

UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

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

[REDACTED]

Docket Number: BR:

09-13

(TS)

PRIMARY ORDER

A verified application having been made by the Director of the Federal Bureau of Investigation (FBI) for an order pursuant to the Foreign Intelligence Surveillance Act of 1978 (the Act), Title 50, United States Code (U.S.C.), § 1861, as amended, requiring the production to the National Security Agency (NSA) of the tangible things described below, and full consideration

having been given to the matters set forth therein, the Court finds as follows:

1. There are reasonable grounds to believe that the tangible things sought are relevant to authorized investigations (other than threat assessments) being conducted by the FBI under guidelines approved by the Attorney General under Executive Order 12333 to protect against international terrorism, which investigations are not being conducted solely upon the basis of activities protected by the First Amendment to the Constitution of the United States. [50 U.S.C. § 1861(c)(1)]

2. The tangible things sought could be obtained with a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation or with any other order issued by a court of the United States directing the production of records or tangible things. [50 U.S.C. § 1861(c)(2)(D)]

3. The application includes an enumeration of the minimization procedures the government proposes to follow with regard to the tangible things sought. Such procedures are similar to the minimization procedures approved and adopted as binding by the order of this Court in Docket Number BR 09-09 and its predecessors. [50 U.S.C. § 1861(c)(1)]

Accordingly, the Court finds that the application of the United States to obtain the tangible things, as described below,

satisfies the requirements of the Act and, therefore,

IT IS HEREBY ORDERED, pursuant to the authority conferred on this Court by the Act, that the application is GRANTED, and it is

FURTHER ORDERED, as follows:

(1)A. [REDACTED] shall produce to NSA upon service of the appropriate secondary order, and continue production on an ongoing daily basis thereafter for the duration of this order, unless otherwise ordered by the Court, an electronic copy of the following tangible things: all call detail records or "telephony metadata"¹ created by [REDACTED]. In addition, the Custodian of Records of [REDACTED] shall produce to NSA upon service of the appropriate Secondary Order an electronic copy of the same tangible things created by [REDACTED] for the period from 5:11 p.m. on July 9, 2009, to the date of this Order, to the extent those records still exist.

¹ For purposes of this Order "telephony metadata" includes comprehensive communications routing information (e.g., originating and terminating telephone number, International Mobile Subscriber Identity (IMSI) number, International Mobile station Equipment Identity (IMEI) number, etc.), trunk identifier, telephone calling card numbers, and time and duration of call. Telephony metadata does not include the substantive content of any communication, as defined by 18 U.S.C. § 2510(8), or the name, address, or financial information of a subscriber or customer.

B. The Custodian of Records of [REDACTED]

[REDACTED]

[REDACTED] shall produce to NSA upon service of the appropriate secondary order, and continue production on an ongoing daily basis thereafter for the duration of this order, unless otherwise ordered by the Court, an electronic copy of the following tangible things: all call detail records or "telephony metadata" created by [REDACTED] for communications (i) between the United States and abroad; or (ii) wholly within the United States, including local telephone calls. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(2) With respect to any information the FBI receives as a result of this Order (information that is passed or "tipped" to it by NSA), the FBI shall follow as minimization procedures the procedures set forth in The Attorney General's Guidelines for Domestic FBI Operations (September 29, 2008).

(3) With respect to the information that NSA receives as a result of this Order, NSA shall strictly adhere to the following minimization procedures:

A. The government is hereby prohibited from accessing business record metadata acquired pursuant to this Court's orders in the above-captioned docket and its predecessors ("BR metadata") for any purpose except as described herein. Notwithstanding the requirements set forth below, Executive Branch personnel may be permitted access to the BR metadata and information derived therefrom in order to facilitate their lawful oversight functions, which include, but are not limited to, those set forth below.

B. The BR metadata may be accessed for the purposes of ensuring data integrity and developing and testing any technological measures designed to enable the NSA to comply with the Court's orders. Access to the BR metadata for such purposes shall be limited to the NSA Collection Managers, Data Integrity Analysts, and System Administrators described in paragraph 16 of the Declaration of [REDACTED], Chief, Special FISA Oversight and Processing, Oversight and Compliance, Signals Intelligence Directorate, the National Security Agency, filed as Exhibit A to the Application in the above-captioned docket ([REDACTED] Declaration"). Additional individuals directly involved in developing and testing technologies to be used with the BR metadata may be granted access to the BR metadata, provided such access is approved by NSA's Office of General Counsel (OGC) on a

case-by-case basis. Except as provided in paragraph (3)J, persons who query the BR metadata pursuant to this paragraph may only share the results of any such query with other specially-cleared NSA technical personnel. Queries performed by the persons described in this paragraph shall not be subject to the approval process and standard set forth in paragraph (3)C below. To the extent NSA personnel make copies of the BR metadata for purposes of ensuring data integrity or developing and testing technological measures, such copies shall be destroyed upon the completion of their work.

C. Subject to the restrictions and procedures below, the BR metadata may be accessed for purposes of obtaining foreign intelligence information through contact chaining [REDACTED] ("queries") using telephone identifiers,² as described in the [REDACTED] Declaration at paragraphs 8-13.

(i) Except as provided in subparagraph (ii) below, all telephone identifiers to be used for queries shall be approved by one of the following designated approving

[REDACTED]

officials: the Chief, Special FISA Oversight and Processing, Oversight and Compliance, Signals Intelligence Directorate; the Chief or Deputy Chief, Homeland Security Analysis Center; or one of the twenty specially-authorized Homeland Mission Coordinators in the Analysis and Production Directorate of the Signals Intelligence Directorate. Such approval shall be given only after the designated approving official has determined that based on the factual and practical considerations of everyday life on which reasonable and prudent persons act, there are facts giving rise to a reasonable, articulable suspicion that the telephone identifier to be queried is associated with [REDACTED] [REDACTED] [REDACTED]

³ For purposes of this Order, the term [REDACTED] includes the following [REDACTED]

[REDACTED]

[REDACTED]⁴
provided, however, that NSA's OGC shall first determine that any telephone identifier reasonably believed to be used by a United States (U.S.) person is not regarded as associated with [REDACTED]

[REDACTED]
[REDACTED] solely on the basis of activities that are protected by the First Amendment to the

[REDACTED]

⁴ For purposes of this Order, the term [REDACTED] "refers to those [REDACTED] organizations involved in international terrorism (namely [REDACTED])

[REDACTED] If intelligence reveals the existence of other terrorist organizations associated with the [REDACTED] the Government shall seek the Court's approval before regarding them as falling within [REDACTED]

Constitution.⁵

(ii) Telephone identifiers that are currently the subject of electronic surveillance authorized by the Foreign Intelligence Surveillance Court (FISC) based on the FISC's finding of probable cause to believe that they are used by agents of [REDACTED]

[REDACTED], including those used by U.S. persons, may be deemed approved for querying for the period of FISC-authorized electronic surveillance without review and approval by a designated approving official. The preceding sentence shall not apply to telephone identifiers under surveillance pursuant to any

⁵ The Court understands that from time to time the information available to designated approving officials will indicate that a telephone identifier was, but may not presently be, or is, but was not formerly, associated with [REDACTED]

[REDACTED] In such a circumstance, so long as the designated approving official can determine that the reasonable, articulable suspicion standard can be met for a particular period of time with respect the telephone identifier, NSA may query the BR metadata using that telephone identifier. However, analysts conducting queries using such telephone identifiers must be made aware of the time period for which the telephone identifier has been associated with [REDACTED]

[REDACTED], in order that the analysis and minimization of the information retrieved from their queries may be informed by that fact.

certification of the Director of National Intelligence and the Attorney General pursuant to Section 702 of FISA, as added by the FISA Amendments Act of 2008, or pursuant to an Order of the FISC issued under Section 703 or Section 704 of FISA, as added by the FISA Amendments Act of 2008.

(iii) A determination by a designated approving official that a telephone identifier is associated with [REDACTED]

[REDACTED] shall be effective for: one hundred eighty days for U.S. telephone identifiers and for any identifiers believed to be used by a U.S. person; one year for all other telephone identifiers.⁶

⁶ [REDACTED]

D. The Director of the NSA shall continue to maintain mandatory procedures to strictly control access to and use of the BR metadata, in accordance with this Court's orders. NSA's OGC shall continue to promptly provide NSD with copies of these mandatory procedures (and all replacements, supplements or revisions thereto in effect now or adopted in the future). The Chief, Special FISA Oversight and Processing, Oversight and Compliance, Signals Intelligence Directorate; Chief and Deputy Chief, Homeland Security Analysis Center; and the Homeland Mission Coordinators shall maintain appropriate management controls (e.g., records of all tasking decisions, audit and review procedures) for access to the metadata.

E. The NSA shall obtain the BR metadata from [REDACTED] via [REDACTED], and shall store and process the BR metadata on a secure internal network that NSA exclusively will operate.

F. Any processing by technical personnel of the BR metadata acquired pursuant to this order shall be conducted through the NSA's secure internal network, which shall be accessible only to authorized personnel, using accounts authorized by a user authentication service, based on user login and password.

G. Access to the metadata shall be controlled by user name and password. NSA's Oversight and Compliance Office shall

monitor the designation of individuals with access to the BR metadata. When the BR metadata is accessed through queries under paragraphs (3)B or (3)C above, a software interface shall limit access to the BR metadata to authorized personnel, and the user's login, Internet Protocol (IP) address, date and time, and retrieval request shall be automatically logged for auditing capability.⁷ When the BR metadata is accessed through any other means under paragraph (3)B above, the user's login, date and time shall be automatically logged for auditing capability. NSA's Office of Oversight and Compliance shall monitor the functioning of this automatic logging capability. All persons authorized for access to the BR metadata and other NSA personnel who are authorized to receive query results shall receive appropriate and adequate briefings by NSA's OGC concerning the authorization granted by this Order, the limited circumstances in which the BR metadata may be accessed, and/or other procedures and restrictions regarding the retrieval, storage, and dissemination of the metadata.

⁷ In addition, the Court understands from the Declaration of Lieutenant General Keith B. Alexander, Director of NSA (Ex. A to the Report of the United States filed in docket number BR 09-09 on August 17, 2009) that NSA has made a number of technical modifications that will prohibit analysts: a) from inadvertently accessing the BR metadata in [REDACTED]; b) from querying the BR metadata in [REDACTED] with non-RAS-approved identifiers; and c) from going beyond three "hops" from an identifier used to query the BR metadata in [REDACTED]

H. NSA shall treat information from queries of the BR metadata in accordance with USSID 18 and shall apply USSID 18 to minimize information concerning U.S. persons obtained from the records produced pursuant to the authorities granted herein. Additionally, before the NSA disseminates any U.S. person identifying information, the Chief of Information Sharing Services in the Signals Intelligence Directorate, the Senior Operations Officer at NSA's National Security Operations Center, the Signals Intelligence Directorate Director, the Deputy Director of the NSA, or the Director of the NSA must determine that the information identifying the U.S. person is in fact related to counterterrorism information and that it is necessary to understand the counterterrorism information or assess its importance. Notwithstanding the above requirements, NSA may share information derived from the BR metadata, including U.S. person identifying information, with Executive Branch personnel in order to enable them to determine whether the information contains exculpatory or impeachment information or is otherwise discoverable in legal proceedings. By 5:00 p.m. each Friday following the authorization requested herein, the government shall file 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 BR metadata

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, e-mail, oral communication, etc.). For each such instance in which U.S. person information has been shared, except those involving Executive Branch personnel seeking to identify discoverable information, the Chief of Information Sharing Services in the Signals Intelligence Directorate shall certify that one of the authorized officials identified above determined, prior to dissemination, that the information was related to counterterrorism information and necessary to understand the counterterrorism information or to assess its importance. This paragraph's reporting requirement is not intended to apply to instances in which BR metadata and information derived therefrom is shared with Executive Branch personnel in order to facilitate their lawful oversight functions.

I. Personnel authorized to query the BR metadata in paragraph (3)C above may use and share the results of authorized queries of the BR metadata among themselves and with NSA personnel, including those who are not authorized to access the BR metadata pursuant to paragraph (3)C, provided that all NSA personnel receiving such query results in any form (except for

information properly disseminated outside NSA) shall first receive appropriate and adequate training and guidance regarding the rules and restrictions governing the use, storage, and dissemination of such information. NSA's Oversight and Compliance Office shall monitor the designation of individuals who have received the training and guidance necessary to receive the results of queries of the BR metadata.

J. Authorized personnel also may use and share the identity of high-volume telephone identifiers and other types of identifiers not associated with specific users [REDACTED]

[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] that they discover or have discovered as a result of access authorized under paragraphs (3)B and (3)C or as a result of technical personnel access under prior docket numbers in this matter, among themselves and with other NSA personnel, including those who are not authorized to access the BR metadata, for purposes of metadata reduction and management. The training requirements set forth in paragraph (3)I above for NSA personnel receiving query results shall not apply to personnel receiving such identifiers, which may have

been identified through queries, so long as they are received solely for purposes of metadata reduction and management.

K. The BR metadata collected under this Court's Orders may be kept online (that is, accessible for queries) for five years from the date of acquisition, at which time it shall be destroyed.

L. At least twice before the expiration of the authorities granted herein, NSA's OGC shall conduct a random spot check, consisting of an examination of a sample of call detail records obtained, to ensure that NSA is receiving only data as authorized by the Court and not receiving the substantive content of communications.

M. At least twice before the expiration of the authorities granted herein, the Department of Justice's National Security Division (NSD) will review NSA's access to the BR metadata under paragraph (3)C above. Such reviews shall include a sample of the justifications designated approving officials relied upon to approve telephone identifiers for querying the BR metadata, and a review of the queries conducted.

N. NSA's OGC shall consult with NSD on all significant legal opinions that relate to the interpretation, scope, and/or implementation of the authorizations granted by the Court in this matter. When operationally practicable, such consultation

shall occur in advance; otherwise, NSD shall be notified as soon as practicable.

O. NSA's OGC shall promptly provide NSD with copies of all formal briefing and/or training materials (including all revisions thereto) currently in use or prepared and used in the future to brief/train NSA personnel concerning the authorizations granted by this Order.

P. At least once before the expiration of the authorities granted herein, a meeting for the purpose of assessing compliance with this Court's orders in this matter shall be held with representatives from NSA's OGC, NSD, and appropriate individuals from NSA's Signals Intelligence Directorate. The results of this meeting shall be reduced to writing and submitted to the Court as part of any application to renew or reinstate the authorities granted herein.

Q. At least once before the expiration of the authorities granted herein, NSD shall meet with NSA's Office of Inspector General (OIG) to discuss their respective oversight responsibilities and assess NSA's compliance with the Court's orders in this matter.

R. Prior to implementation, all proposed automated query processes shall be reviewed and approved by NSA's OGC, NSD, and

the Court.⁸

S. Any application to renew or reinstate the authority granted herein shall include a report describing: (i) the queries made since the end of the reporting period of the last report filed with the Court; (ii) the manner in which NSA applied the procedures set forth in paragraph (3)C above; and (iii) any proposed changes in the way in which the call detail records would be received from the carriers and any significant changes to the systems NSA uses to receive, store, process, and disseminate BR metadata. In particular, the report shall describe how NSA has conducted queries described in footnote 5 of this order and minimized any information obtained or derived therefrom.

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⁸ The Court understands that NSA may begin testing of certain automated processes (or capabilities associated with such processes) within the next sixty days.

This authorization regarding [REDACTED]
[REDACTED] and unknown persons in the United States
and abroad affiliated with [REDACTED]
[REDACTED]
[REDACTED] and unknown persons in the United States
and abroad affiliated with [REDACTED]
[REDACTED] expires on 30th day of October 2009,
at 5:00 p.m., Eastern Time.

Signed _____ Eastern Time
Date 09-03-2009 P03:33 Time



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

