

U.S. FOREIGN INTELLIGENCE SURVEILLANCE COURT

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U.S. FOREIGN INTELLIGENCE SURVEILLANCE COURT

2023 MAR 13 AM 10: 27

(U) EXHIBIT I

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MAURICE PETERSON
CLERK OF COURT

(U) QUERYING PROCEDURES USED BY THE FEDERAL BUREAU OF INVESTIGATION IN CONNECTION WITH ACQUISITIONS OF FOREIGN INTELLIGENCE INFORMATION PURSUANT TO SECTION 702 OF THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978, AS AMENDED

MAURICE PETERSON
CLERK OF COURT

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 Federal Bureau of Investigation (“FBI”), and apply in addition to separate minimization procedures for the FBI 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. FBI personnel who have completed training in these procedures and the FBI’s section 702 minimization procedures may query FBI systems containing unminimized information acquired pursuant to section 702 of the Act to find, extract, review, translate, and assess whether such information reasonably appears to be foreign intelligence information, to be necessary to understand foreign intelligence information or assess its importance, or to be evidence of a crime. 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 the FBI’s applicable section 702 minimization procedures.

II. (U) If the FBI 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, the FBI may take such action immediately. The FBI 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

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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 United States person query terms may include: names or unique titles; government-associated personal or corporate identification numbers: [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 (including metadata) of section 702-acquired information that is located in an FBI 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 (2) examining or manipulating, including by technical means, communications or documents for the purpose of minimizing such communications or documents,³ (3) searches done for UAM purposes in systems or other repositories that contain UAM data, as defined in Section III.F.7 of the FBI's section 702 minimization procedures, so long as the only unminimized section 702-acquired information that the searches run against are in records captured through user activity monitoring, or (4) searches conducted in the special purpose systems defined in Sections III.F.5 and 6 of the FBI's section 702 minimization procedures in furtherance of an authorized use specified in those provisions.

(U) "Contents" means any information concerning the substance, purport, or meaning of a communication.

(U) "Metadata" means the dialing, routing, addressing, or signaling information associated with a communication, but does not include information concerning the substance, purport, or meaning of the communication.

~~(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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(U) The terms “Federal Bureau of Investigation” and “FBI personnel” refer to any employees of the FBI, as well as all contractors and others authorized to work under the direction and control of the FBI.

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 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 FBI Office of General 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 FBI Office of General 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.

1. (U) Each query of FBI systems containing unminimized contents or noncontents (including metadata) acquired pursuant to section 702 of the Act must be reasonably likely to retrieve foreign intelligence information, as defined by FISA, or evidence of a crime, unless otherwise specifically excepted in these procedures. In order to meet this standard:
 - (a) the person conducting the query must have the purpose of retrieving foreign intelligence information or evidence of a crime;

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- (b) the person conducting the query must have a specific factual basis to believe that it is reasonably likely to retrieve foreign intelligence information or evidence of a crime; and
 - (c) the query must be reasonably tailored to retrieve foreign intelligence information or evidence of a crime without unnecessarily retrieving other information.
2. (U) For queries conducted using United States person query terms that are not designed to find and extract foreign intelligence information, as defined by FISA, the FBI will follow the procedures in subsection 702(f)(2) of FISA before accessing the unminimized contents of communications retrieved by such queries in connection with a predicated criminal investigation that does not relate to the national security of the United States, unless there is a reasonable belief that such contents could assist in mitigating or eliminating a threat to life or serious bodily harm. Consistent with subsections 702(f)(2)(F)(ii)-(iii) of the Act, this restriction does not prohibit or limit (1) the FBI's ability to review, without a court order, the results of any query of section 702-acquired information that was reasonably designed to find and extract foreign intelligence information, regardless of whether such foreign intelligence information could also be considered evidence of a crime; and (2) the FBI's ability to access the results of queries that were conducted when evaluating whether to open an assessment or predicated investigation related to the national security of the United States.
 3. (U) Prior to reviewing or accessing the unminimized contents of section 702-acquired information retrieved using a United States person query term, FBI personnel will provide a written statement of the specific factual basis to believe that the query was reasonably likely to retrieve foreign intelligence information or evidence of a crime.⁴ Such written statement will comply with the documentation requirements set forth in Section IV.B.4 below.

(U) This requirement does not apply to queries conducted using United States person query terms that are not designed to find and extract foreign intelligence information and that are conducted in connection with a predicated criminal investigation. Such queries must comply with the requirements in Section IV.A.2.

B. (U) Creation and Maintenance of Query Records.

1. (U) The FBI must generate and maintain an electronic record of each United States person query term used for a query of unminimized content or noncontent information acquired pursuant to section 702. Such electronic record must, at a minimum, include the following information:

⁴ (U) FBI personnel are not required to provide a written statement of facts before conducting any query or before reviewing the unminimized section 702-acquired noncontents (including metadata) retrieved using a United States person query term.

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- 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) In the event it is impracticable for an FBI system to generate an electronic record of each United States person query term, or in the event an unanticipated circumstance arises that prevents the generation of such an electronic record, the FBI 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, FBI personnel 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.
 3. (U) The FBI 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) must be maintained at least five years from the date the United States person query term was used. NSD and ODNI will review the FBI'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 evidence of a crime, or were otherwise conducted pursuant to one of the exceptions provided below.
 4. (U) The FBI shall maintain a record of each statement of facts required by Section IV.A.3 above in a manner that will enable oversight by NSD and ODNI.
- C. (U) **Exceptions.** Notwithstanding subsection IV.A 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 the FBI from providing the assistance necessary for these entities to perform their lawful oversight functions, and nothing in these procedures shall prohibit the FBI from conducting queries it determines are necessary to:
1. (U) the FBI's performance of lawful training functions of its personnel regarding the proper implementation of FISA and the FBI's FISA procedures, including its section 702 procedures. However, the FBI shall use non-United States person query terms to perform such queries, unless the FBI determines that there is a particular need to use a United States person query term in such a query to conduct training on the implementation of an aspect of the FBI's section 702 procedures;
 2. (U) create, test, or conduct technical maintenance of FBI systems that process or store unminimized section 702-acquired information;

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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;
5. (U) conduct vulnerability or network assessments using unminimized 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 FBI's personnel or systems:
 - a. (U) support the FBI's investigation and remediation of a possible FISA compliance incident;
 - b. (U) remediate a potential spill of classified FISA-acquired information in FBI systems;
 - c. (U) identify FISA-acquired information subject to destruction, including under the FBI's section 702 minimization procedures;
 - d. (U) ensure the effective application of marking or segregation requirements in the FBI's FISA minimization procedures;
 - e. (U) assess compliance with federal record-keeping requirements, where such queries are conducted in audit and oversight systems, as defined in FBI's section 702 minimization procedures, that contain FBI personnel e-mails and instant messages that may contain unminimized section 702-acquired information; or
 - f. (U) support the FBI's audit or review, for quality control purposes, of work done related to FISA collection by FBI personnel.


(U) Should the FBI 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), the FBI 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.

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(U) Consistent with the requirements set forth in subsection IV.B above, the FBI 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.

10/14/21
Date



LISA O. MONACO
Deputy Attorney General of the United States

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