO)~~ See FBI Incidents [REDACTED].

⁷⁶ ~~(U//FOUO)~~ See FBI Incidents [REDACTED].

⁷⁷ ~~(U//FOUO)~~ See FBI Incident [REDACTED].

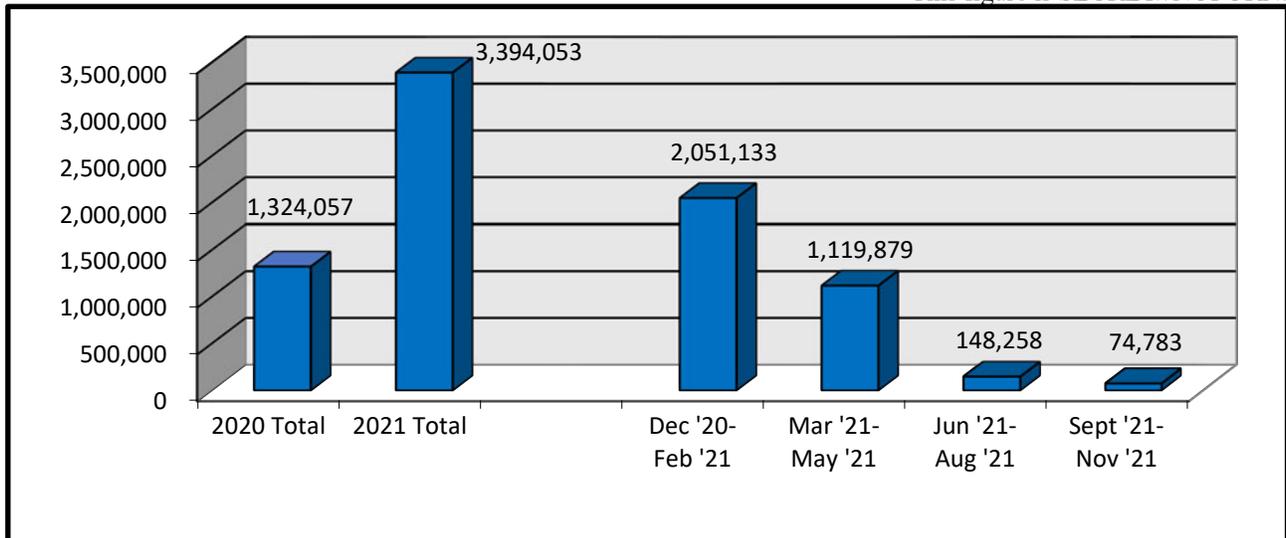
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(U) Figure 13 provides the total number of FBI queries of United States person and “presumed” United States person identifiers during 2020 and 2021, including quarterly breakdowns for this reporting period and the prior reporting period. The totals are provided to enhance transparency and provide context for FBI query incidents and compliance metrics.⁷⁸

(U) Figure 13: FBI United States Person and “Presumed” United States Person Queries Conducted, by Quarter (Annual Totals⁷⁹ for 2020 and 2021)

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⁷⁸ (U) FBI does not currently have the capability to identify the number of unique United States person query terms used, only the total number of United States person queries conducted, which may include duplicate queries. If FBI runs the same query term five times against Section 702-acquired content, this is counted as five queries, not one query term. In addition, FBI queries are run against both content and metadata.

(U) The number of FBI queries does not reflect the number of United States persons associated with these queries. For example, a single United States person might be associated with 10 unique query terms including name, social security number, passport number, telephone number, multiple email addresses, etc. These 10 identifiers could be run 10 different times throughout the reporting period, resulting in 100 queries associated with a single individual. Query terms may also be associated with a United States company rather than a specific United States person.

(U) Finally, certain steps FBI has taken to ensure United States person protections apply to all United States person queries result in an over-counting of United States person queries. More specifically, FBI has the capability to run queries in which a single query action might include hundreds or thousands of query terms, often referred to as a “batch job.” FBI counts such query actions as hundreds or thousands of queries, not one query. However, because FBI systems apply a single United States person label to an entire batch job, if even one query term in such a batch job is associated with a United States person, every term in the batch job carries the United States person label. This means that if one term in a 100-term batch job is associated with a United States person, the query action will be counted as 100 United States person queries, even if the other 99 query terms are not associated with a United States person. This system design ensures that United States person protections are applied to all United States person queries but results in an over-counting of the number of United States person queries actually conducted by the FBI. For this reason, the total number of FBI United States person queries is referred to as “fewer than” the total number of queries labeled as United States person queries.

⁷⁹ (U) The information in Figure 13 regarding FBI queries is tracked and reported quarterly from December 1 to November 30 and, therefore, does not align precisely with calendar year reporting.

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(U) As Figure 13 illustrates, the number of United States person and presumed United States person queries increased by approximately 156 percent between 2020 and 2021. The significant increase was almost entirely attributable to several large batch jobs, comprising nearly two million total queries, conducted by one user in the first quarter of 2021. Those batch jobs concerned one particular cyber threat from Russia related to attempts to compromise United States critical infrastructure. The large number of potential victims, including United States persons, involved in these queries accounted for the vast majority of the increase in United States person queries conducted by FBI over the prior year. The justification for these queries was reviewed by NSD and found to be compliant with the FBI Section 702 querying procedures.

(U) Figure 13 also shows a 92.5 percent decrease in the number of such queries run in the second half of the 2021, as compared to the first half. This decrease was likely due, in part, to the large batch jobs discussed above not being repeated after the first quarter of 2021, as well as certain changes to FBI's systems. In order to address certain recurring query errors, at the end of June 2021, FBI changed its systems to default opt-out of querying unminimized Section 702-acquired information. This change meant that a user would have to affirmatively opt-in to unminimized Section 702-acquired information if the user wanted to query that dataset.

(U) *Querying Errors*

(U) Figure 14 provides the FBI query compliance incident rate, which is calculated as the total number of FBI query compliance incidents reported by NSD to the FISC during the reporting period, expressed as a percentage of the total number of FBI queries reviewed by NSD in connection with the query reviews during which NSD identified the FBI query compliance incidents reported to the FISC during the reporting period. Notably, NSD conducted far fewer query reviews during this reporting period than in past years. During this reporting period, NSD conducted only three query reviews, whereas, for example, NSD conducted query reviews at 27 field offices in 2019 and 29 field offices in 2018. However, NSD's agency-wide query review covered a sample of queries conducted during prior reporting periods, substantially increasing the volume of queries reviewed. It is also worth noting that, starting in or around December 2019, FBI's querying procedures required FBI to generate and maintain certain records pertaining to queries of United States person identifiers. As discussed in greater detail below, compliance incidents relating to the failure to properly label United States person and non-United States person identifiers accounted for a significant number of the FBI querying incidents reported during this reporting period. These types of errors did not exist prior to December 2019; because NSD suspended its FBI query reviews between March 2020 and February 2021, very few of NSD's FBI query reviews prior to February 2021 examined queries conducted after December 2019.

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(U) **Figure 14: FBI Query Compliance Incident Rate**⁸⁰

(U)

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(U) FBI query compliance incidents reported to the FISC during this reporting period (01 June 2021 – 30 November 2021)	(U) (S//NF) 81,289
(U) Number of FBI queries reviewed by NSD in connection with FBI query reviews during which NSD identified the FBI query compliance incidents reported to the FISC during this reporting period	(U) (S//NF) 2,519,931 ⁸¹
(U) FBI query compliance incident rate: number of query incidents reported, divided by number of queries audited	(U) 3.2 percent

⁸⁰ (U) Neither the number of incidents reported in Figure 12, nor the FBI query compliance incident rate in Figure 14, is based on the number of compliance incidents that *occurred* during a given reporting period. Rather, each is based on incidents that were *reported* to the FISC as compliance incidents during the reporting period. There may be delays in resolving and reporting compliance incidents after they are first identified, in part, because of delays in the Government’s investigation while FBI gathers the relevant facts, or while FBI and NSD discuss whether the facts of a matter constitute a compliance incident. Incidents that occur during a given reporting period may, accordingly, be reported over multiple joint assessments, and the number of incidents reported in a given assessment may include incidents that occurred during multiple periods. The number of query compliance incidents reported in Figure 12 and the FBI query compliance incident rate in Figure 14 may, therefore, include queries and personnel audited by NSD during the reporting period for a prior joint assessment.

(U) In addition, because of the delays in resolving and reporting certain compliance incidents, incidents discovered at a single field office review may be reported in different reporting periods. When that occurs, the total number of FBI queries (or personnel) reviewed by NSD in connection with the relevant query review is included in the denominator of the FBI query compliance incident rate for both reporting periods, even though the total number of FBI query compliance incidents discovered as a result of auditing those queries is split between reporting periods. There was one review for which some, but not all, of the FBI query compliance incidents were reported during this reporting period.

(U) It is possible that some of the queries in the logs provided by FBI were not run against Section 702-acquired information but were instead run against other FISA datasets, as NSD’s query audits are designed to review compliance with FBI’s query requirements in all of its applicable FISA procedures. The FBI query error rate may also include identical queries that were conducted multiple times. For example, if NSD discovered that the same improper query was conducted on two separate occasions, those would be counted as two queries reviewed and two compliance incidents.

⁸¹ ~~(S//NF)~~ This number is an approximation. As discussed above, and shown in Figure 10, NSD conducted an agency-wide review of a sample of queries conducted in FBI’s [REDACTED] during a six-month period by personnel across FBI. These queries included batch jobs [REDACTED]. This audit was in addition to NSD’s usual FBI field office query reviews, and the query logs produced by FBI for that audit included nearly six million queries. For a typical field office review, NSD reviews each query log provided by FBI. For this review, however, NSD only reviewed a sample of query logs and did not review or make assessments about all six million of these queries. NSD estimates that, of those nearly six million queries, it made assessments of about approximately 2.3 million queries. Certain of those 2.3 million queries were run in connection with batch jobs for which NSD assessed that the entire job complied with the FBI’s Section 702 querying procedures based on FBI’s description of the purpose of the queries and the source of the identifiers queried. As referenced above, nearly 2

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(U) The FBI query compliance incident rate of 3.22 percent is an increase from the prior reporting period's 0.36 percent. The number of query compliance incidents reported in Figure 14 and the FBI query compliance incident rate in Figure 14 include queries conducted by FBI personnel during prior periods, but these queries were discovered and/or reported during this reporting period. The joint oversight team has noted significant fluctuations in the FBI query compliance incident rate over the last several reporting periods. Those fluctuations are typically driven by the discovery of a small number of very large noncompliant batch jobs during certain reporting periods and not others.⁸² Although the FBI query compliance incident rate is lower during this reporting period than during some pre-pandemic reporting periods, and although many of the errors were conducted prior to the system changes and training updates, the joint oversight team assesses that query issues have remained a compliance challenge for FBI. The joint oversight team notes that NSD identified query compliance incidents during each query review it conducted during both this reporting period and the prior reporting period. In subsequent joint assessments, the joint oversight team expects to be in a position to review the efficacy of some, if not all, of the remedial measures put in place by FBI between the summer of 2021 and the beginning of 2022. The joint oversight team continues to work with FBI to assess the need for additional corrective actions to address the query compliance issues. There were no identified incidents of FBI personnel intentionally running improper queries during this reporting period.

(U) During this reporting period, approximately 99 percent of the FBI query errors were discovered in connection with NSD's agency-wide review of a sample of batch job queries of unminimized Section 702-acquired information. A large number of those queries were non-compliant because the relevant FBI personnel misapplied established presumptions regarding United States person status (which are applied when FBI does not know the status of a user of an identifier), and as a result misidentified queries of potential United States person identifiers as being queries of non-United States person identifiers. In addition, a large number of the queries were non-compliant because they did not have a reasonable expectation that such queries were likely to return foreign intelligence information or evidence of a crime. In these incidents, although the FBI analysts conducted the queries for work-related purposes, such as attempts to investigate threats, the analysts generally misunderstood the application of the query requirements.

(U) The following types of query errors were identified during NSD's reviews, including NSD's review of an internal query audit conducted by FBI's Office of Internal Auditing (OIA).⁸³

million, (approximately 1.9 million) of the 2.3 million queries assessed by NSD in connection with this review were conducted by one user, as part of one project relating to attempts to compromise U.S. critical infrastructure by foreign cyber actors, and were assessed by NSD to be compliant.

⁸² ~~(S//NF)~~ Approximately 99 percent of the 81,289 query errors reported during this reporting period were discovered in connection with above-described agency-wide review of a sample of batch job queries [REDACTED] during a six-month period by personnel across FBI.

⁸³ ~~(S//NF)~~ In fall 2020, FBI established the Office of Internal Auditing (OIA) to augment its internal compliance functions. OIA has advised NSD that this review consisted of an examination of approximately 2,321 queries conducted by users in multiple FBI field offices as well as FBI headquarters elements between 01 April 2020 and 31 March 2021 in FBI's [REDACTED] and were selected by OIA. Some of the noncompliant queries identified by NSD from this audit were reported during this period, but other noncompliant queries NSD identified from this audit were reported in the subsequent reporting period and will be included in the next joint assessment.

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Certain incidents involve queries that were improper for multiple reasons—for example because they both misidentified the United States person or non-United States person status of a relevant query term and because they otherwise failed to satisfy the FBI Section 702 query standard. A query that is improper for multiple reasons is only counted as one incident but may be described and accounted for in multiple subsections below.

(U) (1) *Errors Caused by Misidentifying United States Person Query Terms*

(U) During this reporting period, 70.8 percent of FBI compliance incidents resulted from FBI personnel misidentifying United States person query terms as queries of non-United States person identifiers. Four large batch jobs accounted for 73.8 percent of these misidentification issues.

~~(S//NF)~~ For example, in one instance, NSD's review revealed that an intelligence analyst (IA) conducted three batch jobs, totaling approximately 22,531 separate queries, consisting of 8,217 unique ~~(S//NF)~~ of known or presumed United States persons who had been the targets ~~(S//NF)~~. However, when conducting the queries, the IA identified these queries as containing non-United States person query terms. NSD assessed that there was a specific factual basis to believe that the queries were reasonably likely to retrieve foreign intelligence information or evidence of a crime in unminimized FISA collection; however, NSD further assessed that, based on the information available to the IA, these 8,217 query terms should have been treated as United States person query terms or presumed United States person query terms.

(U) ~~(S//NF)~~ In a second instance, NSD's review revealed that a special agent conducted two related batch jobs consisting of approximately 68,183 separate queries. The query terms were taken from the U.S.-based mobile telephone of a United States person subject ~~(S//NF)~~. When conducting the queries, the special agent labeled the batches as containing exclusively non-United States person identifiers. NSD assessed that there was a specific factual basis to believe that the queries were reasonably likely to retrieve foreign intelligence information or evidence of a crime in unminimized FISA collection; however, NSD further assessed that, based on the information available to the special agent, 34,252 of these query terms should have been treated as United States person query terms or presumed United States person query terms.⁸⁴

(U) ~~(S//NF)~~ NSD identified multiple instances in which queries were conducted relating to individuals present during the 06 January 2021 breach of the U.S. Capitol ("Capitol Breach"), and the query terms were misidentified as non-United States person query terms. These incidents represented both a misapplication of the query standard (discussed in greater detail below) and a misapplication of the United States person presumptions in the querying procedures. In another example, NSD's review revealed that a special agent conducted approximately 265 queries between 06 May 2020 and 23 February 2021, in which the special agent misidentified queries as being of

(U)

⁸⁴ ~~(S//NF)~~ After further examination of the distinct terms within the batch, the FBI advised that approximately 33,931 of the query terms could have been correctly categorized as non-United States person terms if they had been queried in a separate batch. NSD, accordingly, reported the 34,252 queries of identifiers that should have been labeled as United States person identifiers as compliance incidents. NSD assessed that the 33,931 queries of identifiers that were properly labeled as non-United States person identifiers were not compliance incidents.

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non-United States persons. NSD's reviews of the special agent's logs indicate that during the time frame contained within the reviewed logs, whenever the special agent conducted queries of unminimized Section 702-acquired information, the special agent always designated the query as identifying a non-United States person. During the audit, NSD discussed with the special agent the need to properly identify United States person queries of unminimized Section 702-acquired information. The FBI provided refresher training to this agent on applying the United States person presumptions in the Section 702 querying procedures.

(U) (2) Query Errors Caused by Misapplication of the Query Standard

(U) During this reporting period, 28.9 percent of FBI compliance incidents resulted from FBI personnel misunderstanding or misapplying the querying standard. Even though the queries were conducted for work-management or work-related purposes, these queries were not reasonably likely to retrieve foreign intelligence information or evidence of a crime because there were no specific facts linking the individual or query term to the type of information generally found in FBI's unminimized Section 702 collection and, thus, such queries constituted compliance incidents. In most of the instances, FBI personnel did not fully understand the application of the query rules.

~~(S//NF)~~(U) The vast majority of these noncompliant queries sought information regarding civil unrest and protests following the death of George Floyd or regarding the Capitol Breach. For example, in one instance a Task Force Officer conducted approximately [REDACTED] queries of [REDACTED] e-mail addresses in unminimized Section 702-acquired information in response to a lead in which a complainant provided the name of an individual that allegedly participated in the Capitol Breach.⁸⁵ NSD assessed that these queries were not reasonably likely to retrieve foreign intelligence information or evidence of a crime from unminimized FISA collection.

~~(S//NF)~~In addition, [REDACTED] improper queries were conducted in connection with FBI efforts to vet various individuals for derogatory information where there was no reasonable basis to believe that derogatory information would be found in Section 702-acquired data prior to the query. In one example, NSD's review at a field office revealed that an FBI staff operations specialist (SOS) conducted approximately [REDACTED] queries in FBI' [REDACTED] using identifiers associated with a United States person who was working closely with the FBI. The SOS advised NSD that the queries were run in order to vet the person for derogatory information.⁸⁶ In other examples, FBI queried the identifiers of complainants who reported suspicious behavior to FBI in order to evaluate the complainant's credibility, an applicant for a sensitive job in the U.S. Government, and an applicant for a Top Secret clearance and his wife. NSD determined that the queries were not reasonably likely to retrieve foreign intelligence information or evidence of a crime.⁸⁷

~~(S//NF)~~ Further, some noncompliant queries were conducted in connection with domestic terrorism investigations or criminal investigations unrelated to national security,⁸⁸ such as [REDACTED]

⁸⁵ ~~(U//FOUO)~~ See FBI Incidents [REDACTED]

⁸⁶ ~~(U//FOUO)~~ See FBI Incidents [REDACTED]

⁸⁷ ~~(U//FOUO)~~ See FBI Incidents [REDACTED]

⁸⁸ (U) See id.

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[REDACTED] which lacked a specific factual basis to believe that the queries were reasonably likely to retrieve foreign intelligence information or evidence of a crime from the unminimized Section 702 collection.

~~(U//FOUO)~~ Finally, during this reporting period, NSD reported certain noncompliant queries that resulted from misunderstandings of the query standard that also involved sensitive matters.⁸⁹ The joint oversight team worked with FBI to develop requirements and guidance for users conducting such queries. In particular, prior to conducting such queries, users now have to seek pre-approval from senior FBI officials. This new requirement should help reduce occurrences of noncompliant queries involving sensitive matters. The new requirement and associated guidance was deployed in March 2022.

(U) (3) Errors Caused By Unintentional Queries of FISA-Acquired Information

(U) Approximately 0.03 percent of the improper queries reported during this period (as compared to approximately 15.1 percent in the prior reporting period) were conducted as a result of FBI personnel inadvertently failing to opt-out of querying unminimized FISA-acquired information.⁹⁰ To help prevent compliance incidents where the user does not intend to query

⁸⁹ ~~(S//NF)~~ One of these queries involved a member of Congress, and several others involved U.S. Government employees. During its remote review of FBI's [REDACTED] NSD discovered that an FBI Special Agent conducted approximately one query [REDACTED] of unminimized Section 702-acquired information of the first and last name of a member of Congress. The Special Agent had received information that text messages were being sent stating that [REDACTED]. The information provided to the Special Agent included the name of the individual who was allegedly sending these messages, the phone number from which the message was sent, and a web link that was included in the text message. The Special Agent queried the name of the individual alleged to be sending these messages, who, unbeknownst to the Special Agent, was a member of Congress. Based on the information provided to NSD, NSD assesses that there was not a specific factual basis to believe that the queries were reasonably likely to retrieve foreign intelligence information or evidence of a crime in the unminimized Section 702-acquired collection that was queried.

~~(S//NF)~~ During its review of FBI's [REDACTED], NSD discovered that an FBI analyst conducted approximately [REDACTED] queries i [REDACTED] of unminimized Section 702-acquired information using the names and identifiers of [REDACTED] [REDACTED] the chief of staff of a member of Congress, a congressional candidate, and several other United States persons. [REDACTED]

[REDACTED] NSD assesses that these queries were not reasonably likely to retrieve foreign intelligence information or evidence of a crime from unminimized Section 702-acquired collection in the absence of specific facts indicating a connection between the individuals queried and foreign influence threats to the 2020 election. FBI confirmed that no Section 702 information was accessed as a result of these approximately [REDACTED] queries. See FBI Incidents [REDACTED]

⁹⁰ ~~(S//NF)~~ During this reporting period, approximately [REDACTED] of the improper queries were caused by FBI personnel inadvertently failing to opt-out of querying unminimized FISA-acquired information. For example, where FBI personnel neglected to opt-out of unminimized FISA datasets when searching for national security letter returns or intelligence reports. See FBI Incidents [REDACTED]

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unminimized Section 702-acquired information, FBI changed its systems early in this reporting period to default opt-out of unminimized Section 702-acquired information.



(U) (4) *Errors Related to Queries Conducted Solely for an Evidence of a Crime Purpose*

(U) There are several requirements associated with queries conducted solely to retrieve evidence of a crime. The first is a statutory approval requirement that pertains to queries conducted in connection with a predicated criminal investigation. The second is a FISC-mandated quarterly reporting requirement and pertains to all queries conducted solely to retrieve evidence of a crime, whether or not associated with a predicated criminal investigation.⁹²

(U) Section 702(f)(2)(A) provides that FBI may not access the results of a query conducted in connection with a predicated criminal investigation, using a United States person query term, that was not designed to find and extract foreign intelligence information, unless FBI applies for an order from the FISC, based on probable cause, and the FISC enters an order approving the application. During this reporting period, only a small number of compliance incidents involved violations of Section 702(f)(2)(A).⁹³ The number of such compliance incidents has consistently decreased over the past several reporting periods (likely as a result of certain system modifications made by FBI). However, these types of incidents have been a recurring compliance issue for FBI, and since 2018, when Section 702(f)(2)(A) was added to FISA, FBI has never applied for a Section 702(f)(2)(A) order from the FISC.

(U) ~~(S//NF)~~ For example, in one incident, an FBI IA accessed unminimized Section 702-acquired information returned by a query that used a United States person query term solely to retrieve evidence of a crime unrelated to national security. The IA conducted the query based on a lead that was sent by another FBI field office related to the Capitol Breach. At the time of the query, the analyst did not realize that the other field office had opened a predicated criminal investigation. FBI advised that it has not used the query results for any further analytical, investigative, or evidentiary purpose.

(U) IV. Compliance Assessment

(U) The joint oversight team finds that during this reporting period, FBI has continued to implement its targeting procedures and follow the guidelines in a manner that reflects a focused and concerted effort by agency personnel to comply with the targeting requirements of Section 702.

⁹¹ ~~(U//FOUO)~~ See FBI Incidents 

⁹² (U) Subsequent to this reporting period, in its order approving the 2021 Certifications, the FISC slightly revised and added to these quarterly reporting requirements.

⁹³ ~~(S//NF)~~ There were  incidents during this reporting period. See FBI Incidents . The FBI system that was involved in these incidents was .

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The personnel involved in implementing the Section 702 authorities are appropriately directing their targeting efforts at non-United States persons reasonably believed to be located outside the United States for the purpose of acquiring foreign intelligence information. Processes have been put in place to implement these authorities and to impose internal controls for compliance and verification purposes.

(U) However, notwithstanding a focused and concerted effort by FBI personnel to comply with the requirements of Section 702, misunderstandings regarding FBI's querying requirements continued to cause a significant number of query errors. The joint oversight team has worked, and continues to work, with FBI to address query compliance issues through training, guidance, and system changes. **All of the above-described noncompliant queries were conducted prior to the remedial measures put in place in 2021 that are discussed below.**

(U) A. Query Guidance

(U) As a result of the findings from NSD's reviews and observations of the FISC related to these query incidents, NSD, in consultation with ODNI, developed guidance on the query standard for FBI personnel. This guidance document is designed to supplement existing and planned training on the querying standard and provides a fulsome explanation of the query standard. The guidance document also includes multiple examples of the application of the guidance to particular factual scenarios. On 01 November 2021, NSD provided this guidance document to FBI, and FBI has provided this guidance document to users with access to unminimized FISA-acquired information. NSD anticipates that this additional guidance document will facilitate the correct application of the querying standard.

(U) Based on its 2022 query reviews, NSD identified certain compliance trends and areas where additional guidance was warranted for users. NSD and FBI's Office of General Counsel conveyed this information to FBI field office Chief Division Counsels for distribution to their personnel.

(U) B. Enhanced Training

(U) Based on the above guidance regarding the querying standard, FBI has undertaken additional training for FBI personnel focused specifically on the querying requirements. FBI has developed training on the query standard, as well as the Section 702 querying procedures and statutory requirements, and deployed the new training in December 2021. All users with access to unminimized FISA-acquired information are required to take this new query training.

(U) Subsequent to this reporting period in early 2022, NSD resumed its onsite query-related training at FBI field offices.

(U) C. Attorney Review of Batch Jobs

(U) To address query compliance incidents resulting from batch jobs, where a single improper decision or assessment by FBI personnel can result in a large number of compliance incidents, FBI imposed a new requirement during this reporting period. Individual queries conducted using the batch query tool in an FBI system of 100 or more identifiers now require FBI attorney approval prior to the queries being conducted. This added layer of review is designed to

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mitigate the risk that queries with a significant potential to impact privacy and civil liberties equities will not comply with FBI's Section 702 querying procedures.

(U) D. System Changes

(U) At the beginning of this reporting period, the main FBI systems containing unminimized Section 702-acquired information were configured to automatically include FISA datasets – including data acquired pursuant to Section 702 of FISA – and any other datasets the user was authorized to access unless personnel intentionally excluded, or opted-out of, such data. As discussed above, within the first month of this reporting period, FBI implemented a system change altering the default setting in these systems to exclude FISA Section 702 datasets from queries. Pursuant to this change, a user must now affirmatively opt-in to unminimized FISA Section 702 data, thus decreasing the likelihood that the user will unintentionally query FISA Section 702 data.

(U) During this reporting period, FBI also implemented a system change that requires users to write their own free-text justification for a query of unminimized Section 702-acquired information if the user seeks to access Section 702 content returned from such a query and the query includes United States person identifiers. Prior to this change, users selected a justification from a pre-populated drop down menu of options. The joint oversight team assesses that reviewing these case-specific justifications will enable both internal FBI overseers and external overseers at NSD and ODNI to better determine whether FBI personnel understand the querying standard.

(U) E. Pre-approval for Sensitive Queries

(U) Subsequent to this reporting period, in March 2022, FBI put in place requirements for users to obtain pre-approval from senior FBI officials prior to conducting certain sensitive queries. These pre-approvals are documented and subject to audit by the joint oversight team.

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~~TOP SECRET//SI//NOFORN~~**(U) SECTION 5: ASSESSMENT OF SECTION 702 ACTIVITIES – CIA****(U) I. Joint Oversight of CIA**

(U) CIA is authorized to collect Section 702 information under all certifications. While it does not engage directly in targeting or acquisition, it nominates potential targets to NSA for review and processing. If approved for targeting, NSA will either task CIA facilities associated with the target to an electronic communication service provider or pass the request on to FBI for processing.

(U) ~~(S//NF)~~ CIA may also request dual-routed collection for targets originally nominated by another agency. CIA provides NCTC with access to certain unminimized collection and disseminates minimized collection through intelligence reporting. Finally, CIA may query its collection using United States person and non-United States person identifiers for the purpose of retrieving foreign intelligence information.

(U) Because CIA nominates potential Section 702 targets to NSA, and because NSA routinely relies on CIA lead information to target a number of facilities pursuant to Section 702, the joint oversight team typically conducts reviews of CIA, including of its original source documentation underlying lead information. Because those reviews ultimately impact NSA's targeting and the application of NSA's targeting procedures, the results of those reviews are included in the bimonthly NSA review reports discussed previously. CIA has established internal compliance mechanisms and procedures to oversee proper implementation of its Section 702 authorities. Those processes are further described in the Appendix.

(U) The reviews also focus on CIA's application of its Section 702 minimization and querying procedures. Reports for each of those reviews have previously been provided to the congressional committees with the Section 707 Report. For this reporting period, the joint oversight team conducted reviews of CIA's application of its minimization and querying procedures during the dates shown in Figure 15.

(U) Figure 15: CIA Reviews

This table is UNCLASSIFIED.

Approximate Dates of Review	Minimization and Querying Reviewed
September 2021	1 June – 31 July 2021
November 2021	1 August 2021 – 30 September 2021
January 2022	1 October – 30 November 2021

(U) Section 702-acquired communications received by CIA must be minimized pursuant to CIA's minimization procedures. As a part of the typical reviews, the joint oversight team examines documentation related to CIA's retention and dissemination of Section 702-acquired information. NSD reviews all justifications regarding communications acquired under Section 702 and identified as containing United States person information that have been minimized and retained by CIA. Reviewers ensure that communications have been properly minimized and coordinate with CIA

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personnel if they identify any issues involving the proper application of CIA's minimization procedures. The team also reviews all disseminations of information acquired under Section 702 that CIA identified as potentially containing United States person information.⁹⁴

(U) In addition, NSD reviews CIA's written foreign intelligence justifications for all queries using United States person identifiers of unminimized Section 702-acquired information to assess whether those queries were compliant with CIA's querying procedure requirements, including that such queries were reasonably likely to retrieve foreign intelligence information, as defined by FISA.

(U) In addition to the bimonthly reviews, throughout the reporting period, the joint oversight team also investigates and reports incidents of non-compliance with CIA's minimization and querying procedures, the Attorney General Acquisition Guidelines, or other agencies' procedures in which CIA is involved.⁹⁵ Investigations are coordinated through CIA's FISA Program Office and CIA OGC, and when necessary, may involve requests for further information, meetings with CIA legal, analytical and/or technical personnel, or the review of source documentation. All compliance incidents identified through those investigations are reported to the congressional committees in the Section 707 Report and to the FISC.

(U) **II. CIA Training**

(U) During this reporting period, CIA provided targeted FISA training for attorneys it embeds with CIA operational personnel who regularly handle FISA matters, and continued to provide FISA training to any attorney beginning an assignment that may involve the provision of legal advice on FISA matters. Additionally, CIA provided required training to anyone handling unminimized Section 702-acquired information, as well as anyone participating in the Section 702 nomination process. Furthermore, CIA has issued guidance to its personnel about how to properly conduct United States person queries that are reasonably likely to retrieve foreign intelligence information.⁹⁶

(U) **III. Section 702 Data and Compliance Trends**

~~(S//NF)~~ Figure 16 provides the classified number of minimization and querying incidents that involved CIA for the last ten reporting periods. As Figure 17 indicates, there were [REDACTED] compliance incidents reported to the FISC during this reporting period that involved CIA's minimization and querying procedures, which is a decrease from the [REDACTED] incidents reported during

⁹⁴ ~~(S//NF)~~ Due to the sensitive nature of these disseminations, they must be reviewed [REDACTED]

⁹⁵ (U) Insofar as CIA nominates facilities for tasking and reviews content that may indicate that a target is located in the United States or is a United States person, some investigations of possible non-compliance with NSA's targeting procedures can also involve CIA.

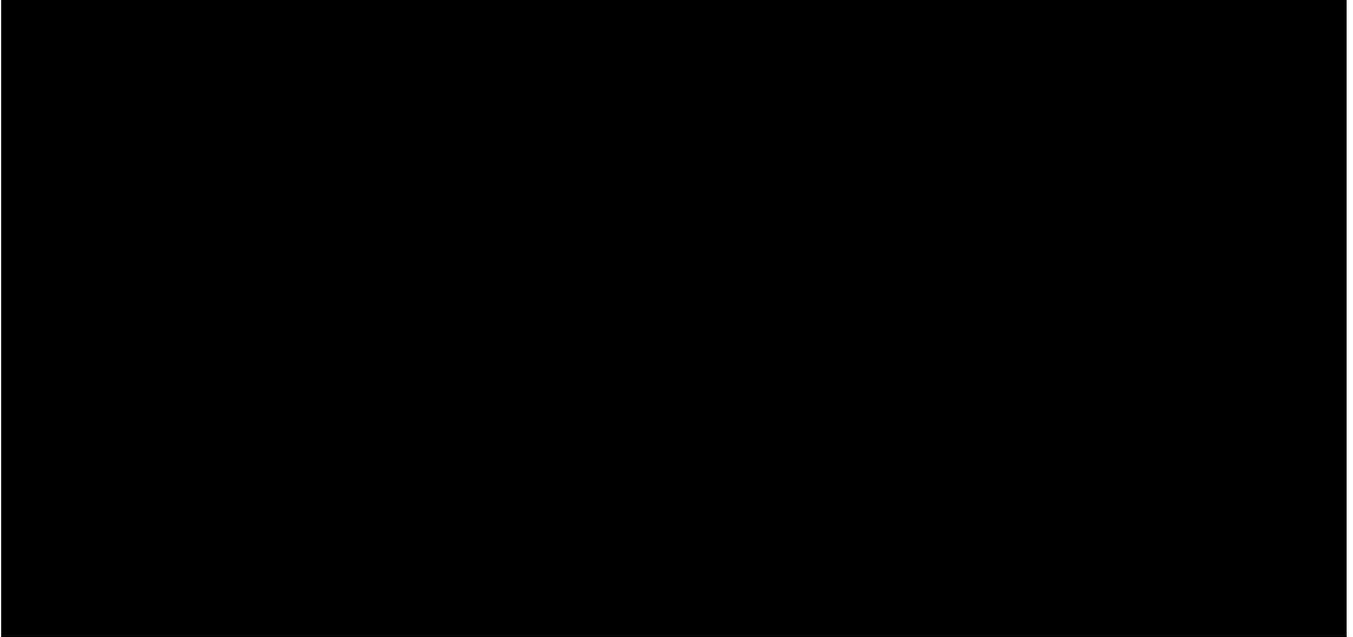
⁹⁶ (U) See *USP Query Guidance for Personnel with Access to Unminimized FISA Section 702 Data*. As discussed in previous joint assessments, in response to the aforementioned ACLU FOIA case, CIA's guidance document was posted, in redacted form, on ODNI's *intel.gov* website via the *IC on the Record* database on 11 April 2017, see Document 15 "CIA's United States Person Query Guidelines for Personnel."

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the previous reporting period and is generally consistent with the number of incidents reported over the last ten reporting periods.

(U) Figure 17: Number of Compliance Incidents Involving CIA's Minimization and Querying Procedures



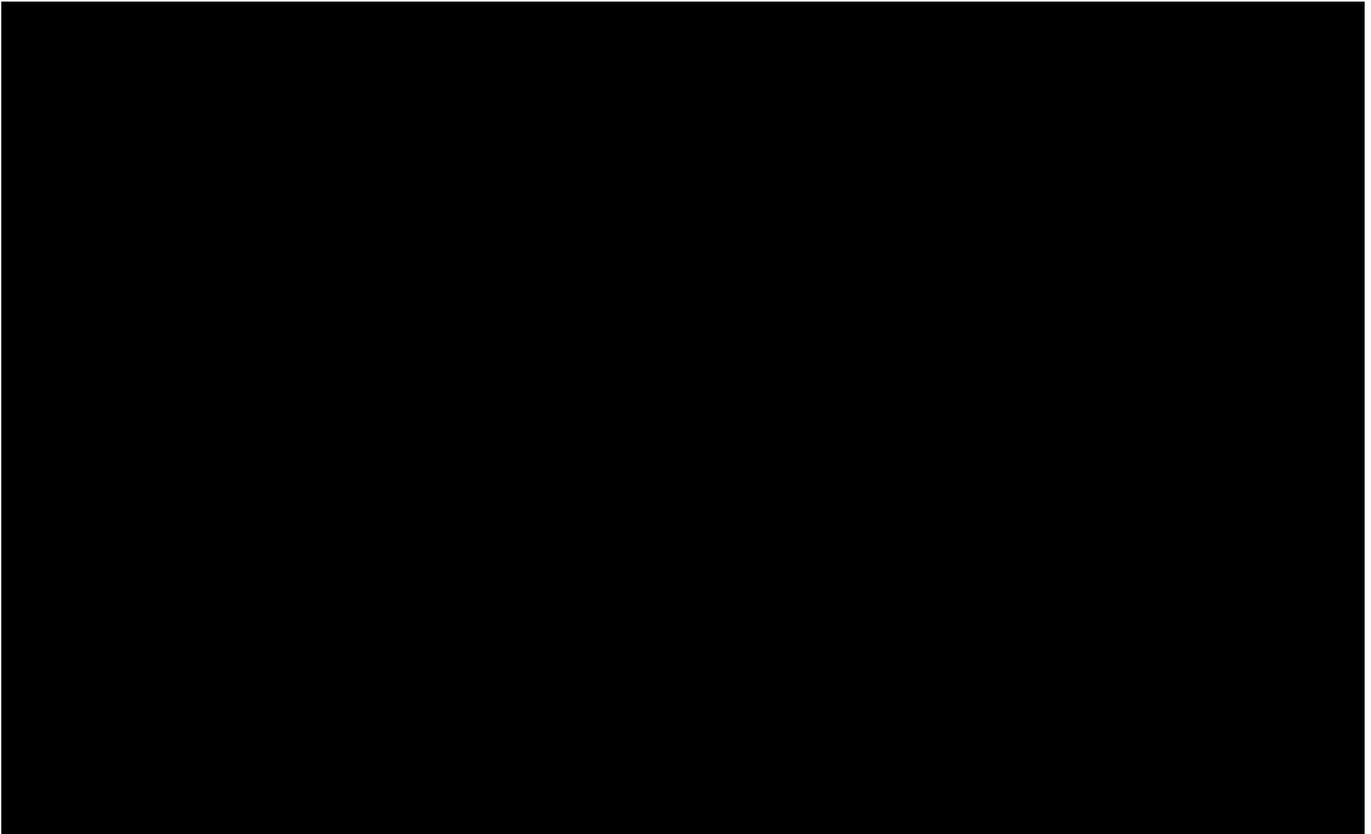
(U) A. Minimization Data and Incidents

(U) Figure 18 provides the number of disseminations containing United States person information identified by CIA in the last ten reporting periods, excluding certain disseminations to NCTC. Although CIA Section 702 nominations were appropriately focused on non-United States persons located overseas, United States person information may be incidentally collected when the target of collection communicates with or talks about a United States person. Such information may be disseminated if it constitutes foreign intelligence or evidence of crime. While the vast majority of these disseminations have been compliant, the total number of disseminations identified by CIA are provided for context when assessing compliance incidents over time. The number of CIA-identified disseminations containing United States person information has fluctuated over the years, but those fluctuations, whether upward or downward, have generally been incremental.

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(U) Figure 18: Disseminations Identified by CIA as Containing Minimized Section 702-Acquired United States Person Information (excluding Certain Disseminations to NCTC)



~~(S//NF)~~ During this reporting period, CIA identified approximately [REDACTED] disseminations of Section 702-acquired information containing minimized United States person information, a slight increase from the prior period. CIA also permits some NCTC personnel to have access to a database containing certain CIA operational cables. These cables have not been included in the above numbers because some of the operational cables were duplicative of the other disseminations CIA has already identified, while a number of others were determined to not contain United States person information.

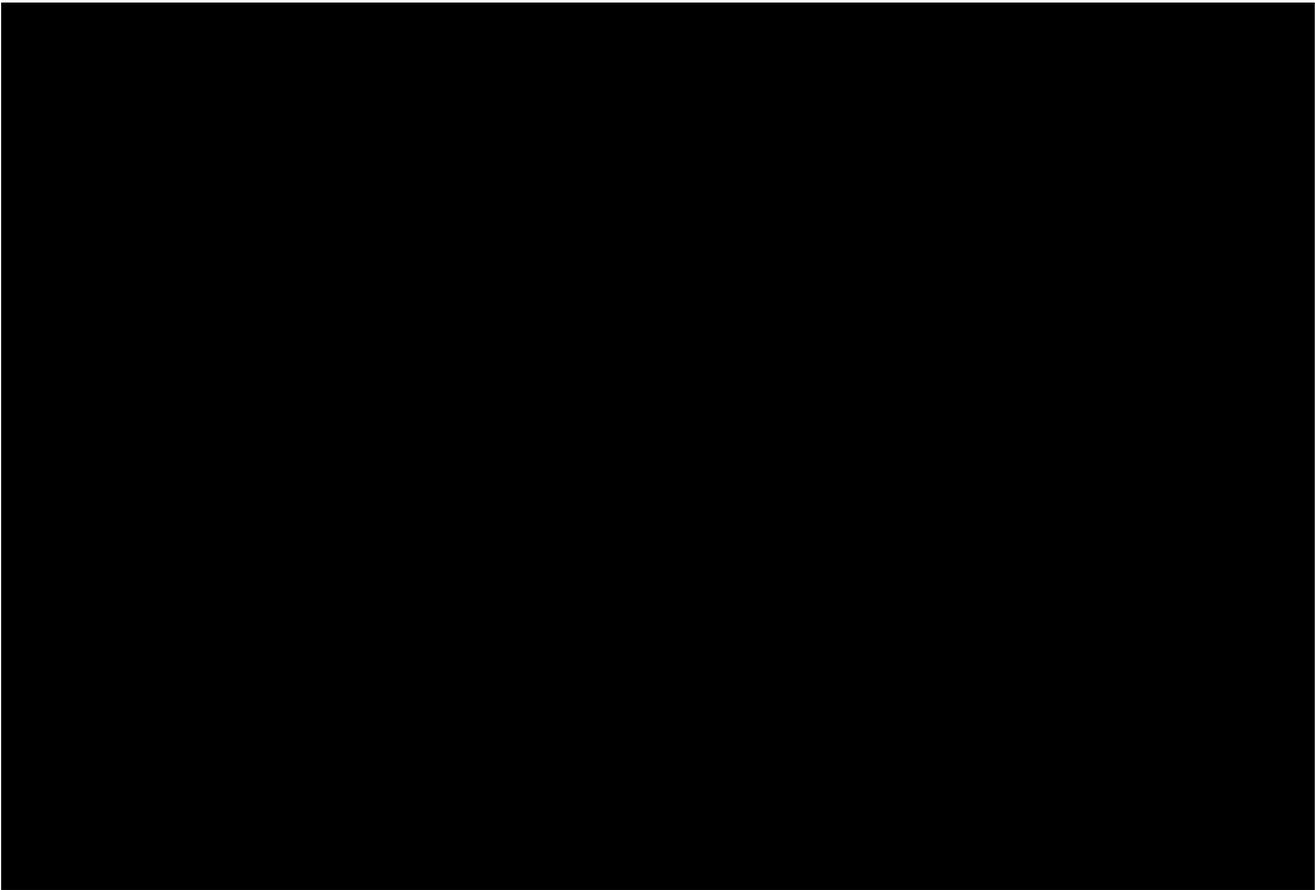
~~(S//NF)~~ Notwithstanding the increase in the number of disseminations by CIA of United States person information over the last ten reporting periods, the number of CIA minimization incidents has remained relatively low. During this reporting period, there was [REDACTED] incident involving non-compliance with CIA's minimization procedures.⁹⁷ [REDACTED]

⁹⁷ ~~(S//NF)~~ CIA receives unminimized communications from facilities that it nominates to NSA for targeting [REDACTED]

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(U) Figure 19: Total CIA Files Retained or Transferred and Total Retained or Transferred Files that Contained Potential United States Person Information¹⁰⁰



(U) B. Querying Incidents

~~(S//NF)~~ During this reporting period, there were [REDACTED] incidents involving non-compliance with CIA's querying procedures. These incidents involved improper queries of Section 702-acquired information by CIA personnel that were not reasonably likely to retrieve foreign intelligence information.¹⁰¹ Specifically, a CIA analyst queried the name of his/her United States person colleague [REDACTED] due to a copy and paste error when he/she was switching between a data repository that contained information obtained pursuant to FISA and another system. CIA advised that the relevant personnel have been reminded of the Section 702 querying requirements.

(U) IV. Compliance Assessment

(U) During this reporting period, the joint oversight team found that CIA continued to implement the procedures and follow the guidelines in a manner that reflects a focused and

¹⁰⁰ ~~(S//NF)~~ Increases noted in Figure 19 during this reporting period, as compared to the prior reporting period, were likely due, at least in part, to the end of [REDACTED]

¹⁰¹ ~~(U//FOUO)~~ See CIA Incidents [REDACTED]

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concerted effort by agency personnel to comply with the requirements of Section 702. The joint oversight team assesses that the relatively low number of compliance incidents involving CIA's Section 702 procedures is a result of training, internal processes designed to identify and remediate potential compliance issues, and a continued focus by internal and external oversight personnel to ensure compliance with the applicable minimization and querying procedures.

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(U) SECTION 6: ASSESSMENT OF SECTION 702 ACTIVITIES – NCTC

(U) I. Joint Oversight of NCTC

(U) ~~(S//NF)~~ NCTC is authorized to receive unminimized Section 702-acquired information and has access to certain systems administered by other agencies that contain minimized Section 702 information pertaining to counterterrorism. NCTC may also receive dual-routed unminimized Section 702-acquired communications. NCTC’s processing, retention, dissemination, and querying of such information is subject to its Section 702 minimization and querying procedures.

(U) ~~(S//NF)~~ Unlike NSA, FBI, and CIA, NCTC does not directly engage in targeting or acquisition, nor does it nominate potential Section 702 targets to NSA. NCTC has established internal compliance mechanisms and procedures to oversee proper implementation of its Section 702 authorities. Because NCTC acquires unminimized Section 702 information, the joint oversight team typically conducts minimization and query reviews of NCTC, and the results of those reviews are included in bimonthly NCTC review reports. Separately, the joint oversight team also conducts an annual review of NCTC’s processes and systems for handling Section 702-acquired information. The most recent such annual process review occurred in July 2022.

(U) Reports for each of those reviews have been provided to the congressional committees with the Section 707 Report. For this reporting period, reviews of NCTC’s application of its minimization and querying procedures were conducted during the dates shown in Figure 20.

(U) Figure 20: NCTC Reviews

This table is UNCLASSIFIED.

Approximate Dates of Review	Minimization and Querying Reviewed
23 September 2021	1 May – 30 June 2021
September 2021	1 July – 31 August 2021
November 2021 – January 2022	1 September – 31 October 2021

(U) As a part of the bimonthly reviews, the joint oversight team examines documents related to NCTC’s retention, dissemination, and querying of Section 702-acquired information. The joint oversight team reviews all communications intercept logs acquired under Section 702 that have been minimized and retained by NCTC, irrespective of whether they contain United States person information, but only reviews the contents of those communication intercepts if they contain United States person information. Reviewers ensure that communications intercepts have been properly minimized and discuss with NCTC personnel issues involving the proper application of NCTC’s minimization procedures. The team also reviews all NCTC disseminations containing United States person information acquired under Section 702. Last, the joint oversight team reviews all of NCTC’s queries of unminimized Section 702-acquired information and the associated written foreign intelligence justifications for those queries.

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(U) In addition to the regularly scheduled reviews, throughout the reporting period, the joint oversight team also investigates and reports incidents of non-compliance with NCTC's minimization and querying procedures or other agencies' procedures in which NCTC is involved.¹⁰² Investigations are coordinated through the NCTC Compliance and Transparency Group and NCTC Legal, a forward-deployed component of ODNI OGC, and when necessary, may involve requests for further information; meetings with NCTC legal, analytical, and/or technical personnel; or the review of source documentation. All compliance incidents identified by those investigations are reported to the congressional committees in the Section 707 Report and to the FISC.

(U) **II. NCTC Training**

(U) During this reporting period, NCTC provided training on NCTC's Section 702 minimization and querying procedures to all of its personnel who will have access to unminimized Section 702-acquired information. NCTC uses a training tracking system through which NCTC can verify that its users have received the appropriate Section 702 training before being given access to unminimized Section 702-acquired information. In addition, NCTC conducts audits of personnel at NCTC who have access to unminimized Section 702-acquired information to confirm that those personnel have received training on NCTC's Section 702 minimization and querying procedures.

(U) **III. Section 702 Data and Compliance Trends**

(U) ~~(S//NF)~~ Figure 21 provides the classified number of minimization and querying incidents that involved NCTC for the last nine reporting periods. As Figure 21 indicates, there was one compliance incident reported to the FISC during this reporting period involving NCTC's minimization procedures and no incidents involving NCTC's querying procedures.

(U) **Figure 21: Number of Compliance Incidents Involving NCTC's Minimization and Querying Procedures**



¹⁰² (U) Insofar as NCTC reviews content that may indicate that a target is located in the United States or is a United States person, some investigations of possible non-compliance with NSA's targeting procedures can also involve NCTC.

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~~TOP SECRET//SI//NOFORN~~**(U) A. Minimization Data and Incidents**

~~(S//NF)~~ During this reporting period, there was one incident involving a violation of NCTC's minimization procedures, a slight decrease from the [REDACTED] incidents reported during the prior reporting period. The incident during this reporting period involved the improper retention of Section 702-acquired information as a result of a configuration error with one user's web-browser. The data was deleted and the analyst involved in this incident was reminded of the Section 702 minimization requirements.

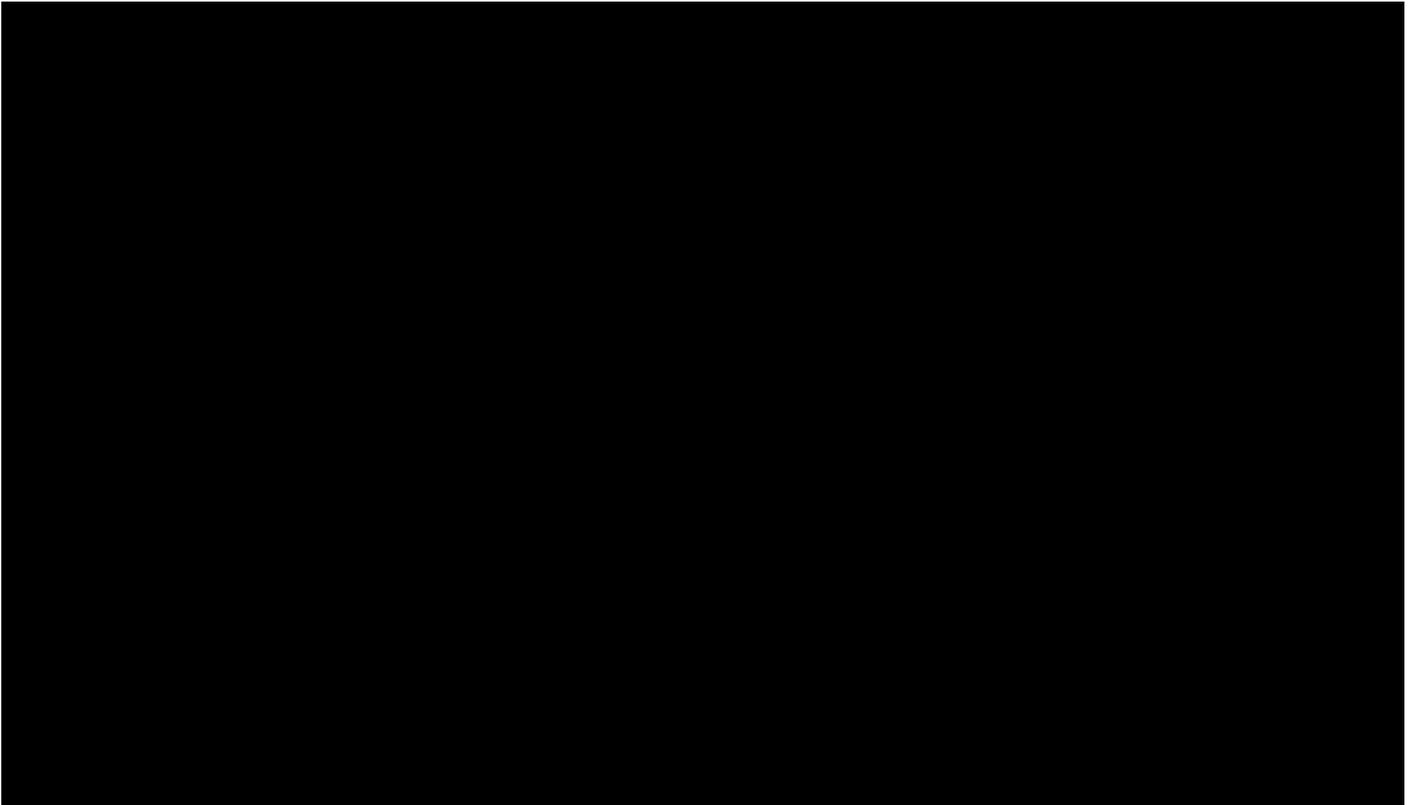
(U) The numbers of NCTC minimization incidents have remained relatively low over the last nine reporting periods, notwithstanding fluctuations in the number of disseminations identified by NCTC as containing minimized Section 702-acquired information. Figure 22 provides classified statistics regarding the number of disseminations identified by NCTC as containing Section 702-acquired information, the vast majority of which were proper disseminations. For reporting periods prior to November 2018, the statistics in Figure 22 include all disseminations identified as containing Section 702-acquired information. Starting in November 2018, NCTC identified and provided to NSD and ODNI only disseminations containing minimized United States person information. Because NCTC only began obtaining unminimized Section 702-acquired data in May 2017, Figure 22 provides data for only nine six-month periods.¹⁰³

¹⁰³ ~~(S//NF)~~ The FISC's April 2017 opinion approved NCTC's 2016 minimization procedures, allowing NCTC to obtain unminimized Section 702-acquired information. NCTC began receiving unminimized Section 702-acquired information on [REDACTED] May 2017.

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(U) Figure 22: Disseminations Identified by NCTC as Containing Minimized Section 702-Acquired Information



~~(S//NF)~~ During this reporting period, NCTC identified and provided to NSD and ODNI approximately [REDACTED] disseminations of Section 702-acquired information containing minimized United States person information. This represented a 41 percent decrease in disseminations containing minimized United States person information when compared to the previous reporting period.

(U) B. Querying Errors

(U) During the reporting period, there were no incidents involving violations of NCTC's querying procedures.

(U) IV. Compliance Assessment

(U) During this reporting period, the joint oversight team found that NCTC continued to implement the procedures and follow the guidelines in a manner that reflects a focused and concerted effort by agency personnel to comply with the requirements of Section 702. The joint oversight team assesses that the relatively low number of compliance incidents involving NCTC's Section 702 procedures is a result of training, internal processes designed to identify and remediate potential compliance issues, and a continued focus by internal and external oversight personnel to ensure compliance with the applicable minimization and querying procedures.

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**(U) SECTION 7: ASSESSMENT OF SECTION 702 ACTIVITIES –
ELECTRONIC COMMUNICATION SERVICE PROVIDERS AND OTHER AGENCIES**

(U) During this reporting period, there was one incident of noncompliance with Section 702 of FISA by another agency within the federal government.¹⁰⁴ The incident involved the improper retention by the Defense Intelligence Agency of reports that were sourced to minimized Section 702-acquired information and that were recalled by NSA for FISA compliance related reasons. The reports, including the improperly retained Section 702-acquired information, have been deleted.

~~(S//NF)~~ During this reporting period, there were no incidents of non-compliance caused by errors made by electronic communication service providers, which represents a decrease from the [REDACTED] incidents reported in the prior reporting period. The joint oversight team assesses that the relatively low number of errors by electronic communication service providers, as compared to the number of facilities tasked to those providers, is the result of continuous efforts by the Government and providers to ensure that lawful intercept systems effectively comply with the law while protecting the privacy of the providers' customers.

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~~TOP SECRET//SI//NOFORN~~**(U) SECTION 8: CONCLUSION**

(U) During this reporting period, the joint oversight team found that the agencies continued to implement the procedures and follow the guidelines in a manner that reflects a focused and concerted effort by agency personnel to comply with the requirements of Section 702. Nevertheless, a continued focus is needed to address the underlying causes of the incidents that did occur, especially those incidents relating to improper queries. In its ongoing efforts to reduce the number of future compliance incidents, the joint oversight team will continue to focus on measures to improve (a) inter- and intra-agency communication, (b) training, and (c) systems used in the handling of Section 702-acquired information, including those systems needed to ensure that appropriate query practices and purge practices are followed and that disseminated reports are recalled when required. Additionally, as part of its ongoing oversight responsibilities, the joint oversight team and the agencies' internal oversight regimes will continue to monitor the efficacy of measures implemented to address the causes of compliance incidents during the next reporting period.

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(U) APPENDIX

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~~TOP SECRET//SI//NOFORN~~**(U) APPENDIX****(U) IMPLEMENTATION OF SECTION 702 AUTHORITIES – OVERVIEW****(U) I. Overview – NSA**

(U) The National Security Agency (NSA) seeks to acquire foreign intelligence information concerning specific targets under each Section 702 certification from or with the assistance of electronic communication service providers, as defined in Section 701(b)(4) of the Foreign Intelligence Surveillance Act of 1978, as amended (FISA).¹ As required by Section 702, those targets must be non-United States persons² reasonably believed to be located outside the United States.

~~(S//NF)~~ During this reporting period, NSA conducted foreign intelligence analysis to identify targets of foreign intelligence interest that fell within one of the following certifications: Certification 2020-A, concerning [REDACTED]

[REDACTED] Certification 2020-B, concerning [REDACTED]

[REDACTED] or Certification 2020-C, concerning [REDACTED]

(U) As affirmed in affidavits filed with the Foreign Intelligence Surveillance Court (FISC), NSA believes that the non-United States persons reasonably believed to be outside the United States

¹ (U) Specifically, Section 701(b)(4) provides:

The term ‘electronic communication service provider’ means – (A) a telecommunications carrier, as that term is defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153); (B) a provider of electronic communication service, as that term is defined in section 2510 of title 18, United States Code; (C) a provider of a remote computing service, as that term is defined in section 2711 of title 18, United States Code; (D) any other communication service provider who has access to wire or electronic communications either as such communications are transmitted or as such communications are stored; or (E) an officer, employee, or agent of an entity described in subparagraph (A), (B), (C), or (D).

² (U) Section 101(i) of FISA defines “United States person” as follows:

a citizen of the United States, an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act [8 U.S.C. § 1101(a)(20)]), an unincorporated association 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 subsection (a)(1), (2), or (3).

³ [REDACTED]

⁴ [REDACTED]

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who are targeted under these certifications will either possess foreign intelligence information about the persons, groups, or entities covered by the certifications or are likely to receive or communicate foreign intelligence information concerning these persons, groups, or entities. This requirement is reinforced by the Attorney General's Acquisition Guidelines, which provide that an individual may not be targeted unless a significant purpose of the targeting is to acquire foreign intelligence information that the person possesses, is reasonably expected to receive, and/or is likely to communicate.

(U) Under NSA's FISC-approved targeting procedures, NSA targets a particular non-United States person reasonably believed to be located outside the United States by tasking facilities used by that person who possesses or who is likely to communicate or receive foreign intelligence information. A facility is a specific communications identifier tasked to acquire foreign intelligence information that is to, from, or about a target. A facility could be a telephone number or an identifier related to a form of electronic communication, such as an e-mail address.⁵ In order to acquire foreign intelligence information from or with the assistance of an electronic communications service provider, NSA first uses the identification of a facility to acquire the relevant communications. Then, after applying its targeting procedures (further discussed below) and other internal reviews and approvals, NSA "tasks" that facility in the relevant tasking system. The facilities are in turn provided to electronic communication service providers who have been served with the required directives under the certifications.

(U) After information is collected from those tasked facilities, it is subject to FISC-approved minimization procedures. NSA's minimization procedures set forth specific measures NSA must take when it acquires, retains, and/or disseminates non-publicly available information about United States persons. All collection of Section 702 information is routed to NSA. However, the NSA's minimization procedures also permit the provision of unminimized communications to the Central Intelligence Agency (CIA), Federal Bureau of Investigation (FBI), and the National Counterterrorism Center (NCTC) relating to targets identified by these agencies that have been the subject of NSA acquisition under the certifications. The unminimized communications sent to CIA, FBI, and NCTC, in accordance with NSA's targeting and minimization procedures, must in turn be processed by CIA, FBI, and NCTC in accordance with their respective FISC-approved Section 702 minimization procedures.⁶

(U) NSA's targeting procedures address, among other subjects, the manner in which NSA will determine that a person targeted under Section 702 is a non-United States person reasonably believed to be located outside the United States, the post-targeting analysis conducted on the facilities, and the documentation required.

⁵ ~~(TS//SI//NF)~~ NSA has also acquired foreign intelligence information through the tasking [REDACTED]

The FISC and congressional committees have been previously advised of such [REDACTED]. The NSA targeting and minimization procedures apply equally to [REDACTED] and references to NSA's processes with respect to "facilities" below are equally applicable to such targeting.

⁶ [REDACTED]

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(U) A. Pre-Tasking Location

(U) 1. Telephone Numbers

~~(S//SI//NF)~~ For telephone numbers, NSA analysts

[Redacted]

(U) 2. Electronic Communications Identifiers

~~(S//SI//NF)~~ For electronic communications identifiers, NSA analysts

[Redacted]

(U) B. Pre-Tasking Determination of United States Person Status

~~(S//NF)~~ With respect to the United States person status

[Redacted]

7 [Redacted]

⁸ (U) Analysts also check this system as part of the “post-targeting” analysis described below.

9 [Redacted]

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[REDACTED]

[REDACTED] In the absence of specific information regarding whether a target is a United States person, the procedures provide that, for a person reasonably believed to be located outside the United States or whose location is not known, NSA may presume the person to be a non-United States person, unless such person can be positively identified as a United States person, or the nature of the person's communications gives rise to a reasonable belief that such a person is a United States person.

(U) C. Post-Tasking Checks

[REDACTED]

[REDACTED] NSA also requires that tasking analysts review information collected from the facilities they have tasked. With respect to NSA's review of acquired communications, a notification e-mail is sent to the tasking team upon initial collection for the facility. NSA analysts are expected to review this collection within five business days to confirm that the user of the facility is the intended target, that the target remains appropriate to the certification cited, and that the target remains outside the United States. Analysts are then responsible to review traffic on an on-going basis to ensure that the facility remains appropriate under the authority. [REDACTED]

[REDACTED] Should traffic not be viewed at least once every 30 business days, a notice is sent to the tasking team and their management, who then have the responsibility to follow up.

(U) D. Documentation

~~(S//NF)~~ The procedures provide that analysts will document in the tasking database a citation to the information leading them to reasonably believe that a targeted person is located outside the United States. The citation is a reference that includes the source of the information, such as a report number or communications intercept identifier, maintained by NSA, enabling oversight personnel to locate and review the information that led the analyst to his/her reasonable belief. Analysts must also identify the foreign power or foreign territory about which they expect the proposed targeting will obtain foreign intelligence information.

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(S//NF) NSA [REDACTED] an existing database tool, for use by its analysts for Section 702 tasking and documentation purposes. [REDACTED] to assist analysts as they conduct their work. This tool has been modified over time to accommodate the requirements of Section 702, to include, for example, certain fields and features for targeting, documentation, and oversight purposes. Accordingly, the tool allows analysts to document the required citation to NSA records on which NSA relied to form the reasonable belief that the target was located outside the United States. [REDACTED]

[REDACTED] The tool has fields for the certification under which the target falls, and for the foreign power as to which the analyst expects to collect foreign intelligence information. Analysts fill out various fields [REDACTED] for each facility, as appropriate, including the citation to the information on which the analyst relied in making the foreignness determination.

(U) NSA's targeting procedures also require analysts to identify the foreign power or foreign territory about which they expect the proposed targeting will obtain foreign intelligence information and provide a written explanation of the basis for their assessment, at the time of targeting, that the target possesses, is expected to receive, and/or is likely to communicate foreign intelligence information concerning that foreign power or foreign territory.

(U) NSA also includes the targeting rationale (TAR) in the tasking record, which requires the targeting analyst to briefly state why targeting for a particular facility was requested. The intent of the TAR is to memorialize why the analyst is requesting targeting, and provides a linkage between the user of the facility and the foreign intelligence purpose covered by the certification under which it is being tasked. The joint oversight team assesses that the TAR has improved the oversight team's ability to understand NSA's foreign intelligence purpose in tasking facilities.

(S//NF) [REDACTED]

[REDACTED] Entries are reviewed before a tasking can be finalized. Records from this tool are maintained and compiled for oversight purposes. For each facility, a record can be compiled and printed showing certain relevant fields, such as: the facility, the certification, the citation to the record or records relied upon by the analyst, [REDACTED] the analyst's foreignness explanation, the targeting rationale, any other comments from NSA, etc. These records, referred to as "tasking sheets," are reviewed by the Department of Justice's National Security Division (NSD), and also provided to the Office of the Director of National Intelligence (ODNI), as part of the oversight process.

(S//NF) The source records cited on these tasking sheets are contained in a variety of NSA data repositories. These records are maintained by NSA and, when requested by the joint oversight team, are produced to verify determinations recorded on the tasking sheets. Other source records may consist of "lead information" from other agencies, such as disseminated intelligence reports or lead information [REDACTED]

[REDACTED]

[REDACTED]

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(U) F. Internal Procedures

(U) NSA has instituted internal training programs, access control procedures, standard operating procedures, compliance incident reporting measures, and similar processes to implement the requirements of the targeting procedures. Only authorized personnel who have received certain types of training and authorizations are provided access to the Section 702 program data. These authorized personnel must complete a comprehensive training program as approved by NSA OGC and NSA Compliance Group; review the targeting, minimization, and querying procedures as well as other documents filed with the certifications; and pass a competency test. The databases personnel use are subject to audit and review by NSA's Compliance Group. For guidance, authorized personnel must consult standard operating procedures, supervisors, NSA Compliance Group personnel, and NSA OGC attorneys.

(U) The NSA targeting and minimization procedures also require NSA to conduct oversight activities and make any necessary reports, including those relating to incidents of non-compliance, to the NSA Office of the Inspector General (NSA OIG) and NSA OGC. NSA's Office of Compliance for Cyber and Operations reviews all Section 702 taskings and conducts spots checks of disseminations based in whole or in part on Section 702-acquired information. The Directorate of Operations Information and Intelligence Analysis organization also maintains and updates an NSA internal website regarding the implementation of, and compliance with, the Section 702 authorities.

(U) NSA has established standard operating procedures for incident tracking and reporting to NSD and ODNI. Compliance officers work with NSA analysts as well as CIA and FBI points of contact, as necessary, to compile incident reports that are forwarded to both NSA OGC and OIG. NSA OGC forwards the incidents to NSD and ODNI.

(U) On a more programmatic level, under the guidance and direction of the Compliance Group, NSA has implemented and maintains a Comprehensive Mission Compliance Program (CMCP) designed to effect verifiable conformance with the laws and policies that afford privacy protections during NSA missions. The Compliance Group complements and reinforces the intelligence oversight program of the NSA OIG and oversight responsibilities of NSA OGC.

(U) A key component of the CMCP is an effort to manage, organize, and maintain the authorities, policies, and compliance requirements that govern NSA mission activities. This effort, known as "Rules Management," focuses on two key components: (1) the processes necessary to better govern, maintain, and understand the authorities granted to NSA; and (2) technological solutions to support (and simplify) Rules Management activities. The Authorities Integration Group coordinates NSA's use of the Verification of Accuracy process originally developed for other FISA

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programs to provide an increased level of confidence that factual representations to the FISC or other external decision makers are accurate and based on an ongoing, shared understanding among operational, technical, legal, policy, and compliance officials within NSA. NSA has also developed a Verification of Interpretation review to help ensure that NSA and its external overseers have a shared understanding of key terms in Court orders, minimization procedures, and other documents that govern NSA's FISA activities. The Compliance Group conducts the Mission Compliance Risk Assessment (MCRA) that assesses the risk of non-compliance with the rules designed to protect privacy and to safeguard information. Risks are assessed annually by authority and/or function for SIGINT and Cybersecurity missions. The results are used to inform management decisions, priorities, and resource allocations regarding the CMCP.

(U) II. Overview – CIA

(U) A. CIA's Role in Targeting

~~(S//NF)~~ Although CIA does not target or acquire communications pursuant to Section 702, CIA has put in place a process, in consultation with NSA, FBI, NSD, and ODNI, to identify foreign intelligence targets to NSA. Based on its foreign intelligence analysis, CIA may "nominate" a facility to NSA for potential acquisition under one of the Section 702(h) certifications. The nomination provides NSA with the basis for CIA's assessment that a nominated facility falls within the foreign intelligence purpose of the specified certification, as well as information [REDACTED] [REDACTED] NSA will apply its targeting procedures, as described above, to CIA's nominations and, if appropriate, task the [REDACTED] [REDACTED]

~~(S//NF)~~ In addition to nominations, CIA may also request unminimized data from Section 702 facilities already tasked by NSA, a process referred to as "dual-routing."¹¹ CIA applies its Section 702 minimization procedures to both the Section 702 nominated and dual-routed data.

~~(S//NF)~~ [REDACTED] [REDACTED] [REDACTED] [REDACTED] At the beginning of this reporting period, nominations were reviewed and approved by a targeting officer's first line manager, a component legal officer, a senior operational manager, and the FISA Program Office prior to export to NSA. However, on 21 October 2021, CIA's nominations process was revised to require approval by only the targeting officer's first line manager and the FISA Program Office. Throughout the process, both component legal officers and CIA's FISA attorneys are available for consultation regarding whether the nomination is in compliance with Section 702 of FISA and NSA's targeting procedures.

¹¹ ~~(TS//SI//NF)~~ Dual-routing is the process whereby CIA, FBI, or NCTC may request that NSA route already tasked Section 702-acquired information (for specified facilities) to CIA, FBI, or NCTC respectively. Pursuant to its Section 702 authorities, NSA collects information [REDACTED] in two ways: [REDACTED] (commonly referred to as "downstream" collection); [REDACTED] (commonly referred to as NSA's "upstream" collection). NSA does not provide upstream collection to CIA, FBI, or NCTC.

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The Government assesses this change eliminates redundancy in CIA's nomination process. NSA will then conduct a review of CIA's nomination information under the NSA's targeting procedures, based on the "totality of the circumstances," [REDACTED]

[REDACTED]

[REDACTED]

~~(S//NF)~~ The FISA Program Office was established in December 2010 [REDACTED] and is charged with providing strategic direction for the management and oversight of CIA's FISA collection programs, including the retention and dissemination of foreign intelligence information acquired pursuant to Section 702. This group is responsible for overall strategic direction and policy, programmatic external focus, and interaction with counterparts of NSD, ODNI, NSA, and FBI. In addition, the office leads the day-to-day FISA compliance efforts [REDACTED]. The primary responsibilities of the FISA Program Office are to provide strategic direction for data handling and management of FISA data, as well as to ensure that all Section 702 collection is properly tasked and that CIA is complying with all compliance and purge requirements.

(U) B. Oversight and Compliance

(U) CIA's FISA compliance program is managed by its FISA Program Office in coordination with CIA OGC. CIA provides small group training to personnel who nominate facilities to NSA and/or minimize Section 702-acquired communications. Access to unminimized Section 702-acquired communications is limited to trained personnel. CIA attorneys embedded with operational elements that have access to unminimized Section 702-acquired information also respond to inquiries regarding nomination, minimization, and querying. Identified incidents of noncompliance with the CIA minimization and querying procedures are generally reported to NSD and ODNI by CIA OGC.

(U) III. Overview – NCTC

(U) A. NCTC's Handling of Section 702 data

~~(S//NF)~~ NCTC does not target or acquire communications pursuant to Section 702. In addition, NCTC does not currently have a process in place to identify or nominate foreign intelligence targets to NSA. However, like CIA and FBI, NCTC may request to be dual-routed on unminimized data (pertaining to counterterrorism) from Section 702 facilities already tasked by

¹² ~~(S//NF)~~ In April and May 2022, after this reporting period, CIA [REDACTED].

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NSA. NCTC applies its Section 702 minimization and querying procedures to Section 702 dual-routed data.

~~(S//NF)~~ NCTC, in consultation with NSD, developed an electronic and data storage system, known as ██████ to retain and process unminimized FBI-collected FISA-acquired information in accordance with NCTC's Standard Minimization Procedures for Information Acquired by the Federal Bureau of Investigation Pursuant to Title I, Title III, or Section 704 or 705(b) of the Foreign Intelligence Surveillance Act. In consultation with NSD, ODNI, NSA, and FBI, NCTC modified ██████ to (i) provide additional compliance capabilities in support of dual-routing FISA Section 702-acquired counterterrorism data and (ii) monitor compliance with NCTC's minimization and querying procedures for Section 702-acquired counterterrorism data. In addition to documenting compliance with the Section 702 minimization and querying procedures requirements, ██████ also documents the requests for dual-routing of Section 702-acquired information. This documentation includes the foreign intelligence justification (pertaining to counterterrorism) for dual-routing the facility and supervisory concurrence with an analyst's request.

~~(S//NF)~~ Dual-routed unminimized communications from Section 702 tasked facilities are stored within ██████ where only properly trained and authorized analysts are able to query them. As a supplement to the requirements of NCTC's minimization procedures and querying procedures, NCTC's internal business process requires that NCTC analysts provide a written justification for each query, as well as a written justification for each minimization action to mark a product as meeting the retention standard in order to document how the query or minimization was compliant with the standards in NCTC's minimization procedures or querying procedures, as applicable. By internal policy, all dual-route requests and minimization actions must be reviewed and approved within ██████ by the analyst's supervisor.

(U) ~~(S//NF)~~ NCTC personnel may disseminate Section 702-acquired information of or concerning an unconsenting United States person if that information meets the standard for dissemination pursuant to Section D of NCTC's minimization procedures.

~~(S//NF)~~ All activity within ██████ is logged and audited. NCTC's Compliance and Transparency Group (hereinafter, "NCTC Compliance") within the Office of Enterprise Services (OES) conducts periodic reviews of Section 702 query logs and minimization logs, as well as NCTC Section 702 disseminations in order to verify compliance with NCTC's minimization procedures and identify the need for system modifications, enhancements, or improvements to training materials or analyst work aids.

(U) B. Oversight and Compliance

(U) NCTC's FISA compliance program is managed by NCTC Compliance in coordination with NCTC Legal. NCTC provides training to all NCTC personnel who may access unminimized FISA-acquired information. Access to unminimized Section 702-acquired communications is limited to trained personnel. NCTC compliance personnel and attorneys also respond to inquiries regarding minimization and querying questions. Identified incidents of noncompliance with the NCTC minimization and querying procedures are reported to NSD and ODNI generally by NCTC Compliance or NCTC Legal personnel.

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(U) ~~(S//NF)~~ NCTC Compliance was established in the fall of 2014 and is charged with providing strategic direction for the management and oversight of NCTC's access to and use of all datasets pursuant to executive order, statute, interagency agreement, applicable Intelligence Community (IC) policy, and internal policy. This includes management and oversight of NCTC's FISA programs, including the retention and dissemination of foreign intelligence information acquired pursuant to Section 702. This group is responsible for overall strategic direction and policy, programmatic external focus, and interaction with counterparts of NSD, ODNI, NSA, FBI, and CIA. In addition, the office leads the day-to-day FISA compliance efforts within NCTC. NCTC Compliance is responsible for providing strategic direction and internal oversight for data handling and management of Section 702 data, as well as administering and implementing NCTC Section 702 training, ensuring that all NCTC Section 702 collection is properly dual-routed, minimized, and disseminated, and that NCTC is complying with all minimization and querying procedures requirements.

(U) **IV. Overview – FBI**

(U) **A. FBI's Role in Targeting – Nomination for Acquiring In-Transit Communications**

~~(S//NF)~~ Like CIA, FBI has developed a formal nomination process to identify foreign intelligence targets to NSA for the acquisition of in-transit communications. [REDACTED]

[REDACTED] including information underlying the basis for the foreignness determination and the foreign intelligence interest. FBI nominations are reviewed by FBI operational and legal personnel prior to export to NSA for tasking. Like CIA, FBI may be dual-routed the unminimized data from Section 702 facilities already tasked by NSA. FBI applies its Section 702 minimization procedures to both the Section 702 nominated and dual-routed data.

[REDACTED] FBI targeting procedures require that NSA first apply its own targeting procedures to determine that the user of the Designated Account is a person reasonably believed to be outside the United States and is not a United States person. NSA is also responsible for determining that a significant purpose of the acquisition it requests is to obtain foreign intelligence information. After NSA designates accounts as being appropriate for [REDACTED] acquisition, FBI must then apply its own, additional procedures, which require FBI to review NSA's conclusion of foreignness [REDACTED]

~~(S//NF)~~ More specifically, after FBI obtains the tasking sheet from NSA, it reviews the information provided by NSA regarding the location of the person and the non-United States person status of the person. [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

~~(S//NF)~~ Unless FBI locates information indicating that the user is a United States person or is located inside the United States, [REDACTED]

[REDACTED]

~~(S//NF)~~ If FBI identifies information indicating that NSA's determination that the target is a non-United States person reasonably believed to be outside the United States may be incorrect, FBI provides this information to NSA and does not approve [REDACTED]

[REDACTED]

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(U) C. Documentation

~~(S//NF)~~ The targeting procedures require that FBI retain the information [REDACTED] in accordance with its records retention policies [REDACTED]. FBI uses a multi-page checklist for each Designated Account to record the results of its targeting process, as laid out in its standard operating procedures, commencing with [REDACTED] extending through [REDACTED] and culminating in approval or disapproval of the acquisition. In addition, FBI standard operating procedures call for [REDACTED] depending on the circumstances, which are maintained by FBI with the applicable checklist. FBI also retains with each checklist any relevant communications [REDACTED] regarding its review of the NSA's information. Additional checklists have been created to capture information on requests withdrawn [REDACTED], or not approved by FBI.

(U) D. Implementation, Oversight, and Compliance

~~(S//NF)~~ FBI's implementation and compliance activities are overseen by FBI OGC, particularly the National Security and Cyber Law Branch (NSCLB), as well as FBI's Technology and Data Innovation Section (TDI), [REDACTED] and FBI's Inspection Division (INSD). [REDACTED]

[REDACTED] TDI has the lead responsibility in FBI for [REDACTED] requests [REDACTED]. TDI personnel are trained on the FBI targeting procedures and FBI's detailed set of standard operating procedures that govern its processing of requests for the acquisition [REDACTED]. TDI also has the lead responsibility for facilitating FBI's nominations to NSA [REDACTED]. TDI, NSCLB, NSD, and ODNI have all worked on training FBI personnel to ensure that FBI nominations and post-tasking review comply with the NSA targeting procedures. With respect to minimization, FBI has created a mandatory online training that all FBI agents and analysts must complete prior to gaining access to unminimized Section 702-acquired information in FBI's [REDACTED]. In addition, NSD generally conducts training on the Section 702 minimization and/or querying procedures at multiple FBI field offices each year.¹³

~~(S//NF)~~ FBI's targeting procedures require periodic reviews by NSD and ODNI at least once every 60 days. FBI must also report incidents of non-compliance with FBI targeting procedures to NSD and ODNI within five business days of learning of the incident. TDI and NSCLB are the lead FBI elements in ensuring that NSD and ODNI received all appropriate information with regard to these two requirements.

¹³ (U) NSD did not conduct onsite training at field offices during this reporting period. NSD onsite field office reviews, during which NSD typically provided training, were suspended in March 2020. NSD resumed field office query reviews remotely in February 2021. NSD started remote Section 702 minimization reviews in mid-2022.

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(U) **V. Overview – Minimization and Querying**

(U) After a facility has been tasked for collection, non-publicly available information collected as a result of these taskings that concerns United States persons must be minimized; if the Government queries that collection, it must follow specific query rules. The FISC-approved minimization procedures require such minimization in the acquisition, retention, and dissemination of foreign intelligence information. The FISC-approved querying procedures set rules for using United States person and non-United States person identifiers to query unminimized Section 702-acquired information. Prior to the FISA Amendments Reauthorization Act of 2017 codification, the minimization procedures contained querying rules. The 2018 certifications were the first certifications to contain the newly required querying procedures.

(U) As a general matter, minimization procedures under Section 702 are similar in most respects to minimization under other FISA orders. For example, the Section 702 minimization procedures, like those under certain other FISA court orders, allow for sharing of certain unminimized Section 702 information among NSA, FBI, CIA and NCTC. Similarly, the procedures for each agency require special handling of intercepted communications that are between attorneys and clients, as well as foreign intelligence information concerning United States persons that is disseminated to foreign governments.

(U) Section 702 minimization procedures do, however, impose additional obligations or restrictions as compared with the minimization procedures associated with authorities granted under Titles I and III of FISA. For example, the Section 702 minimization procedures require, with limited exceptions, the purge of any communications acquired through the targeting of a person who at the time of targeting was reasonably believed to be a non-United States person located outside the United States, but is in fact located inside the United States at the time the communication is acquired, or was in fact a United States person at the time of targeting.

(U) NSA, CIA, NCTC, and FBI have created systems to track the purging of information from their systems. CIA, NCTC, and FBI receive incident notifications from NSA to document when NSA has identified Section 702 information that NSA is required to purge according to its procedures, so that CIA, NCTC, and FBI can meet their respective obligations.

(U) With passage of the FISA Amendments Reauthorization Act of 2017, Congress amended Section 702 to require that querying procedures be adopted by the Attorney General, in consultation with the DNI. Section 702(f)(1) requires that the querying procedures be consistent with the Fourth Amendment and that they include a technical procedure whereby a record is kept of each United States person term used for a query. Congress added other requirements in Section 702(f), which pertain to accessing certain results of queries conducted by FBI. Specifically, under Section 702(f)(2)(A), an order from the FISC is required before the FBI can review the contents of a query using a United States person query term when the query was not designed to find and extract foreign intelligence information and was performed in connection with a predicated criminal investigation that does not relate to national security.

(U) Queries may be conducted in two types of unminimized Section 702-acquired information: (i) Section 702-acquired *content* and (ii) Section 702-acquired *metadata*. Query terms may be date-bound, and may include alphanumeric strings, such as telephone numbers, email addresses, or terms, such as a name, that can be used individually or in combination with one

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another. Pursuant to FISC-approved procedures, an agency can only query Section 702 information if the query is reasonably likely to retrieve foreign intelligence information or, in the case of the FBI, evidence of a crime. This standard applies to all Section 702 queries, regardless of whether the term concerns a United States person or non-United States person.

(U) The agencies have similar querying procedures. For example, the agencies' procedures require a written statement of facts justifying that the use of any such identifier as a query selection term of Section 702-acquired content is reasonably likely to retrieve foreign intelligence information or, in the instance of FBI, evidence of a crime. Some querying rules are unique to individual agencies. For example, NSA's Section 702 querying procedures also require that any United States person query term used to identify and select unminimized Section 702-acquired content must first be approved by NSA's OGC and that such an approval include a statement of facts establishing that the use of any such identifier as a selection term is reasonably likely to retrieve foreign intelligence information. In addition, with respect to queries of Section 702-acquired metadata using a United States person identifier, NSA's querying procedures require that NSA analysts document the basis for each metadata query prior to conducting the query.

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