

## How the Reforming Intelligence and Securing America Act (RISAA) Strengthens Privacy and Civil Liberties Protections for U.S. Persons

Section 702 of the Foreign Intelligence Surveillance Act (FISA) allows the U.S. Government (USG) to target the communications of non-U.S. persons reasonably believed to be located outside the United States who use U.S. electronic communications services, such as email and telephone. While the USG does not target U.S. persons through Section 702, it may incidentally result in the collection of U.S. person communications when they are in contact with foreign targets.

The Intelligence Community (IC) dedicates substantial resources to protecting the privacy and civil liberties of U.S. persons in handling these communications. The reforms in RISAA added important additional protections for U.S. persons.

### RISAA's reforms have been fully implemented.

#### KEY REFORMS

- **FBI Collection.** FBI may only ingest Section 702 information into an FBI system if the targeted person is relevant to an existing, open, predicated, national security investigation.
- **FBI Query Procedures.** RISAA requires FBI attorney pre-approval for U.S. person queries, sensitive queries, and queries related to batch jobs; query training for FBI personnel; written justifications for U.S. person queries; and certain reporting requirements to Congress if FBI conducts a query of a member of Congress.
- **No Evidence of a Crime Only (EOCO) Queries.** RISAA prohibits FBI from conducting queries designed to find "evidence of a crime only," with two exceptions: when required to identify information that must be produced or preserved in connection with a litigation matter and in cases that involve a threat to life or other exigent circumstances.
- **FBI System Requirements.** All unminimized Section 702 information must be properly stored with access controls and users must affirmatively "opt in" to include Section 702-acquired data when running queries.

#### OVERSIGHT & ACCOUNTABILITY

All three branches of the USG play a key role in overseeing the Section 702 program. RISAA adds new oversight reports and responsibilities:

- **New Department of Justice (DOJ) Reviews.**
  - *Targeting Decisions.* DOJ's National Security Division (NSD) must review every Section 702 targeting decision to ensure that the IC does not intentionally target a U.S. person. The DOJ Inspector General must also audit a sample of the targeting decision reviewed by NSD.
  - *FBI U.S. Person Queries.* DOJ NSD must review 100% of all FBI U.S. person queries within 180 days of when they were conducted. Although not required by RISAA, FBI's Office of Internal Auditing also conducts 100% review of all U.S. person queries.
- **FBI Accountability Standards.** RISAA codified minimum accountability standards for FBI personnel conducting Section 702 queries, including zero tolerance for willful misconduct.
- **FBI Annual Query Accountability Report.** FBI must submit a report describing the accountability actions taken in the preceding 12-month period for noncompliant querying of Section 702 information and the outcome of any related adverse personnel actions taken.
- **FISC Reforms.** RISAA added new Foreign Intelligence Surveillance Court (FISC) rules and authorities. For example, the Court is required to appoint amici curiae (friends of the Court) to review Section 702 certification applications. The FISC was also expressly granted authority to hold officials in contempt of court.

#### TRANSPARENCY

The Office of the Director of National Intelligence and DOJ provide the public with a broad range of information on intelligence activities and authorities, including Section 702. RISAA added several new transparency measures:

- **New FBI Report.** FBI must produce an Annual Section 702 Query Report containing the number of U.S. person queries conducted under Section 702 and statistics on why the query was conducted. FBI must also provide certain query metrics to Congress on a quarterly basis.
- **Director of National Intelligence (DNI) Declassification Review.** The Attorney General and DNI must conduct declassification reviews of significant FISC and FISA Court of Review decisions, orders, and opinions within 180 days of issuance for public release.

