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NATIONAL SECURITY AGENCY/CENTRAL SECURITY SERVICE



INSPECTOR GENERAL REPORT

**(U) Report on the Special Study of NSA Controls to
Comply with the FISA Amendments Act §§704 and
705(b) Targeting and Minimization Procedures
ST-15-0002**

7 January 2016

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(U) OFFICE OF THE INSPECTOR GENERAL

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NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
OFFICE OF THE INSPECTOR GENERAL



7 January 2016
ST-15-0002

TO: (U) DISTRIBUTION

SUBJECT: (U) Report on the Special Study of NSA Controls to Comply with the FISA Amendments Act §§704 and 705(b) Targeting and Minimization Procedures (ST-15-0002)—
ACTION MEMORANDUM

1. (U) This report summarizes our special study of NSA Controls to Comply with the FISA Amendments Act §§704 and 705(b) Targeting and Minimization Procedures and incorporates management's response to the draft report.

2. (U//~~FOUO~~) In accordance with NSA/CSS Policy 1-60, NSA/CSS Office of the Inspector General, and IG-11731-14, Follow-up Procedures for OIG Report Recommendations, actions on OIG recommendations are subject to monitoring and follow-up until completion. Therefore, we ask that you provide a written status report concerning each planned corrective action categorized as "OPEN." If you propose that a recommendation be considered closed, please provide sufficient information to show that actions have been taken to correct the deficiency. If a planned action will not be completed by the original target completion date, please state the reason for the delay and forward a revised target completion date to [redacted] Follow-up Program Manager, at DL D1_Followup (ALIAS) D1.

3. (U//~~FOUO~~) We appreciate the courtesy and cooperation extended to the evaluators throughout the review. For additional information, please contact [redacted] on 963-0922(s) or via e mail at [redacted]@nsa.ic.gov.

DR. GEORGE ELLARD
Inspector General

(b) (3) - P.L. 86-36

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EXDIR

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SV: [redacted]

SV3: [redacted]

S02: [redacted]

S23: [redacted]

TV: [redacted]

T1: [redacted]

T1412: [redacted]

(U//FOUO) cc: .

SIGINT Director: MG G. Potter [redacted]

TD Director: G. Smithberger [redacted]

AIG: [redacted]

CLPO: R. Richards [redacted]

ODOC: [redacted]

OGC: [redacted]

RMO: [redacted]

SV: [redacted]

SV4: [redacted]

S02: [redacted]

S23: [redacted]

S2312: [redacted]

S3M: [redacted]

T131: [redacted]

T141: [redacted]

T1411: [redacted]

T1412: [redacted]

CLPO (DL D5_ALL)

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OGC Registry (DL d_gc_registry)

RMO (DL Risk)

SID IG POC (DL SIDIGLIAISON)

S02 (DL s02_frontoffice)

TD Registry (DL TD REGISTRY)

TD Strategic Operations Group (DL TD_Strat_Ops_Grp)

IG

D/IG

D1/Follow-up Program Manager [redacted] (DL D1_Followup)

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(U) EXECUTIVE SUMMARY

(U) Overview

(U//FOUO) We conducted this study to determine whether National Security Agency/Central Security Service (NSA) controls are adequate to ensure compliance with the Foreign Intelligence Surveillance Act (FISA) Amendments Act of 2008 (FAA) §§704 and 705(b) targeting and minimization procedures. We found that Agency controls for monitoring query compliance have not been completely developed [redacted]

[redacted]

(U) Highlights

(U) Our study of NSA's FAA §§704 and 705(b) controls revealed:

- (U//FOUO) Agency controls for monitoring query compliance have not been completely developed

(U//FOUO) The Agency has no process to reliably identify queries performed using selectors associated with FAA §§704 and 705(b) targets. [redacted]

[redacted]

- (U//FOUO) The Agency has not provided guidance for documenting [redacted]

[redacted]

(S//SI//NF)

[redacted]

- (U//FOUO) [redacted]

[redacted]

(S//SI//NF)

[redacted]

(U) Management action

(U) Officials from the Signals Intelligence Directorate agreed with the OIG's recommendations. The planned actions meet the intent of the recommendations.

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I. (U) INTRODUCTION

(U) Background

(U//~~FOUO~~) In July 2008, the President of the United States signed into law the Foreign Intelligence Surveillance Act (FISA) Amendments Act of 2008 (FAA). FAA §§703 through 705 set forth requirements that must be satisfied to target U.S. persons (USPs) outside the United States for foreign intelligence purposes. The National Security Agency/Central Security Service (NSA) has implemented the FAA §§704 and 705(b) authorities, but not the FAA §703 authority.

~~(S//SI//NF)~~ In July 2008, the Attorney General (AG) approved *National Security Agency's Standard Minimization Procedures for Acquisitions Targeting United States Persons Reasonably Believed to be Located Outside the United States Pursuant to Section 704 of the Foreign Intelligence Surveillance Act*. These procedures also apply to FAA §705(b). In August 2008, the AG issued a memorandum to the NSA Director (known as the "Mukasey Letter") that required NSA to proceed under §§704 and 705(b) of FISA to conduct foreign intelligence that previously had been authorized by the AG pursuant to §2.5 of Executive Order 12333. The two documents comprise NSA's FAA §§704 and 705(b) targeting and minimization procedures.

(U//~~FOUO~~) FAA §704 grants the Foreign Intelligence Surveillance Court (FISC) jurisdiction over certain aspects of targeting USPs reasonably believed to be outside the United States when they have reasonable expectations of privacy and a warrant would be required if the collection were conducted inside the United States for law enforcement purposes. NSA's application for an order under FAA §704 must include a statement of facts and circumstances sufficient to allow the FISC to find that the USP who is the target of the collection is reasonably believed to be outside the United States and is a foreign power, an agent of a foreign power, or an officer or employee of a foreign power and targeting is for a valid foreign intelligence purpose. The FISC issues orders for 90 days when it finds that the facts support targeting.

(U//~~FOUO~~) FAA §705(b) streamlines the approval process for collection against USPs who are outside the United States and are currently subject to a FISC order authorizing electronic surveillance or physical search under FISA §105 or §304, respectively. In such cases, the FISC has already made a probable cause determination with respect to the target. Accordingly, FAA §705(b) permits the AG to authorize collection against the USP for the effective period of the Order, while the person is reasonably believed to be outside the United States.

(U) Table 1 summarizes the requirements for targeting USPs under FAA §§704 and 705(b).

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(b) (1)
(b) (3) -18 USC 798
(b) (3) -50 USC 3024 (i)
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(U) Table 1. FAA §§704 and 705(b) Targeting Requirements

(TS//SI//NF)	FAA §704	FAA §705(b)
Targeting requirements	(U//FOUO) Must satisfy four criteria: 1. Proof that target is a USP 2. USP is reasonably believed to be outside the United States 3. USP is a foreign power, an agent of a foreign power, or an officer or employee of a foreign power 4. Targeting is for a valid foreign intelligence purpose	(U//FOUO) Same as FAA §704
Approval	(U) FISC Order	(TS//SI//NF) AG authorization; however, [redacted] must have an existing FISC Order against the target
Duration	(U//FOUO) 90 days	(TS//SI//NF) For the period of the existing FISC order [redacted]
Targeting and minimization procedures	(S//SI//REL TO USA, FVEY) Mukasey Letter and National Security Agency's Standard Minimization Procedures for Acquisitions Targeting United States Persons Reasonably Believed to be Located Outside the United States Pursuant to Section 704 of the Foreign Intelligence Surveillance Act	(U) Same as FAA §704

~~(TS//SI//NF)~~

(U) Study Scope and Methodology

~~(S//SI//REL TO USA, FVEY)~~ Our study focused on NSA system controls and manual processes designed to ensure that data is collected (tasked and detasked) and queried in compliance with the FAA §§704 and 705(b) targeting and minimization procedures. We reviewed records of taskings and detaskings and queries associated with FAA §§704 and 705(b) targets to determine compliance for January through March 2015 [redacted]

[redacted] We also reviewed whether selectors had been tasked in the [redacted] with the correct [redacted] and entered in [redacted] as the Signals Intelligence Directorate (SID) requires.¹ Last, we determined whether the Agency has implemented controls to [redacted]

¹ ~~(S//SI//REL TO USA, FVEY)~~ The term "selector" includes but is not limited to dialed number recognition (DNR) data (e.g., telephone numbers) and digital network intelligence (DNI) data (e.g., e-mail addresses). [redacted] is NSA's corporate system for managing selector taskings and detaskings. [redacted]

~~(S//REL TO USA, FVEY)~~

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(U//FOUO) Table 2 shows the four areas reviewed and the corresponding study results within the report.

(U) Table 2. Study Scope and Results

(U//FOUO)

Areas Reviewed	Results
Tasking and detasking compliance	See Appendix B
Selectors entered in [redacted]	See Appendix B
Query compliance	Finding One: Agency Controls for Monitoring Query Compliance Have Not Been Completely Developed Finding Two: The Agency Has Not Provided Guidance for Documenting [redacted]
Controls implemented in response [redacted]	See Appendix B
[redacted]	Finding Three: [redacted]

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II. (U) FINDINGS AND RECOMMENDATIONS

~~(U//FOUO)~~ FINDING ONE: Agency Controls for Monitoring Query Compliance Have Not Been Completely Developed

~~(U//FOUO)~~ The Agency has no process to reliably identify queries performed using selectors associated with FAA §§704 and 705(b) targets. [REDACTED]

[REDACTED]

[REDACTED] As a result, the Agency cannot monitor completely query compliance for these authorities.

(U) Criteria

(U) FAA §§704 and 705(b)

~~(S//SI//REL TO USA, FVEY)~~ National Security Agency's Standard Minimization Procedures for Acquisitions Targeting United States Persons Reasonably Believed to be Located Outside the United States Pursuant to Section 704 of the Foreign Intelligence Surveillance Act, 29 July 2008

(U//~~FOUO~~) Mukasey Letter, 18 August 2008

(U) FAA §702

(U) Minimization Procedures Used by NSA in Connection with Acquisitions of Foreign Intelligence Information Pursuant to Section 702 of the Foreign Intelligence Surveillance Act of 1978, as Amended in 2008, 24 July 2014

(U) E.O. 12333

(U) Executive Order 12333, United States Intelligence Activities, as amended (2008)

~~(U//EQUO)~~ SID Oversight and Compliance (SV) Controls for Monitoring Query Compliance Are Not Complete

~~(U//EQUO)~~ The SV internal oversight program for the FAA §§704 and 705(b) authorities is still being developed. The following two activities, although important, do not allow SV to monitor completely query compliance with the FAA §§704 and 705(b) targeting and minimization procedures.

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(U//FOUO) SV's support to external reviews is limited

~~(C//REL TO USA, FVEY)~~ In October 2014, SV began supporting the Department of Justice National Security Division's (DoJ NSD) semi-annual reviews of NSA's FAA §§704 and 705(b) operations. SV provides to DoJ NSD records of queries that NSA analysts performed during the previous six months. These records include only queries of FAA §§704 and 705(b) data in [redacted] and in certain partitions of [redacted]

[redacted]

(U//FOUO) The methodology that DoJ NSD and NSA have agreed on does not include providing all records of queries performed using selectors associated with FAA §§704 and 705(b) targets. [redacted]

[redacted]

On the basis of compliance risk and NSA system limitations, DoJ and NSA agreed that NSD's semi-annual reviews would focus on queries of content performed in [redacted] and in certain partitions of [redacted]

(U//FOUO) SV's post-query auditing controls are not designed to verify query compliance with the FAA §§704 and 705(b) authorities

(U//FOUO) SV oversees the Agency's post-query auditing controls. SV performs "super audits" that randomly sample query records across all NSA missions and authorities. SID mission auditors review query records (marked for auditor review) for their assigned missions. SV requires that auditors have target knowledge and be familiar with the types of queries within their production chain to verify the foreignness of queries and to protect USP privacy. [redacted]

[redacted]

² (U//FOUO) [redacted] and [redacted] are mission data repositories approved to retain communications content. Content, as defined in 18 U.S.C. §2510, is the substance, purport, or meaning of a communication.

³ (U//FOUO) [redacted]

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~~(U//FOUO)~~ **NSA System Limitations for Identifying FAA §§704 and 705(b) Queries**

~~(U//FOUO)~~ At the time of our review, the Agency could not reliably identify queries performed using selectors associated with FAA §§704 and 705(b) targets because SIGINT databases did not uniformly send records in the correct format to [redacted] (NSA's SIGINT auditing and logging system). [redacted]

[redacted] As a result, the Technology Directorate (TD) could not search these records to identify queries performed using selectors associated with FAA §§704 and 705(b) targets.

~~(U//FOUO)~~ We worked with TD to identify records of queries using selectors associated with FAA §§704 and 705(b) targets. [redacted]

[redacted]

[redacted] The TD extraction tool and the system script allowed TD, in coordination with the OIG, to identify all query records from January through March 2015 related to our review. We then developed our own process that automated the analysis of the query records and flagged potential incidents for further review. [redacted]

[redacted]

~~(U//FOUO)~~ **OIG Test Results: Query Compliance Problems Discovered**

~~(TS//SI//NF)~~ We analyzed all [redacted] query records available for review from January through March 2015. Queries were performed using selectors associated with [redacted] FAA §§704 and 705(b) targets. We identified [redacted] queries that were not compliant with the FAA §§704 and 705(b) targeting and minimization procedures. [redacted]

[redacted]

[redacted] We identified another [redacted] queries that were performed outside the targeting authorization periods in E.O. 12333 data, which is prohibited by the E.O. 12333 minimization procedures. We also identified [redacted]

⁴ ~~(U//FOUO)~~ [redacted] is a mission data repository. [redacted]

[redacted]

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queries performed using USP selectors in FAA §702 upstream data, which is prohibited by the FAA §702 minimization procedures. Table 3 summarizes our test results.

(U) Table 3. Summary of Non-Compliant Queries

Reason for Non-Compliance*	Non-Compliant Queries		Authority
	No.	% of total	
[REDACTED]	[REDACTED]	0.7%	FAA §§704 and 705(b)
[REDACTED]	[REDACTED]	1.4%†	
Queries were performed outside targeting authorization periods (dates of queries) in E.O. 12333 data.	[REDACTED]	1.3%	E.O. 12333
Queries were performed in FAA §702 upstream data	[REDACTED]	5.2%	FAA §702

* (U//FOUO) Non-compliant queries that had more than one problem are included in the counts in multiple categories. There were a total of [REDACTED] non-compliant queries.
† (TS//SI//NF) We reviewed [REDACTED] query records for the [REDACTED] targets that had [REDACTED] by the Analysis and Production FISA Staff branch or the [REDACTED] TOPIs selected for review. See Finding Two for additional details.

(U//FOUO) SV confirmed that [REDACTED] of the [REDACTED] non-compliant queries that we identified were newly discovered instances of non-compliance. SV had already discovered two instances of non-compliance and filed incident reports before our review. For the newly discovered incidents, SV ensured that the appropriate TOPIs filed incident reports and counseled analysts to prevent future non-compliance. NSA's Office of General Counsel (OGC) notified DoJ NSD of the FISA incidents.⁶

(U//FOUO) Factors that caused non-compliant queries

(U//FOUO) SV explained that NSA query compliance is maintained largely through a series of manual checks that analysts perform before querying data. Analysts are relied on to maintain target awareness, track targets' U.S. travel, and perform compliant queries. For queries performed outside the targeting authorization periods and queries performed using [REDACTED] SV concluded that analysts had not performed the required checks before querying data. SV also explained that [REDACTED] SIGINT systems automatically

⁵ (U//FOUO) Upstream Internet collection includes acquisition of two types of communications not present in provider-enabled collection: "abouts" communications and "multiple communications transactions" (MCTs). "Abouts" communications are those that are not to or from the target selector but whose contents include the selector. An MCT is an Internet "transaction" that contains more than one discrete communication. If one of those communications is to, from, or about a tasked selector and if the active end of the transaction is foreign, the entire MCT transaction will be acquired through upstream Internet collection. This can include other discrete communications that do not contain the tasked selector. If the targeted selector is not the active user in the transaction, the MCT can include other discrete communications that do not contain the tasked selector.

⁶ (U//FOUO) The instances of non-compliance with the E.O. 12333 minimization procedures will be reported in NSA's first quarter 2016 calendar year Intelligence Oversight Quarterly report. The reports are provided quarterly to the Office of the Department of Defense Senior Intelligence Oversight Official and the President's Intelligence Oversight Board.

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include all authorities to which analysts are entitled access on the basis of their credentials. For the queries into FAA §702 upstream data, SV concluded that analysts had not removed the FAA §702 upstream authority from their search criteria (that automatically defaulted on the basis of their credentials) or had not included the appropriate [redacted] limiters to prevent FAA §702 upstream data from being queried.

(U) New controls to improve future query compliance

(U//FOUO) NSA is in the early stages of implementing a new system control,

[redacted]

Until [redacted] has been implemented [redacted]

[redacted]

[redacted] the Agency's compliance monitoring activities, and compliance awareness programs will remain important tools for detecting query compliance problems and preventing future recurrences.

(U//FOUO) SV has already agreed to perform compliance verification reviews periodically using the process we developed for this study. This will significantly strengthen the Agency's ability to monitor future compliance with the FAA §§704 and 705(b) and FAA §702 targeting and minimization procedures and implement corrective action as needed.

(U) RECOMMENDATION 1

(U//FOUO) Implement a process to periodically monitor for compliance all queries performed using selectors associated with FAA §§704 and 705(b) targets. These reviews must determine whether queries had been performed [redacted] as the FAA §§704 and 705(b) targeting and minimization procedures require, and whether queries of FAA §702 data excluded upstream data, as the FAA §702 minimization procedures require.

(ACTION: Chief, Compliance Verification (SV3) with Analysis and Compliance (S2) Compliance Lead and Office of the Director of Compliance)

⁷ (U//FOUO) [redacted]

⁸ (U//FOUO) [redacted]

[redacted]

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(U) Management Response

(U//~~FOUO~~) **AGREE** SV will develop a standard operating procedure (SOP) to document SV's procedures and processes to periodically monitor for compliance all queries performed using selectors associated with FAA §§704 and 705(b) targets. It is estimated the SOP will be developed by [redacted]. This SOP will include the procedures for determining whether queries were performed [redacted] and whether queries of FAA §702 data excluded upstream data. It is estimated that the periodic compliance verification reviews will be implemented by [redacted].

(U) OIG Comment

(U) The planned action meets the intent of the recommendation.

(U) RECOMMENDATION 2

(U//~~FOUO~~) For the periodic reviews of queries performed using selectors associated with FAA §§704 and 705(b) targets, work with TD to obtain records that also include [redacted] query records.

(ACTION: Chief, SV3, with [redacted] Lead, T1412)

(U) Management Response

(U//~~FOUO~~) **AGREE** SV will develop an SOP to document SV's procedures and processes to periodically monitor for compliance all queries performed using selectors associated with FAA §§704 and 705(b) targets. The SOP will also include the procedures and processes to assess [redacted] query records. Target completion date is [redacted].

(U) OIG Comment

(U) The planned action meets the intent of the recommendation.

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(U) RECOMMENDATION 3
<p>(U//FOUO) Develop a process to send periodic reminders to the SID workforce to specify that queries performed using selectors associated with FAA §§704 and 705(b) targets must be performed [redacted].</p> <p>[redacted] Analysts must also be reminded periodically that queries of FAA §702 data using USP selectors must exclude upstream data by removing the FAA §702 upstream authority from the search criteria [redacted].</p> <p>[redacted] to prevent that data from being queried.</p> <p style="text-align: center;">(ACTION: Chief, SV, and S2 Compliance Lead)</p>
(U) Management Response
<p>(U//FOUO) AGREE SV will develop and post two compliance advisories – one for the FAA §§704 and 705(b) queries and one for FAA §702 queries. Based on trend analysis of any non-compliant queries discovered during the planned periodic compliance verification reviews (as agreed in Recommendation 1), SV will issue periodic reminders, as needed, to the SID workforce that references the two compliance advisories to improve awareness. Target completion date is [redacted].</p>
(U) OIG Comment
<p>(U) The planned action meets the intent of the recommendation.</p>

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(U//FOUO) FINDING TWO: The Agency Has Not Provided Guidance for Documenting [redacted]

(S//SI//NF) [redacted] by FAA §§704 and 705(b) targets are not documented consistently and completely and in a manner accessible to all SID analysts who cover the targets. As a result, the Agency has an increased risk of non-compliance.

(U//FOUO) Information Is Not Documented Consistently and Completely

(U//FOUO) FAA §§704 and 705(b) targeting and minimization procedures prohibit targeting USPs while they are in the United States. Although the Agency is not required to document [redacted] maintaining these records is important for securing compliance with the targeting and minimization procedures.

(S//SI//NF) We reviewed the processes that [redacted] TOPIs use to document [redacted] by FAA §§704 and 705(b) targets. Although the Agency uses the processes to maintain compliance with all NSA authorities, we focused our review on how they are used for the FAA §§704 and 705(b) authorities. We determined that [redacted] are not documented consistently and completely and in a manner accessible to all SID analysts who cover FAA §§704 and 705(b) targets.

(U//FOUO) Processes to document [redacted] are not adequate

(S//SI//NF) Each TOPI has developed its own method for [redacted] FAA §§704 and 705(b) targets. Information is often saved in systems inaccessible by analysts in other TOPIs who might cover the same targets.

However, this information is not consistently documented in [redacted]

(TS//SI//NF) The Analysis and Production FISA Staff branch also documents [redacted] FAA §§704 and 705(b) targets. However, branch personnel stated that the records they maintain cannot be relied on. They also asserted that the TOPIs are responsible for maintaining the official records. Failure to have [redacted] documented consistently and completely in a system available to all SID analysts increases the risk that [redacted]. It also increases the risk that [redacted] will be performed [redacted]

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