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U.S. FOREIGN INTELLIGENCE SURVEILLANCE COURT

(U) EXHIBIT K

2019 SEP 17 PM 1:16

(U) **QUERYING PROCEDURES USED BY THE NATIONAL COUNTERTERRORISM CENTER IN CONNECTION WITH ACQUISITIONS OF FOREIGN INTELLIGENCE INFORMATION PURSUANT TO SECTION 702 OF THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978, AS AMENDED**

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I. (U) These procedures apply to the querying of unminimized information, acquired pursuant to section 702 of the Foreign Intelligence Surveillance Act of 1978, as amended (“FISA” or “the Act”), by the National Counterterrorism Center (“NCTC”), and apply in addition to separate minimization procedures for NCTC adopted pursuant to subsection 702(e) of the Act. These querying procedures should be read and applied in conjunction with those minimization procedures, and nothing in these procedures permits any actions that would otherwise be prohibited by those minimization procedures. NCTC employees who have completed training in these procedures and NCTC’s section 702 minimization procedures may query NCTC systems containing unminimized information acquired pursuant to section 702 of the Act. Authorized users with access to unminimized section 702-acquired information should process the results of an appropriate query of unminimized section 702-acquired information in accordance with NCTC’s applicable section 702 minimization procedures.

II. (U) If NCTC determines that it must take action in apparent departure from these querying procedures to protect against an immediate threat to human life (e.g., force protection or hostage situations) and that it is not feasible to obtain a timely modification of these procedures, NCTC may take such action immediately. NCTC will make a record of the action taken, to include any query term(s) used, and report the action taken to the Office of the Director of National Intelligence (“ODNI”) and to the Department of Justice’s National Security Division (“NSD”), which will promptly notify the Foreign Intelligence Surveillance Court (“FISC”) of such activity.

III. (U) **Definitions and Presumptions**

A. (U) **Definitions for purposes of these procedures**

(U) These procedures adopt the definitions set forth in 50 U.S.C. § 1801 for the terms “foreign intelligence information,” “person,” “United States,” and “United States person.”

~~(S//NF)~~ When used to conduct a query, “United States person query term” means a term that is reasonably likely to identify one or more specific United States persons. United States person query terms may be either a single item of information or information that, when combined with other information, is reasonably likely to identify one or more specific United States persons. Determining whether information is reasonably likely to identify one or more specific United States persons in a particular context may require a case-by-case assessment by a trained intelligence professional. “United States person query term” is not limited to any single category of information or technology. Depending on the context, examples of

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~~Classified by: The Attorney General
Derived From: DOJ/NSI/SCG 1 INT dated 20120701, 1.6
Declassify On: 20440916~~

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United States person query terms may include: names or unique titles; government-associated personal or corporate identification numbers; [REDACTED]

[REDACTED] and street address, telephone, and [REDACTED]

United States person query term does not include a reference to a product by brand or manufacturer's name (or related nomenclature, including part numbers) or the use of a name in a descriptive sense, as, for example, "Ford Crown Victoria" or "Boeing 737," so long as such term is not intended to retrieve information concerning a specific United States person (e.g., "Ford Crown Victoria with License Plate Number CBA 321").

(U) "Query" means the use of one or more terms¹ to retrieve the unminimized contents or noncontents of section 702-acquired information that is located in a NCTC system. The term "query" does not include a user's query of a system that contains unminimized section 702-acquired information, where the user does not receive unminimized section 702-acquired information in response to the query either because the user has not been granted access to the unminimized section 702-acquired information, or because a user who has been granted such access has limited the query such that it cannot retrieve unminimized section 702-acquired information. The term "query" also does not include (1) a system user's actions subsequent to conducting a query for purposes of sorting the results of that query based upon the attributes of the information retrieved,² or (2) examining or manipulating, including by technical means, communications or documents for the purpose of minimizing such communications or documents.³

(U) "NCTC employee" means (i) individuals directly employed by NCTC, (ii) personnel detailed to NCTC from other departments or agencies who work under NCTC management and supervision in a manner substantially the same as individuals directly employed by NCTC, and (iii) contractors working under NCTC management and supervision who are authorized to perform services in support of NCTC on FISA-related matters.

B. (U) Presumptions for purposes of these procedures

(U) The following guidelines apply in determining whether a person whose status is unknown is a United States person:

1. (U) A person known to be located in the United States will be treated as a United States person unless the person is identified as an alien who has not been admitted for

¹ ~~(S//NF)~~ Such terms may include the use of keywords, identifiers, [REDACTED]

² (U) For example, the action of a system user to sort the results of a query (i.e., the information actually returned to a system user from a query) by date, time, etc.

³ (U) For example, an analyst might run a script against a spreadsheet that would find and replace all instances of a known United States person's name with a generic term, such as "U.S. Person 1."

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permanent residence, or the circumstances give rise to the reasonable belief that such person is not a United States person.

2. (U) A person known to be located outside the United States, or whose location is unknown, will be treated as a non-United States person unless the person is identified as a United States person or the circumstances give rise to the reasonable belief that such person is a United States person.
3. (U) A person known to have been at any time an alien admitted for lawful permanent residence is treated as a United States person, unless a determination that such person is no longer a United States person is made (a) in consultation with the office of NCTC Legal Counsel after obtaining a copy of either an order revoking that person's United States person status issued by a U.S. federal court or a properly executed and filed United States Citizenship and Immigration Services Form I-407 (Record of Abandonment of Lawful Permanent Resident Status), or (b) in consultation with the office of NCTC Legal Counsel and NSD.
4. (U) An unincorporated association whose headquarters or primary office is located outside the United States is presumed not to be a United States person unless there is information indicating that a substantial number of its members are citizens of the United States or aliens lawfully admitted for permanent residence.

IV. (U) Querying Procedures

A. (U) **Query Standard** Each query of NCTC systems containing unminimized content or noncontent information acquired pursuant to section 702 of the Act must be reasonably likely to retrieve foreign intelligence information, as defined by FISA, unless otherwise specifically excepted in these procedures.

B. (U) Creation and Maintenance of Query Records

1. (U) NCTC must generate and maintain an electronic record of each United States person query term used for a query of unminimized information acquired pursuant to section 702. Such electronic record must, at a minimum, include the following information:
 - a. (U) the query term(s) used;
 - b. (U) the date of the query; and
 - c. (U) the identifier of the user who conducted the query.
2. (U) Any use of a United States person query term also must be accompanied by a statement of facts showing that the use of that query term is reasonably likely to

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retrieve foreign intelligence information, as defined by FISA. NCTC shall maintain a record of each such statement of facts.

3. (U) In the event it is impracticable for a NCTC system to generate an electronic record, or in the event an unanticipated circumstance arises that prevents the generation of such an electronic record, NCTC must generate and maintain a written record of each United States person query term that contains the same information required for electronic records, as described above. Before conducting a query in a system that does not generate an electronic record of a query, NCTC employees must reasonably determine that conducting that query in a system that generates an electronic record would be insufficient for technical, analytical, operational, or security reasons.
 4. (U) NCTC will maintain the query records required by this subsection in a manner that will allow NSD and ODNI to conduct oversight and compliance in an effective manner. Such records (both electronic and written), to include the statements of facts, must be maintained at least five years from the date the United States person query term was used. NSD and ODNI will review NCTC's queries of unminimized section 702-acquired information using any such query terms to ensure that they were reasonably likely to retrieve foreign intelligence information, or were otherwise conducted pursuant to one of the exceptions provided below.
- C. (U) **Exceptions** Notwithstanding subsections IV.A and IV.B.2 above, nothing in these procedures shall prohibit the lawful oversight functions of NSD or ODNI, or the applicable Offices of the Inspectors General, or restrict NCTC from providing the assistance necessary for these entities to perform their lawful oversight functions, and nothing in these procedures shall prohibit NCTC from conducting queries it determines are necessary to:
1. (U) NCTC's performance of lawful training functions of its personnel regarding the proper implementation of section 702 and NCTC's section 702 procedures. However, NCTC shall use non-United States person identifiers to perform such queries, unless NCTC determines that there is a particular need to use a United States person identifier in such a query to conduct training on the implementation of an aspect of NCTC's section 702 procedures;
 2. (U) create, test, or conduct technical maintenance of NCTC systems that process or store section 702-acquired information;
 3. (U) comply with an order of a court within the United States or a specific congressional mandate, such as a subpoena or similar process consistent with congressional oversight;
 4. (U) comply with the requirements of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a;


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5. (U) conduct vulnerability or network assessments using information acquired pursuant to section 702 of the Act in order to ensure that its systems are not or have not been compromised;
6. (U) identify information that must be produced or preserved in connection with a litigation matter; or
7. (U) perform the following lawful oversight functions of NCTC's personnel or systems:
 - a. (U) support NCTC's investigation and remediation of a possible FISA compliance incident;
 - b. (U) remediate a potential spill of classified FISA-acquired information in NCTC systems;
 - c. (U) identify FISA-acquired information subject to destruction, including under NCTC's section 702 minimization procedures;
 - d. (U) ensure the effective application of marking or segregation requirements in NCTC's FISA minimization procedures; or
 - e. (U) support NCTC's audit or review, for quality control purposes, of work done related to FISA collection by NCTC employees.

(U) Should NCTC determine that it is necessary to deviate from an aspect of these procedures to perform lawful oversight functions of its personnel or systems apart from those specified in this subsection (IV.C.7), NCTC shall consult with NSD and ODNI prior to conducting such a query. NSD shall promptly report the deviation to the FISC. Each such report shall describe the nature of the deviation from the procedures and identify the specific oversight activity for which the deviation was necessary.

(U) Consistent with the requirements set forth in subsections IV.B.1, 3, and 4 above, NCTC must keep a record of any United States person query term used for a query of unminimized section 702-acquired information in support of the activities described in this subsection IV.C.

9/16/19
Date


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