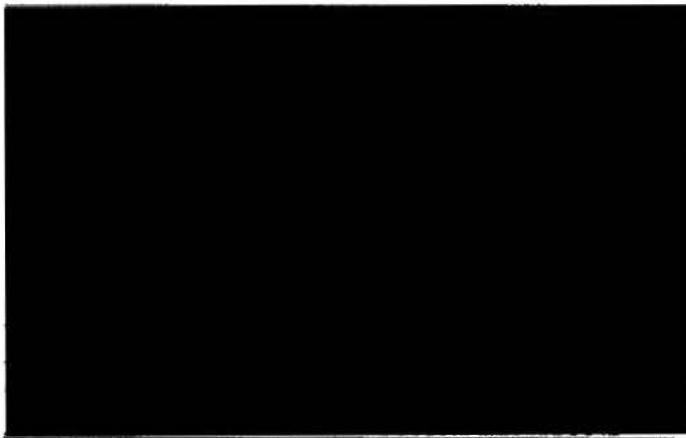


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UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.



DOCKET NO. PR/TT [REDACTED]

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IN RE APPLICATION OF THE FEDERAL  
BUREAU OF INVESTIGATION FOR AN ORDER  
REQUIRING THE PRODUCTION OF TANGIBLE  
THINGS FROM [REDACTED]

DOCKET NO. BR 09-06



ORDER

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On May 29, 2009, this Court issued a Supplemental Order in Docket No. PR/TT [REDACTED] that addressed several issues. Among other things, the May 29 Supplemental Order noted the government's recent disclosure that the unminimized results of authorized queries of PR/TT metadata collected by the National Security Agency (NSA) pursuant to the Court's order in Docket No. PR/TT [REDACTED] and prior FISC orders [REDACTED] had been shared with NSA analysts other than the limited number of analysts authorized to access such metadata. May 29 Supplemental Order at 1-2. Such sharing had not previously been disclosed to the Court. Id. at 2. The May 29 Supplemental Order also noted the government's disclosure of an inaccuracy regarding the number of PR/TT-derived reports described in paragraph 14 of the declaration attached as Exhibit A to the application in Docket No. PR/TT [REDACTED]. Id. at 3.

The Court directed the government to submit, within 20 days, a declaration correcting the inaccuracy regarding the number of reports and to provide a complete and "updated description of NSA's dissemination practices." May 29 Supplemental Order at 3-4. The Court further ordered that it would allow NSA, for a period of 20 days, to continue to share the unminimized results of authorized queries of the PR/TT metadata with NSA analysts other than the limited number of analysts authorized to access such metadata, but that such sharing was not to continue beyond the 20-day period unless the government first satisfied the Court, by written submission, that such sharing is necessary and appropriate on an ongoing basis. Id. at 4.

On [REDACTED], the United States filed the Government's Response to the Court's Supplemental Order Entered On [REDACTED] in Docket No. PR/TT [REDACTED] ("[REDACTED] Response"), and the supporting Declaration of [REDACTED] Chief, Special Foreign Intelligence Surveillance Act Oversight and Processing, Oversight and Compliance, Signals Intelligence Directorate, NSA ("[REDACTED] Declaration"). The government asserted in its

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[REDACTED] filings that “the ability of PR/TT-cleared analysts to share unminimized query results with non-PR/TT-cleared analysts is critical to the success of the NSA’s counterterrorism mission.” [REDACTED] Declaration at 8. The government explained that while “[l]ess than ten percent of NSA’s analysts responsible for tracking and reporting foreign intelligence on counterterrorism matters generally may query the PR/TT metadata,” NSA’s “collective expertise” in the targeted foreign powers “resides in more than [REDACTED] intelligence analysts” assigned not only to “NSA’s Counterterrorism Analytic Enterprise,” but also to “other NSA organizations and product lines.” Id. at 7-8. Further, the government asserted that “[e]ach of the NSA’s [REDACTED] product lines has some role in protecting the homeland from terrorists.” Id. at 8. Accordingly, the government has asked the Court to allow NSA to continue to share the results of authorized queries of the PR/TT metadata with analysts other than the limited number who are permitted to perform queries. See [REDACTED] Response at 9.

On June 18, 2009, the United States submitted the Government’s Response to the Court’s Supplemental Order Entered on May 29, 2009, in Docket No. PR/TT [REDACTED] Requesting a Corrective Declaration (“[REDACTED] Response”), and the supporting Declaration of [REDACTED] Chief, Special Foreign Intelligence Surveillance Act Oversight and Processing, Oversight and Compliance, Signals Intelligence Directorate, NSA (“[REDACTED] Declaration”). In those filings, the government explained that the 117 reports described in the declaration filed in support of the government’s application in Docket No. PR/TT [REDACTED] included only reports prepared by PR/TT-cleared analysts; however, that description did not include one additional report that was prepared by a non-PR/TT analyst. [REDACTED] Declaration at 2-3. Accordingly, the government asserted that “118 reports were produced and disseminated from inception of the PR/TT to [REDACTED]” Id. at 3.

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Unfortunately, the government's responses to the Court's May 29 Supplemental Order also raise two additional compliance issues, one which implicates not only the Court's orders authorizing the collection of PR/TT metadata, but also its orders in the related bulk business records collection, which was last renewed by the Court in Docket No. BR 09-06. First, the government disclosed in its [REDACTED] filings in Docket No. PR/TT [REDACTED] that NSA has generally failed to adhere to the special dissemination restrictions originally proposed by the government, repeatedly relied upon by the Court in authorizing the collection of the PR/TT metadata, and incorporated into the Court's orders [REDACTED] as binding on NSA. See [REDACTED] Response at 2. The Court's current order, which is in pertinent part substantively identical to prior orders, provides that:

The NSA shall treat information derived from queries of the metadata in accordance with United States Signals Intelligence Directive 18 (USSID 18) (Attachment D to the application in docket number PR/TT [REDACTED]), and shall apply USSID 18 to minimize information concerning U.S. persons obtained from the pen registers and trap and trace [REDACTED]. Additionally, prior to disseminating any U.S. person information outside of the NSA, the Chief of Information Sharing Services in NSA's Signals Intelligence Directorate shall determine that the information is related to counterterrorism information and is necessary to understand the counterterrorism information or to assess its importance.

Docket No. PR/TT No. [REDACTED] Primary Order at 12.<sup>1</sup> In its [REDACTED] submissions, however, the government disclosed that "the NSA has generally permitted the dissemination of U.S. person identities derived from the metadata acquired pursuant to the Court's orders in this matter . . . in accordance with [USSID 18] rather than specifically requiring that the narrower dissemination

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<sup>1</sup> Before September [REDACTED], the Court's orders designated the "Chief of Customer Response" in the NSA's Signals Intelligence Directorate as the official responsible for determining whether information proposed for dissemination had the necessary connection to counterterrorism. See, e.g., Docket No. PR/TT [REDACTED], Order at 16; Docket No. PR/TT [REDACTED] at 10.

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provision set forth in the Court's orders in this matter be strictly adhered to." [REDACTED] Response at 2; see also [REDACTED] Declaration at 3-5.

The Court understands the government's disclosure to mean that NSA likely has disseminated U.S. person information derived from the PR/TT metadata outside NSA without a prior determination by the NSA official designated in the Court's orders that the information is related to counterterrorism information and is necessary to understand the counterterrorism information or to assess its importance. See [REDACTED] Response at 2. According to the government, on [REDACTED] the Department of Justice instructed NSA only to disseminate U.S. person information derived from the PR/TT metadata outside NSA after the designated official has made the required determination. Id. The government further stated that it is investigating the matter. Id. at 2-3.

Second, the government referred in its [REDACTED] submissions to a dissemination-related problem that was first brought to the Court's attention in a "preliminary notice of compliance incident filed with the Court on [REDACTED]" [REDACTED] Declaration at 3 n.1. In the [REDACTED] notice – and in a separate notice filed contemporaneously in Docket No. BR 09-06 – the government informed the Court that the unminimized results of some queries of metadata collected in both matters had been "uploaded [by NSA] into a database to which other intelligence agencies . . . had access." Preliminary Notice of Compliance Incident filed [REDACTED] [REDACTED] in Docket No. PR/TT [REDACTED] at 2; Preliminary Notice of Compliance Incident filed June 16, 2009, in Docket No. BR 09-06 at 2. Providing such access, the government explained, may have resulted in the dissemination of U.S. person information in violation of USSID 18 and the more restrictive restrictions on dissemination proposed by the government and adopted by the Court in its current and prior orders in both of the above-captioned matters. Preliminary Notice of

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Compliance Incident filed [REDACTED] in Docket No. PR/TT [REDACTED] at 2; Preliminary Notice of Compliance Incident filed June 16, 2009, in Docket No. BR 09-06 at 2. The government explained that, in the PR/TT matter, any such disseminations would have been in addition to the 118 reports that are described by the government in the [REDACTED] submissions. [REDACTED] Declaration at 3 n.1. The government asserts that NSA terminated access by outside agencies to the database at issue on [REDACTED] and that it is still investigating the matter. Preliminary Notice of Compliance Incident filed June 16, 2009, in Docket No. BR 09-06 at 2; Preliminary Notice of Compliance Incident filed [REDACTED] in Docket No. PR/TT [REDACTED] at 2.

Based upon the information provided by the government in its recent submissions, the Court has concluded that NSA's sharing of authorized queries of the PR/TT metadata with analysts other than the limited number authorized to access the metadata is not the principal concern presented. Indeed, according to the government, only one of the 118 reports containing PR/TT metadata and disseminated outside NSA was prepared by a non-cleared analyst. The Court is gravely concerned, however, that NSA analysts, cleared and otherwise, have generally not adhered to the dissemination restrictions proposed by the government, repeatedly relied upon by the Court in authorizing the collection of the PR/TT metadata, and incorporated into the Court's orders in this matter [REDACTED] as binding on NSA. Given the apparent widespread disregard of these restrictions, it seems clear that NSA's Office of General Counsel has failed to satisfy its obligation to ensure that all analysts with access to information derived from the PR/TT metadata "receive appropriate training and guidance regarding the querying standard set out in paragraph c. above, as well as other procedures and restrictions regarding the retrieval, storage, and dissemination of such information." Docket No. PR/TT [REDACTED] Order at 11 (emphasis added). The Court is also seriously concerned regarding NSA's placement of

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unminimized metadata from both the above-captioned matters into databases accessible by outside agencies, which, as the government has acknowledged, violates not only the Court's orders, but also NSA's minimization and dissemination procedures set forth in USSID 18.

Accordingly, it is hereby ORDERED that:

1. With regard to Docket No. PR/TT [REDACTED] NSA may share the results of authorized queries of the PR/TT metadata with NSA analysts other than the limited number of analysts who are authorized to access the metadata, provided, however, that any NSA analyst receiving such query results in any form has first received appropriate and adequate training and guidance regarding all rules and restrictions governing the use, storage, and dissemination of such information;
2. With regard to Docket Nos. PR/TT [REDACTED] and BR 09-06, the government shall, by 5:00 p.m. each Friday, commencing on July 3, 2009,<sup>2</sup> file with the Court a report listing each instance during the seven-day period ending the previous Friday in which NSA has shared, in any form, information obtained or derived from the PR/TT or BR metadata collections with anyone outside NSA. For each such instance, the government shall specify the date on which the information was shared, the recipient of the information, and the form in which the information was communicated (e.g., written report, email, oral communication, etc.). For each such instance in which U.S. person information has been shared, the Chief of Information Sharing of NSA's Signals Intelligence Directorate shall certify that such official determined, prior to dissemination, the information to be related to counterterrorism information and necessary to understand the counterterrorism information or to assess its importance;
3. With regard to Docket Nos. PR/TT [REDACTED] and BR 09-06, the government shall

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<sup>2</sup> If Friday is a holiday, the report shall be submitted on the next business day.

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include, in its submissions regarding the results of the end-to-end reviews, a full explanation of why the government has 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.

IT IS SO ORDERED this 22<sup>nd</sup> day of June, 2009.



REGGIE B. WALTON  
Judge, United States Foreign  
Intelligence Surveillance Court

[REDACTED]  
Deputy Clerk  
FISC, certify that this document  
is a true and correct copy of  
the original. [REDACTED]

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UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

[REDACTED] DOCKET NO. PR/TT [REDACTED]

**SUPPLEMENTAL ORDER**

On [REDACTED] in the above-captioned docket, the Court ordered the National Security Agency (“NSA”) to cease using the “master list of high-volume selectors” described in the government’s Preliminary Notice of Compliance Incident filed on [REDACTED] within 20 days unless the government showed cause, in writing, why it is necessary and appropriate for the NSA to continue to use the list. [REDACTED] Supplemental Order at 4. In addition, the Court ordered the government to explain, in writing, why any ongoing use of PR/TT metadata collected under the authority of orders in this matter (“PR/TT metadata”) in connection with deleting information associated with “high volume selectors” is consistent with this Court’s orders and otherwise appropriate. Id.

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The Court has reviewed the Government's Response to the Court's Supplemental Order, filed on [REDACTED] ("[REDACTED]"), and the Declaration of [REDACTED] Chief, Special Foreign Intelligence Surveillance Act Oversight and Processing, Oversight and Compliance, Signals Intelligence Directorate, The National Security Agency, filed on the same date ("[REDACTED] Declaration").

As the government has acknowledged, its practices with regard to the creation and use of defeat lists for high volume selectors deviated, at least in part, from the procedures governing the handling of PR/TT metadata. It is important to note that the procedures at issue were devised by the government and incorporated into the Court's orders as binding upon the NSA at the government's suggestion. Had the government initially proposed procedures permitting defeat list practices such as those described in the [REDACTED] Response and the [REDACTED] Declaration, the Court likely would have found them reasonable and would have incorporated such procedures in its orders.

In any event, the Court finds that the continuation of the defeat list practices is reasonable and appropriate. Therefore, subject to further consideration following the submission of the government's report on its end-to-end review, it is

HEREBY ORDERED that the restrictions imposed by the Court in paragraph 3 of its [REDACTED] Supplemental Order, are hereby lifted and, as the government requests, NSA is authorized to:

- Continue to use the existing "master defeat list" for metadata reduction and management in its [REDACTED] contact-chaining repositories, including those repositories containing

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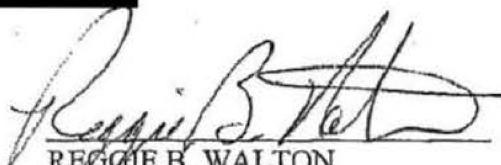
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PR/TT metadata and those containing non-PR/TT metadata;

- Add to the "master defeat list" high-volume identifiers discovered by NSA technical personnel through chain summary building and management processes, as described in paragraphs 6-8 of the [REDACTED] Declaration; and
- Add to the "master defeat list" high-volume identifiers discovered by NSA analysts reviewing the results of authorized queries of the PR/TT metadata.

This authorization was orally conveyed to the government on [REDACTED]

IT IS SO ORDERED this [REDACTED]



REGGIE B. WALTON  
Judge, United States Foreign  
Intelligence Surveillance Court

[REDACTED]  
FISC, certify that this document  
is a true and correct copy of  
the original. [REDACTED]

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