

## Section 702

### Incidental Collection in a Targeted Intelligence Collection Program

Section 702 is a targeted foreign intelligence collection program, where the targets must be non-U.S. persons reasonably believed to be located outside the United States and expected to possess, communicate, or receive foreign intelligence information. If Section 702 collection is targeted, why does this program collect communications involving non-targets?

In short, the answer is that communications generally happen between two or more people. As a result, Section 702 collects communications by Section 702 targets with other Section 702 targets, but it also collects communications between Section 702 targets and individuals who are not targeted under Section 702. The Intelligence Community (IC) refers to collection of communications between a Section 702 target and non-targets as incidental collection.

Incidental collection may involve innocuous contact with family or friends, or it may, for example, constitute foreign intelligence that must be shared to prevent harm. In the latter case, the incidental collection might be with a witting participant, an unwitting participant, or a potential victim:

- **Witting Participant:** For example, a U.S. person contacts a member of ISIS looking for ways to support ISIS. Under Section 702, the government may learn of this contact through incidental collection if the ISIS member is a non-U.S. person, is located overseas, and is currently targeted under Section 702. The U.S. person cannot be targeted under Section 702. If the government wanted to conduct electronic surveillance of the U.S. person, it would have to apply for and obtain a probable cause-based order under the Foreign Intelligence Surveillance Act (FISA). The government could use the Section 702 incidental collection from the targeting of the non-U.S. person ISIS member in such a FISA application.
- **Unwitting Participant:** For example, an American consultant is hired to “advise” on a project by a non-U.S. person targeted under Section 702. The consultant is unaware that the project involves the export of components related to weapons of mass destruction (WMDs). The non-U.S. person target’s communications with the American consultant would contain incidentally collected U.S. person information. This information would allow the FBI to reach out to the consultant and warn him or her that their client is actually engaged in the proliferation of WMDs.
- **Potential Victim:** For example, a non-U.S. person targeted under Section 702 initiates a cyber-intrusion of a U.S. company. The identity of the victimized U.S. company and its contact information would be incidental collection. The IC would use this information to warn or protect the U.S. company from attack.

Incidental collection is not unique to Section 702; it occurs in every type of communications surveillance. But it is important to remember that U.S. persons whose communications are incidentally collected can never be targeted by the government under Section 702. The IC mitigates the privacy impact of incidental collection through the application of FISA Court-approved Section 702 minimization and querying procedures. These procedures contain detailed rules regarding who can access Section 702 collection, when the collection can be viewed or used, the length of time collection can be kept by the government, and when information about U.S. persons can be shared and with whom.

