

NATIONAL SECURITY AGENCY
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JUN 29 2009

MEMORANDUM FOR STAFF DIRECTOR, HOUSE PERMANENT SELECT COMMITTEE ON INTELLIGENCE

SUBJECT: (U) Notification and Update -- INFORMATION MEMORANDUM

(U) This is to provide written notification on matters brought to the Committee's attention by way of oral notification to Committee staff directors on June 25, 2009.

~~(TS//SI//NF)~~ Over the past several months, working with the Department of Justice (DoJ) and the Office of the Director of National Intelligence (ODNI), NSA has been systematically reviewing its technologies and methods of handling the Business Records (BR) and Pen Register/Trap & Trace (PR/TT) data we obtain under Orders of the Foreign Intelligence Surveillance Court (FISC). These reviews have uncovered several compliance matters that we have disclosed to the Court and this Committee. In large part, these compliance issues concern internal information systems created for the purpose of processing, distributing and storing this BR and PR/TT data [REDACTED]

Inadequate attention to these internal systems and their systems architecture resulted in a failure to fully comply with the procedures the Court imposed in the handling of data under the FISC Order. NSA is identifying, reporting, and remediating these matters.

~~(TS//SI//NF)~~ We have made substantial progress along these lines, and the enclosed report on the Business Records FISA end-to-end review details our progress thus far. As the report is highly technical in part, we offer to provide a briefing outlining our findings. We will provide additional information as it emerges; in particular, we will need to supplement the report with an additional section recently required by the FISC, as discussed in section 3. Once work on the additional required section has been completed, a supplement to the report will be prepared and provided to the Committee. The joint review process is ongoing, and we will continue to keep the Committee informed.

~~(TS//SI//NF)~~ Consistent with this commitment, NSA has begun a comprehensive review of the PR/TT platform that operates pursuant to FISC authority. This PR/TT review will mirror closely the rigorous review process of the BR platform.

(U) As these reviews uncover new issues, we will continue to work to resolve them with the FISC. The Court has recently approved several aspects of our work that we had earlier reported, and these are detailed below. At the same time, the Court

ordered additional new weekly reporting requirements to insure compliance with the Court's orders. We will continue to move through this process in the same spirit: rigorous self-examination; transparency with ODNI, DoJ, the FISC, and the Committee; and implementation of corrective actions and internal controls to monitor compliance.

1. ~~(TS//SI//NF)~~ PR/TT Metadata and the Development of a Master "Defeat" List

~~(TS//SI//NF)~~ In a notification to the Committee dated June 12, 2009 NSA described its development and use of a master "defeat" list in which NSA used PR/TT metadata to compile a master list [REDACTED] to block the ingest of, or purge already ingested unwanted information from several NSA data repositories. As reported to the Committee, this matter was the subject of a FISC Order dated [REDACTED]. In that [REDACTED] Order, the FISC authorized NSA to continue to use the master "defeat" list for an additional 20 days at which time the Agency had to either stop using the list or satisfy the Court as to why NSA's continued use of the list was necessary and appropriate, and why any ongoing use of PR/TT metadata in this manner was consistent with the Court's order and was otherwise appropriate.

~~(TS//SI//NF)~~ On [REDACTED] having considered the Government's response, the FISC issued a subsequent Order in which the Court found the defeat list reasonable and appropriate. Accordingly, the Order authorizes NSA to continue with its practices of using the existing master "defeat" list and adding new selectors to it for the purpose of [REDACTED] in relation to PR/TT and non-PR/TT metadata repositories.

2. ~~(TS//SI//NF)~~ Sharing PR/TT Metadata Analytic Results with NSA non-PR/TT Cleared Analysts.

~~(TS//SI//NF)~~ The notification of [REDACTED] also described NSA's practice of sharing the unminimized results of properly predicated queries of PR/TT metadata with non-PR/TT-cleared NSA analysts. As reported to the Committee, this matter was also a subject of the FISC Order dated [REDACTED]. In that [REDACTED] Order, the FISC authorized NSA to continue with this sharing practice for an additional 20 days at which time the Agency had to either stop the sharing practice or satisfy the Court as to why the sharing practice was necessary and appropriate on an ongoing basis.

(U) On [REDACTED], having considered the Government's response, the FISC issued a subsequent Order in which the Court found that this sharing practice was acceptable under the condition that the sharing occur only with analysts who have received "appropriate and adequate training and guidance regarding all rules and restrictions governing the use, storage, and dissemination of such information." NSA, in coordination with DoJ, is reviewing its training of analysts on the rules and restrictions.

3. (U) Compliance With FISC Ordered Minimization Procedures

(~~TS//SI//NF~~) To maximize the utility of the BR and PR/TT metadata, NSA shared the results of some authorized NSA analysis of the metadata with analysts in the larger intelligence community (IC). This occurred through the dissemination of reports and through databases constructed to allow IC counter-terrorism analysts to submit requests for information (RFIs) regarding metadata analysis conducted by authorized NSA analysts based on RAS-approved selectors. These databases also facilitated the sharing of target knowledge. Over time, approximately 200 analysts from CIA, FBI, and NCTC were granted access to these databases. While the collaborative objective of the databases was achieved, NSA analysts stored unminimized metadata analytic results responsive to these RFIs and target knowledge information in these databases. The analytic results consisted of narrative text describing analytic findings from the results of chaining of selectors (but not the content of any communication) in the BR and PR/TT metadata. As the IC analysts had access to the databases, this practice was not consistent with the FISC Orders that required the application of Court-prescribed minimization procedures prior to dissemination of analytic results outside of NSA unless a determination had been made by a named official that the U.S. Person information was related to counterterrorism information and was necessary to understand the counterterrorism information or to assess its importance.

(~~TS//SI//NF~~) [REDACTED]



(~~TS//SI//NF~~) [REDACTED]



(U) Upon discovery of the manual connection [REDACTED] open to these NSA databases (the URL link), NSA blocked this access on [REDACTED] and reported the matter to DoJ. On [REDACTED] DoJ filed with the FISC a notice of non-compliance concerning this matter in accordance with Rule 10 (c) of the FISC Rules of Procedure.

(~~TS//SI//NF~~) In its [REDACTED] Order, the Court folded this matter into a broader analysis of NSA's compliance with procedures relating to the minimization and dissemination of metadata containing U.S. person information. The Court expressed "grave" concern over the lack of apparent NSA compliance with the Court ordered minimization procedures, noting both the practice of sharing the metadata with external IC analysts [REDACTED] and NSA's lack of precise adherence to the procedure for disseminating U.S. person information when necessary to understand the counterterrorism information or to assess its importance. As to this latter concern, while the PR/TT Order lists, as proposed by the Government, a specific NSA official for this purpose and the specific determination to be made, some authorizations to disseminate this information were made by other senior officials. While these officials were responsible for making these same determinations concerning release of U.S. person information relating to intelligence collected under Executive Order 12333, the Government did not propose and thus the FISC Order did not list these officials for the same purpose in relation to the PR/TT metadata and did not permit the PR/TT metadata (or BR metadata) to be disseminated upon exactly the same determination permitted under Executive Order 12333.

(~~TS//SI//NF~~) As a result, the Court ordered additional action by the Government. First, commencing on [REDACTED], the Government is required to file a report with the Court for the preceding week that lists every instance in which NSA has disseminated outside NSA any information, regardless of form, derived from PR/TT or BR FISA material. Secondly, NSA is required to include within the end-to-end reviews of the BR and PR/TT programs a full explanation of "why the government permitted the dissemination outside NSA of U.S. person information without regard to whether such dissemination complied with the clear and acknowledged requirements for sharing U.S. person information derived from the metadata collected pursuant to the Court's orders."

4. (~~TS//SI//NF~~) Use of Correlated Selectors to Query the BR FISA Metadata

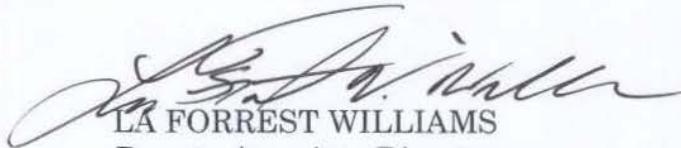
(~~S//SI//REL TO USA, FVEY~~) The analysis of SIGINT relies on many techniques to more fully understand the data. One technique commonly used is correlated selectors. A communications address, or selector, is considered correlated with other communications addresses when each additional address is shown to identify the same communicant as the original address. [REDACTED]

(TS//SI//NF) NSA analysts authorized to query the BR FISA metadata routinely used [REDACTED] to query the BR FISA metadata. In other words, if a reasonable articulable suspicion (RAS) determination was made on any one of the selectors in the correlation, all were considered RAS approved for purposes of the query since all were associated with the [REDACTED]

(TS//SI//NF) While NSA had previously described to the FISC the practice of using RAS-approved correlated selectors as seeds, NSA did not request and the FISC did not rule upon whether it was appropriate to deem as RAS-approved all selectors in a correlation if a reasonable articulable suspicion (RAS) determination was made on any one of the selectors in that correlation. The practice was ended and on [REDACTED]

[REDACTED] DoJ filed a notice of non-compliance with the FISC pursuant to Rule 10 (c) of the FISC Rules of Procedure. We will be working with ODNI and with the Justice Department to seek the Court's approval to use correlated selectors to query data.

(U) Because our reviews are continuing, and because of our commitment to full disclosure and transparency, there is a significant possibility that we will discover additional matters which we will report and resolve. The Committee's continued understanding is appreciated, and we welcome your questions.



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Deputy Associate Director
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Copy Furnished:

Minority Staff Director,
House Permanent Select
Committee on Intelligence

Enclosure:

End to End Review of Business Records Foreign
Intelligence Surveillance Act Report