

Annex 4



The National Counterterrorism Center (NCTC) Review of Procedures and Practices Pertaining to Disseminating U.S. Person Information Acquired Pursuant FISA Title I, Title III and Section 702

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The National Counterterrorism Center (NCTC) is the primary organization within the U.S. government responsible for analyzing and integrating all terrorism and counterterrorism information possessed or acquired by U.S. government agencies. Under 50 U.S.C. § 3056, NCTC has broad authority and responsibility within the U.S. government for “analysis of terrorism and terrorist organizations (except purely domestic terrorism and domestic terrorist organizations) from all sources of intelligence, whether collected inside or outside the United States,” including “provide[ing] strategic operational plans for the civilian and military counterterrorism intelligence and operations across agency boundaries, both inside and outside the United States.” NCTC produces a wide range of analytic and threat information for the President, the Vice President, the Secretaries of State, Defense and Homeland Security, the Attorney General, the Director of the Central Intelligence Agency, and other officials of the executive branch as appropriate, and to the appropriate committees of Congress. Given these roles, NCTC serves as the primary organization for strategic operational planning for counterterrorism, and establishes the information technology systems and architectures within the NCTC and between the NCTC and other agencies that enable access to, as well as integration, dissemination, and use of, terrorism information. Essentially, NCTC brings a broad, interdisciplinary perspective and innovative analysis to bear on information related to terrorism and counterterrorism; greater access to information, therefore, enhances NCTC’s ability to produce counterterrorism foreign intelligence information. As expected, information acquired from FISA is a valuable source of counterterrorism foreign intelligence information.

Currently, NCTC receives certain unminimized FISA information related to counterterrorism. Beginning in 2012, the Foreign Intelligence Surveillance Court (FISC) authorized the Federal Bureau of Investigation (FBI) to share with NCTC unminimized counterterrorism information obtained by the FBI pursuant to certain FISA Title I and III orders. As background, following the attacks of September 11, 2001, the government identified FBI’s requirement to evaluate counterterrorism information obtained pursuant to FISA Titles I and III and apply the dissemination standards before sharing that counterterrorism information with CIA and NSA as a significant intelligence sharing gap. In response to an application by the government to address this information sharing gap in international terrorism cases, in 2002, the FISC authorized the FBI to share such unminimized counterterrorism information with NSA and CIA. Given NCTC’s role in analyzing and integrating counterterrorism information within the U.S. government, the FISC subsequently (in 2012) approved the FBI sharing such unminimized counterterrorism information with NCTC as well provided that NCTC likewise handle, retain, and disseminate such information pursuant to FISC-approved minimization procedures.

Consistent with its mission for analyzing and integrating counterterrorism information, in 2016, NCTC sought to receive unminimized Section 702-acquired information relating to counterterrorism. Previously, NCTC only received certain minimized Section 702 information

from the FBI. NCTC assessed that its capabilities would be enhanced by receiving unminimized Section 702 counterterrorism information because such information would permit NCTC analysts to develop independent analytic judgments and apply analytic tools to an important source of relevant intelligence. It would also afford NCTC the opportunity to receive the intelligence more expeditiously. On April 26, 2017, as part of the FISC's approval of the 2016 Certifications, the FISC approved NCTC's Section 702 minimization procedures permitting NCTC to receive unevaluated counterterrorism information acquired pursuant to Section 702.¹ These new procedures do not authorize NCTC to engage in targeting or acquisition. Unevaluated Section 702 information will significantly advance NCTC's efforts to prioritize and pursue terrorism threat threads and assists, through proper dissemination, the intelligence, law enforcement, and homeland security communities in responding to identified threats.

NCTC's current Section 702 minimization procedures govern how NCTC handles its receipt of unevaluated Section 702-acquired counterterrorism information. These procedures are modeled on the previously-approved minimization procedures that apply to NCTC's receipt of FBI information acquired pursuant to FISA Titles I and III, with modifications intended to address issues unique to Section 702 and to harmonize them with those Section 702 minimization procedures used by NSA, FBI, and CIA. As required by statute, the minimization procedures are carefully and reasonably designed to minimize the retention and prohibit the dissemination of nonpublicly available information concerning unconsenting U.S. persons, consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information. Specifically, NCTC's minimization procedures state, in relevant part, as it pertains to dissemination:

Section D.1. NCTC may disseminate to federal, state, local, territorial, or tribal agencies or officials with responsibilities relating to national security that require access to foreign intelligence information any nonpublicly available information concerning an unconsenting United States person that reasonably appears to be foreign intelligence information, necessary to understand foreign intelligence information, or necessary to assess the importance of foreign intelligence information, if the United States person identity is deleted or otherwise sanitized to prevent the search, retrieval, or review of the identifying information. A generic term may be substituted which does not identify the United States person in the context of the data. If the information cannot be sanitized in such a manner because such person's identity is necessary to understand foreign intelligence information or assess its importance, NCTC may disseminate that identity. NCTC may only disclose section 702-acquired or section 702-derived information received from NSA or FBI in raw form as provided herein.

¹ These procedures were court-stamped September 26, 2016, and approved by the FISC as part of the 2016 Certifications. They were posted on *IC on the Record* on May 11, 2017.

Section D.1. Information that is evidence of a crime that has been, is being, or is about to be committed, but is not foreign intelligence information, may only be retained or disseminated for law enforcement purposes.

NCTC's minimization procedures also provide for retention and dissemination of information that is evidence of a crime, but not foreign intelligence information. NCTC may only retain or disseminate such information for a law enforcement purpose. NCTC's authorization to retain and disseminate evidence of a crime that is not foreign intelligence information—for law enforcement purposes only—is intended to provide NCTC, like NSA and CIA, with the flexibility to handle such information as necessary to fulfill its crimes reporting obligations, and to respond to any unanticipated need to retain or disseminate such information, while remaining consistent with 50 U.S.C. §§ 1801(h)(3), 1821(4)(C), and 1881a(e). Additional requirements imposed by the FISC require NCTC to purge such “evidence of a crime only” information within a reasonable period of time after making any appropriate dissemination of the information to a law enforcement agency.

NCTC's compliance with its minimization procedures is overseen by DOJ and, as it relates to NCTC's Section 702 minimization procedures, ODNI. As it pertains to oversight of Section 702 disseminate information, NSD reviews all disseminations (with ODNI reviewing a sample) of information acquired under Section 702 that NCTC identified as potentially containing U.S. person information. At each bi-monthly oversight review, NCTC provides NSD and ODNI with a copy of every dissemination from the review period containing U.S. person information. Any identified incidents of non-compliance with NCTC minimization procedures are reported to the FISC and to Congress.

Because NCTC just recently (in April 2017) obtained FISC authority to receive unminimized Section 702-acquired counterterrorism information, only a small number of oversight reviews have occurred. CLPT is directly involved in such reviews, including reviews of disseminations. To date, those oversight reviews have confirmed that NCTC is complying with the dissemination requirements in its minimization procedures, with no dissemination compliance issues identified to date.