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CENTRAL SECURITY SERVICE
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20 December 2013

The Honorable James R. Clapper, Jr.
Director of National Intelligence
Washington, DC 20511

Dear Director Clapper:

(U) Section 702 (l) (2) of the FISA Amendments Act of 2008 (FAA) authorizes the National Security Agency/Central Security Service (NSA/CSS) Office of the Inspector General (OIG) to assess the Agency's compliance with procedures for targeting non-U.S. persons outside the United States. My Office reviews incidents involving compliance with procedures for targeting non-U.S. persons outside the United States and incidents involving minimization of U.S. person information as they are reported to the OIG and quarterly. Each incident is evaluated against the targeting and minimization procedures adopted by the Director of National Intelligence and the Attorney General and approved by the Foreign Intelligence Surveillance Court. This letter covers the 12-month period ending 31 August 2013.

(S//SI//NF) During that period, the OIG completed two reports on implementation of FAA §702. The first was an assessment of management controls over FAA §702, which examined the design of the management controls that ensure compliance with FAA §702 and the targeting and minimization procedures associated with the 2011 Certifications. Future studies will test the identified controls. The second report was a study of the management controls for [REDACTED].

(S//NF) In compliance with the targeting and minimization procedures of FAA §702, [REDACTED] intelligence reports were disseminated by NSA/CSS [REDACTED] based on SIGINT derived from FAA §702 authorized collection.[1] Of the [REDACTED] disseminated reports, 3,477 contained one or more references to USPs.[2] During the previous reporting period, NSA stopped counting references to U.S. service providers contained in an e-mail address as a USP reference if the e-mail address was used by a non-USP. For example, a reference in a disseminated report that target A communicated using e-mail account targetA@USprovider.com is no longer included as a report referencing a USP identity, if target A is a non-USP. Because this change was in effect

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[1] (U) These reports were based in whole or in part on information acquired pursuant to FAA §702(a).

[2] (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 USP came. Accordingly, the references to USP identities might have resulted from collection pursuant to FAA §702 or from other authorized SIGINT activity conducted by NSA that was reported in conjunction with information acquired under FAA §702.
(S//NF) The Central Intelligence Agency (CIA) does not conduct acquisitions under FAA §702. However, it receives unminimized communications from NSA and FBI and disseminates information based on those communications. CIA provided the following information to NSA for inclusion in this report. [REDACTED]

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for the entirety of the current reporting period, the total number of NSA intelligence reports counted for this report as containing one or more references to USPs is significantly lower than last year.[3]

(U//FOUO) NSA/CSS released ▮▮▮ USP identities in response to customer requests for USP identities not referred to by name or title in the original reporting.[4] The majority of these requests were received from elements of the United States Intelligence Community or federal law enforcement agencies.

(S//NF) During this reporting period, NSA determined that, on ▮▮▮ occasions, selectors belonging to non-USPs reasonably believed to be located outside the United States at the time of tasking were later suspected or confirmed to be accessed from within the United States. ▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮ ▮▮▮▮▮▮▮▮▮▮▮ Of the ▮▮▮ cases, ▮▮▮ were located through ▮▮▮▮▮▮ and ▮ were located through ▮▮▮▮▮▮▮

(S//SI//NF) On August 13, 2013, DoJ filed a preliminary notice of compliance incident with the FISC that advised the Court that the ▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮ Report that NSA oversight personnel rely on as one of many post-tasking checks to determine if the users of telephony selectors ▮▮▮▮▮▮▮▮▮▮▮ have entered the United States did not always account for selectors that had been tasked in ▮▮▮▮▮▮▮▮▮ ▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮ channels.[5] On October 29, 2013, DoJ filed another preliminary notice of compliance incident with the FISC regarding a technical deficiency that also affected the efficacy of the post-tasking checks of telephony selectors. NSA has implemented procedures designed to prevent any potentially unauthorized electronic surveillance resulting from these deficiencies in the post-tasking checks from being used in any SIGINT-derived reporting, FISA applications, or FAA §702 SIGINT targeting decisions without further review. If the post-tasking checks had worked as intended, the number of occasions on which selectors belonging to non-USPs reasonably believed to be located outside the United States at the time of tasking were later suspected or confirmed to be accessed from within the United States would have likely exceeded the ▮▮▮ figure reported above.

(U) As reported in the OIG's quarterly report to the President's Intelligence Oversight Board on NSA activities, compliance incidents occurred under such circumstances as:

- (U) Tasked selector not meeting the requirements of the certification
- (U) System errors resulting in improper storage or access
- (U) Delayed detasking of targets identified as USPs or traveling in the United States
- (U) Dissemination errors
- (U) Poor construction of database queries and
- (U) USP status discovered post-tasking.

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[3] (S//NF) For the previous reporting period, NSA reported that 4,932 intelligence reports contained one or more references to USPs, including references to U.S. electronic communications providers as part of a communications identifier.

[4] (S//NF) For the previous reporting period, NSA reported that ▮▮▮ identities were disseminated in response to requests for identities not referred to by name or title in the original reporting. For the current reporting period, fewer than a quarter of these disseminated USP identities were proper names of individuals or their titles. In the majority of instances, the released identity information consisted of ▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮
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[5] (U//FOUO) NSA sent a Congressional Notification on this matter on August 26, 2013 with the subject of "Congressional Notification – Post-Tasking Controls – INFORMATION MEMORANDUM"
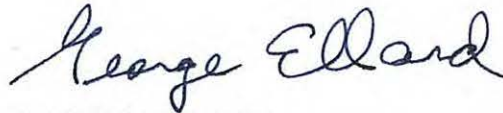
(U) Action has been taken to correct mistakes, and management processes have been reviewed and adjusted to reduce the risk of unauthorized acquisition and improper retention of USP communications.

(U) This is the fifth year for which the OIG has reviewed the Agency's compliance with FAA §702 for the Congress. To ensure consistency between DIRNSA's report of the annual review conducted in accordance with FAA §702 (l) (3) and this OIG report, the OIG and the Signals Intelligence Directorate worked together to achieve a common understanding of the reporting requirements and have agreed on a methodology for accumulating and analyzing compliance statistics.

(U) The OIG continues to exercise oversight of Agency intelligence activities.

George Ellard

DR. GEORGE ELLARD
Inspector General

Copy Furnished:
  The Honorable Irvin C. McCullough III
  Inspector General of the Intelligence Community