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(U) 28th SEMIANNUAL ASSESSMENT OF COMPLIANCE WITH PROCEDURES AND GUIDELINES ISSUED PURSUANT TO SECTION 702 OF THE FOREIGN INTELLIGENCE SURVEILLANCE ACT, SUBMITTED BY THE ATTORNEY GENERAL AND THE DIRECTOR OF NATIONAL INTELLIGENCE

(U) Reporting Period: 1 December 2021 – 31 May 2022

February 2024

Classified By: [REDACTED]

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February 2024

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(U) 28th Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of the Foreign Intelligence Surveillance Act, Submitted by the Attorney General and the Director of National Intelligence

February 2024

(U) Reporting Period: 1 December 2021 – 31 May 2022

(U) EXECUTIVE SUMMARY

(U) The Foreign Intelligence Surveillance Act of 1978 (FISA), 50 U.S.C. § 1881a(m)(1) requires the Attorney General and the Director of National Intelligence (DNI) to assess compliance with certain procedures and guidelines issued pursuant to FISA Section 702 (hereinafter, “Section 702”), and to submit a “semiannual assessment” (referred to herein as “joint assessment”) to the Foreign Intelligence Surveillance Court (FISC) and relevant congressional committees at least once every six months. As of February 2024, 28 joint assessments have been submitted.

(U) This assessment covers the period from 1 December 2021 through 31 May 2022 (hereinafter, the “reporting period”) and serves as a corollary to the Semiannual Report of the Attorney General Concerning Acquisitions under Section 702 of the Foreign Intelligence Surveillance Act as required by Section 707(b)(1) of FISA (hereinafter, the “Section 707 Report”). The Department of Justice (DOJ) submitted the Section 707 Report in September 2022; it covers the same reporting period as this joint assessment. This report is based on compliance data included in the corresponding Section 707 Report, but provides additional perspective on overarching trends and more focused information on oversight and training activities, as well as the overall health of the program at each agency.

(U) Section 702 authorizes, subject to restrictions imposed by the statute and required targeting, minimization, and querying procedures, the targeting of non-United States persons reasonably believed to be located outside the United States in order to acquire foreign intelligence information. This joint assessment is based upon the compliance assessment activities that have been conducted by a joint oversight team consisting of experts from DOJ’s National Security Division (NSD) and the Office of the Director of National Intelligence (ODNI) (hereinafter, the “joint oversight team”).

(U) The following tables present several compliance metrics—the National Security Agency (NSA) targeting compliance incident rate and the Federal Bureau of Investigation (FBI) query compliance incident rates—from this reporting period and the four previous reporting periods.

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~~TOP SECRET//SI//NOFORN~~**(U) Figure 1A: NSA Targeting Compliance Incident Rate**

(U) Figure 1A is UNCLASSIFIED.

	24th Joint Assessment (Dec. '19 – May '20)	25th Joint Assessment (Jun. '20 – Nov. '20)	26th Joint Assessment (Dec. '20 – May '21)	27th Joint Assessment (June '21 – Nov. '21)	28th Joint Assessment (Dec '21 – May '22)
NSA Targeting Compliance Incident Rate ¹	0.10 percent	0.05 percent	0.11 percent	0.11 percent	0.10 percent

(U) The NSA targeting compliance incident rate remained low during this reporting period. The number of *potential* incidents reported by NSA to the joint oversight team during the reporting period declined slightly relative to the prior reporting period but remained above pre-pandemic levels.² Similarly, the number of potential incidents that, after review, were determined to be *actual* NSA compliance incidents and were reported to the FISC also declined slightly during this period.

¹ (U) The targeting compliance incident rate for NSA is calculated as the total number of compliance incidents relating to NSA's targeting procedures (tasking errors, detasking delays, documentation errors, reporting delays, and other errors) expressed as a percentage of the average number of facilities subject to acquisition on any given day during the reporting period.

² (U) Potential incidents include, for example, instances in which Section 702 acquisition may have continued while a targeted individual was in the United States, as well as instances in which a facility tasked to Section 702 may have been used by a United States person.

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~~TOP SECRET//SI//NOFORN~~**(U) Figure 1B: FBI Query Compliance Incident Totals and Rates**

(U) Figure 1B is UNCLASSIFIED.

	24th Joint Assessment (Dec. '19 – May '20)	25th Joint Assessment (Jun. '20 – Nov. '20)	26th Joint Assessment (Dec. '20 – May '21)	27th Joint Assessment (June '21 – Nov. '21)	28th Joint Assessment (Dec '21 – May '22) ³
FBI Queries Reviewed	187,501	56,576	58,906	2,519,931	13,223
FBI Query Compliance Incidents	1,536	1,266 ⁴	207	81,289	994
FBI Query Standard Incidents	1,188	864	111	23,488	290
FBI Query Mislabeling Incidents	n/a ⁵	n/a	16	57,565	702
Overall FBI Query Compliance Incident Rate ⁶	0.82 percent	2.23 percent	0.36 percent	3.22 percent	7.52 percent ⁷
FBI Query Standard Compliance Incident Rate ⁸	0.63 percent	1.53 percent	0.19 percent	0.94 percent	2.19 percent
FBI Query Mislabeling Rate ⁹	Not Calculated		0.03 percent	2.28 percent	5.31 percent

³ (U) For purposes of calculating the FBI query compliance incident rates for this reporting period, the number of FBI queries reviewed and the number of FBI query compliance incidents exclude the number of queries reviewed and the number of compliance incidents identified as part of NSD's review of an internal FBI audit. Unlike other reviews conducted by NSD, the queries NSD selected for this review were batch jobs that NSD had already assessed were likely to contain noncompliant queries. Given the selection bias, any effort to calculate the error rates from that review would result in figures that were not representative of FBI's compliance with the querying procedures. See the discussion of Figure 14 in Section 4 for more information.

⁴ (U) The 25th, 26th, and 27th Joint Assessments reported an incorrect number of incidents of noncompliance with the FBI querying procedures for the 25th reporting period. See footnote 83 for more information.

⁵ (U) Query incidents involving the mislabeling of United States person query terms were first reported in the 26th Joint Assessment, covering December 2020 to May 2021. See the discussion of Figure 12 in Section 4 for more information.

⁷ (U) The denominator used in generating this metric (the number of queries reviewed) reflects the approximate number of queries that NSD made assessments about, excluding queries initially identified by FBI as part of its own internal audit. NSD did not individually review each query conducted in connection with certain large batch jobs. See the discussion of Figure 14 in Section 4 for more information.

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(U) The total number of compliance incidents reported during this reporting period declined significantly relative to the prior reporting period.¹⁰ The joint oversight team attributes this decrease primarily to the number of FBI query incidents reported during this period, which declined by a factor of five relative to the previous reporting period, including the FBI query incidents that NSD identified as part of a review of an internal FBI audit.¹¹ Notwithstanding this fivefold decline in the *total number* of FBI query incidents, the overall FBI query compliance incident *rate* more than doubled relative to the previous period. This increase is due in significant part to a decline in the total number of queries reviewed by NSD during this reporting period relative to the previous period. Specifically, during the previous reporting period, NSD reviewed a set of compliant batch jobs comprising nearly two million total queries, which represented a majority of the denominator in calculating the rate for that period; without similarly large batch jobs during this reporting period, the denominator was smaller, thus raising the overall FBI query compliance incident rate even though the number of FBI query incidents in the numerator went down. The significant decrease in the total number of FBI query incidents suggests that, while FBI query compliance issues persist, remedial measures put in place to address those issues, which are discussed in detail on pages 59–61, are having a positive impact.

(U) When considering FBI query compliance trends, it is important to note that, starting in December 2019, FBI's querying procedures required FBI to generate and maintain certain records pertaining to queries of United States person identifiers. **As discussed in greater detail below, compliance incidents relating to the failure to properly label United States person and non-**

⁷ (U) The denominator used in generating this metric (the number of queries reviewed) reflects the approximate number of queries that NSD made assessments about, excluding queries initially identified by FBI as part of its own internal audit. NSD did not individually review each query conducted in connection with certain large batch jobs. See the discussion of Figure 14 in Section 4 for more information.

⁸ (U) The FBI query standard compliance incident rate represents the number of FBI query compliance incidents involving a misapplication of the query standard, expressed as a percentage of the total number of FBI queries reviewed by NSD in connection with FBI query reviews during which NSD identified such FBI query compliance incidents. This metric includes all incidents that involved a misapplication of the query standard, some of which may have also involved incorrectly labeling the United States person status of a query term.

⁹ (U) The FBI query mislabeling rate represents the number of FBI query compliance incidents involving only incorrectly labeling the United States person status of a query term, expressed as a percentage of the total number of FBI queries reviewed by NSD in connection with FBI query reviews during which NSD identified such FBI query compliance incidents. This metric does not include queries that both violated the query standard and improperly labeled the United States person status of the query term.

(U) ¹⁰ ~~(TS//SI//NF)~~ Following a drop in the total number of compliance incidents reported during the coronavirus pandemic, the prior reporting period saw a return to pre-pandemic compliance incident levels. The joint oversight team assesses that the drop in compliance incidents reported during the coronavirus pandemic was primarily due to the temporary suspension of onsite reviews at certain agencies, including FBI field offices. In February 2021, NSD resumed its reviews of queries conducted by FBI personnel; in mid-2022 (after this reporting period), NSD resumed its FBI field office reviews of compliance with FBI's Section 702 minimization procedures. These reviews identified a significant number of FBI query compliance incidents that occurred during the pandemic and which were reported in the 27th and 28th reporting periods.

¹¹ (U) As noted above and as explained in the discussion of Figure 14 in Section 4, the number of FBI query compliance incidents identified and the number of FBI queries reviewed as part of NSD's review of this internal FBI audit were excluded from the numerator and denominator used to calculate the FBI query compliance incident rates for this reporting period.

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United States person identifiers accounted for over two-thirds of all FBI query incidents reported during this reporting period and were a significant driver of the overall FBI query compliance incident rate. Of the 994 FBI query compliance incidents reported this reporting period that NSD identified outside of NSD’s review of an internal FBI audit, 702 resulted from FBI’s failure to correctly label the United States person status of a query term. Of those 702 mislabeled queries, 331 involved query terms that should have been labeled as United States person query terms, while 371 involved queries using non-United States person query terms that were mislabeled as queries using United States person query terms. This latter group of 371 errors resulted in the provision of additional privacy protections, not required by FISA or the querying procedures, to non-United States persons; they did not negatively impact United States person privacy or civil liberties interests.

(U) Although outside this reporting period, we note that the overall FBI query compliance incident rate and FBI query standard compliance incident rate decreased in the next reporting period when compared to this period. Most of the queries reported during the subsequent reporting periods were conducted after FBI’s initial deployment of remedial measures. The joint oversight team assesses that the FBI remedial measures are helping to improve FBI compliance. In addition, the FISC, in a recently released opinion regarding the 2023 Section 702 certifications, calculated an FBI Section 702 query standard compliance incident rate of about 1.7 percent.¹² In discussing the remedial measures, the FISC noted that “[t]here are further indications that these measures are having the desired effect” and that “[d]espite the reported errors, there is reason to believe that the FBI has been doing a better job in applying the querying standard.” *Id.* at 83, 87.

(U) Considering Section 702 compliance as a whole, the joint oversight team finds that the agencies have continued to implement the procedures and follow the guidelines in a manner that reflects a focused and concerted effort by agency personnel to comply with the requirements of Section 702. The personnel involved in implementing the authorities are appropriately focused on directing their efforts at non-United States persons reasonably believed to be located outside the United States for the purpose of acquiring foreign intelligence information. Processes are in place to implement these authorities and to impose internal controls for compliance and verification purposes.

¹² (U) See *In re DNI/AG 702(g) Certifications 2023-A, 2023-B, 2023-C, and Its Predecessor Certifications* (“the 2023 Opinion”) at 84. The DNI, in consultation with the Attorney General, released the 2023 Opinion in redacted form on the ODNI public website *intel.gov* via the “IC on the Record” database on 21 July 2023.

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~~TOP SECRET//SI//NOFORN~~**(U) SECTION 1: INTRODUCTION**

(U) Section 702(m)(1) of the Foreign Intelligence Surveillance Act of 1978 (FISA), 50 U.S.C. § 1881a(m)(1), requires the Attorney General and the Director of National Intelligence (DNI) to assess compliance with certain procedures and guidelines issued pursuant to Section 702 and to submit such assessments to the Foreign Intelligence Surveillance Court (FISC) and relevant congressional committees at least once every six months. To fulfill this requirement, a team of oversight personnel from the Department of Justice's (DOJ) National Security Division (NSD) and the Office of the Director of National Intelligence (ODNI) (hereinafter, the "joint oversight team") conducts compliance reviews to assess whether the authorities under Section 702 have been implemented in accordance with the applicable procedures and guidelines, discussed herein. This report sets forth NSD and ODNI's 28th joint compliance assessment, based on oversight activities covering the period 1 December 2021 through 31 May 2022 (hereinafter, the "reporting period").¹³

(U) Per subsection (b) of Section 702, collection authorized pursuant to Section 702:

- (1) may not intentionally target any person known at the time of acquisition to be located in the United States;
- (2) may not intentionally target a person reasonably believed to be located outside the United States if the purpose of such acquisition is to target a particular, known person reasonably believed to be in the United States;
- (3) may not intentionally target a United States person reasonably believed to be located outside the United States;
- (4) may not intentionally acquire any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States; and
- (5) shall be conducted in a manner consistent with the Fourth Amendment to the Constitution of the United States.

(U) In addition to these statutory limitations, Section 702 requires that the Attorney General, in consultation with the DNI, adopt targeting, minimization, and querying procedures. To ensure that the statutory requirements are appropriately met, Section 702 requires the adoption of targeting procedures. Targeting is effectuated by tasking communications facilities (such as telephone numbers and electronic communications accounts) to United States electronic communication service providers. Minimization procedures protect any non-public information of United States persons that may be incidentally collected when appropriately targeting non-United States persons abroad for foreign intelligence information. Querying procedures set rules for using United States person and non-United States person identifiers to query unminimized Section 702-acquired

¹³ (U) This report serves as a corollary to the Semiannual Report of the Attorney General Concerning Acquisitions under Section 702, which was previously submitted in September 2022, as required by Section 707(b)(1) of FISA (hereinafter, the "Section 707 Report"). This 28th Joint Assessment covers the same reporting period as the 28th Section 707 Report and uses information included in the Section 707 Report to identify trends in compliance and assess the need for added training and mitigation strategies.

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information. Additionally, the Attorney General and the DNI establish guidelines that provide supplemental constraints on Section 702 collection and use.¹⁴

(U) During this reporting period, the Government acquired foreign intelligence information under Attorney General and DNI authorized Section 702(h) certifications that targeted non-United States persons reasonably believed to be located outside the United States in order to acquire different types of foreign intelligence information that have been specifically authorized pursuant to the Section 702(h) certifications.¹⁵ Four organizations are primarily involved in implementing Section 702: the National Security Agency (NSA), the Federal Bureau of Investigation (FBI), the Central Intelligence Agency (CIA), and the National Counterterrorism Center (NCTC). An overview of how these agencies implement the authority appears in the Appendix of this assessment.

(U) Following this Introduction, Section 2 discusses general oversight activities, as well as general targeting and compliance trends that are applicable across the Section 702 program. Sections 3 through 6 provide agency-specific discussions of oversight, training, and trends relating to the use of Section 702 and compliance with targeting (when applicable), minimization, and querying procedures, as well as the Attorney General's Acquisition Guidelines. Each section concludes with the joint oversight team's assessment of compliance at the relevant agency. Section 7 discusses, when applicable, any incidents by other agencies of the federal government and/or electronic communication service providers. Section 8 then provides the conclusions drawn from the joint oversight team's review of the agencies' implementation of Section 702 during this reporting period. Finally, this joint assessment contains an Appendix, which includes a general description of the internal oversight at each agency.

(U) As with prior joint assessments, this joint assessment takes a broad approach and discusses the trends, patterns, and underlying causes of the compliance incidents reported in the Section 707 Report. The Section 707 Report includes each individual compliance incident and information on applicable remedial and mitigating actions.

¹⁴ (U) The Attorney General's Guidelines for the Acquisition of Foreign Intelligence Information Pursuant to the Foreign Intelligence Surveillance Act of 1978, as amended (hereinafter, "the Attorney General's Acquisition Guidelines") were adopted by the Attorney General, in consultation with the DNI, on 5 August 2008.

¹⁵ ~~(TS//SI//NF)~~ These six Section 702(h) certifications, all targeting non-United States persons reasonably believed to be located outside the United States in order to acquire foreign intelligence information, concerned the following topic areas of foreign intelligence information:

- Certifications 2020-A and 2021-A's foreign intelligence information concerned [REDACTED];
- Certifications 2020-B and 2021-B's foreign intelligence information concerned [REDACTED];
- Certifications 2020-C and 2021-C's foreign intelligence information concerned [REDACTED];

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~~TOP SECRET//SI//NOFORN~~**(U) SECTION 2: PROGRAM-WIDE OVERSIGHT AND TARGETING TRENDS**

(U) The implementation of Section 702 is a multi-agency effort. As described in detail in the Appendix, NSA and FBI each acquires certain types of data pursuant to its own Section 702 targeting procedures. NSA, FBI, CIA, and NCTC¹⁶ each handles Section 702-acquired information in accordance with its own minimization and querying procedures.¹⁷ There are differences in the way each agency implements its procedures resulting from unique provisions in the procedures themselves, differences in how these agencies utilize Section 702-acquired information, and efficiencies gained by leveraging existing agency-specific systems and processes to implement Section 702 authorities. Because of these differences in practices and procedures, there are corresponding differences in each agency's internal compliance programs and in the external NSD and ODNI oversight programs. There are, however, commonalities across agencies in both oversight and data trends that provide helpful context when reviewing the agency-specific discussions below.

(U) I. Joint Oversight

(U) The joint oversight team—consisting of members from NSD, the ODNI Office of Civil Liberties, Privacy, and Transparency (CLPT), the ODNI Office of General Counsel (OGC), and the ODNI Mission Integration Directorate's Mission Performance, Analysis, and Collection (MPAC)—conducts independent Section 702 oversight activities. The team members play complementary roles in the review process. NSD reports all compliance incidents to the FISC and works with agencies to investigate incidents. ODNI provides support for NSD's efforts, but also focuses on identifying larger trends and facilitating multiagency conversations concerning remediation efforts. This section provides a description of the general oversight conducted during this reporting period. Agency-specific nuances resulting from unique authorities, policies, practices, or procedures are discussed in Sections 3 through 6.

(U) Targeting under Section 702 must comply with individual agency targeting procedures and statutory requirements noted in Section 1. Agencies are responsible for conducting post-tasking checks of all Section 702-tasked facilities¹⁸ once collection begins. NSD reviews the tasking record

¹⁶ (U) As discussed herein, CIA, FBI, and NCTC receive Section 702-acquired information from NSA. Additionally, NSA, CIA, and NCTC also receive Section 702-acquired information from FBI.

¹⁷ (U) Each agency's Section 702 targeting (when applicable), minimization, and querying procedures are approved by the Attorney General and reviewed by the FISC. The targeting, minimization, and querying procedures that were in effect during this assessment's reporting period were those approved as part of the 2020 certifications in October 2020 and those approved as part of the 2021 certifications in April 2021. On 26 April 2021, the DNI released, in redacted form, each of the 2020 minimization procedures and the 2020 querying procedures for NSA, FBI, CIA, and NCTC, as well the 2020 targeting procedures for NSA and FBI. On 19 May 2023, the DNI released, in redacted form, each of the 2021 minimization procedures and the 2021 querying procedures for NSA, FBI, CIA, and NCTC, as well the 2021 targeting procedures for NSA and FBI. The 2020 and 2021 procedures are posted on ODNI's *intel.gov* website via the *IC on the Record* database. Redacted versions of the 2023 minimization, querying, and targeting procedures, which went into effect on 12 April 2023 (outside of this reporting period), were released by the DNI on 21 July 2023. The redacted versions of the 2023 procedures are available on ODNI's *intel.gov* website via the *IC on the Record* database.

¹⁸ (U) Targeting is generally effectuated by tasking facilities to Section 702 electronic communication service providers. The oversight review process, which is described in this joint assessment, applies to the tasking of every facility, regardless of the type of facility. A fuller description of the Section 702 targeting process appears in the Appendix.

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for each facility tasked by NSA pursuant to Section 702 and reviews the tasking records for a sample of facilities tasked by FBI pursuant to Section 702.¹⁹

(U) Additionally, agencies must handle United States person information within their Section 702 collection in accordance with their respective minimization procedures, governing the retention and dissemination of Section 702-acquired information. While agencies may not target United States persons pursuant to Section 702, incidental collection of United States person information may occur when a properly targeted non-United States person located overseas is in contact with a United States person or talks about a United States person. NSD reviews dissemination decisions, including disseminated serialized reports containing Section 702-acquired United States person information, disseminated serialized reports containing Section 702-acquired non-United States person information, and disseminations to certain foreign government partners made outside of the serialized reporting process.

(U) Finally, queries of Section 702-acquired information (content and metadata) must be reasonably likely to retrieve foreign intelligence information from the unminimized FISA collection being queried, a standard that applies to both United States person and non-United States person queries. Consistent with its law enforcement mission, FBI is also authorized to conduct queries of unminimized Section 702-acquired information that are reasonably likely to retrieve evidence of a crime from the unminimized FISA collection being queried. Queries for foreign intelligence information or evidence of a crime must be supported by an authorized purpose, have a reasonable justification, and be appropriately designed to retrieve the information sought without unnecessarily retrieving other information. The joint oversight team reviews a sample of FBI queries of unminimized Section 702-acquired information, with particular focus on United States person queries, and all queries, or query approvals, identified by NSA, CIA, and NCTC as being United States person queries of unminimized Section 702-acquired information.

(U) The agencies also proactively report potential compliance incidents identified through internal oversight mechanisms to the joint oversight team. The joint oversight team works with the relevant agency or agencies to determine whether the activity represents a compliance incident and, if so, what actions should be taken to correct the error. For example, an improperly tasked facility would be detasked and relevant collection would be purged. Analysts may also require supplemental training or counseling to ensure proper understanding of the procedures and the statutory requirements.

(U) Because the implementation and oversight of the Government's Section 702 authorities are multi-agency efforts, investigations of compliance incidents may involve more than one agency. In the cooperative environment the implementing agencies have established, an action by one agency can result in an incident of non-compliance with another agency's procedures. For example, an NSA targeting compliance incident could be caused by typographical errors contained in another agency's nomination to NSA for tasking. The resolution of compliance incidents can, therefore, provide lessons learned for all agencies. For those reasons, NSD and ODNI generally lead calls and meetings with representatives from all agencies implementing Section 702 authorities on relevant

¹⁹ (U) CIA and NCTC do not have targeting procedures and may not target. Targeting reviews, therefore, are only conducted at FBI and NSA.

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compliance topics in order to address interagency issues affecting compliance with the statute and applicable procedures.

(U) The joint oversight team's programmatic oversight also involves efforts to proactively minimize the number of incidents of non-compliance. For example, NSD and ODNI have required agencies to demonstrate for the joint oversight team new or substantially revised systems involved in Section 702 targeting, querying, or minimization, prior to implementation. NSD and ODNI personnel also continue to work with the agencies to review and, where appropriate, seek modifications of their targeting, querying, and minimization procedures in an effort to enhance the Government's collection of foreign intelligence information, protection of civil liberties, and compliance efforts.

(U) The joint oversight team, in reviewing existing patterns or trends, seeks to identify the underlying causes of those incidents. The joint oversight team then considers whether and how those underlying causes could be addressed through additional remedial or proactive measures and assesses whether the agency involved has implemented appropriate procedures to prevent recurrences.

(U) All compliance incidents, whether identified through regular reviews, self-reporting by the agencies, or another means, are reported to the FISC through compliance notices and/or quarterly compliance reports. These incidents are also reported to Congress on a semiannual basis through the Section 707 Report.

(U) **II. Trends in Section 702 Targeting**

(U) As noted above, targeting is a multiagency process that relies on substantial and ongoing review of participating agencies. In conducting the above-described oversight, NSD, ODNI, and the agencies have collected a substantial amount of data regarding the implementation of the Section 702 program. This section provides certain statistics relating to trends in Section 702 targeting activities.

(U) **A. Acquisition of In-transit Communications**

(U) Figure 2 presents the classified average number of facilities that were under collection on any given day during the reporting period.²⁰ Since the inception of the program, the total

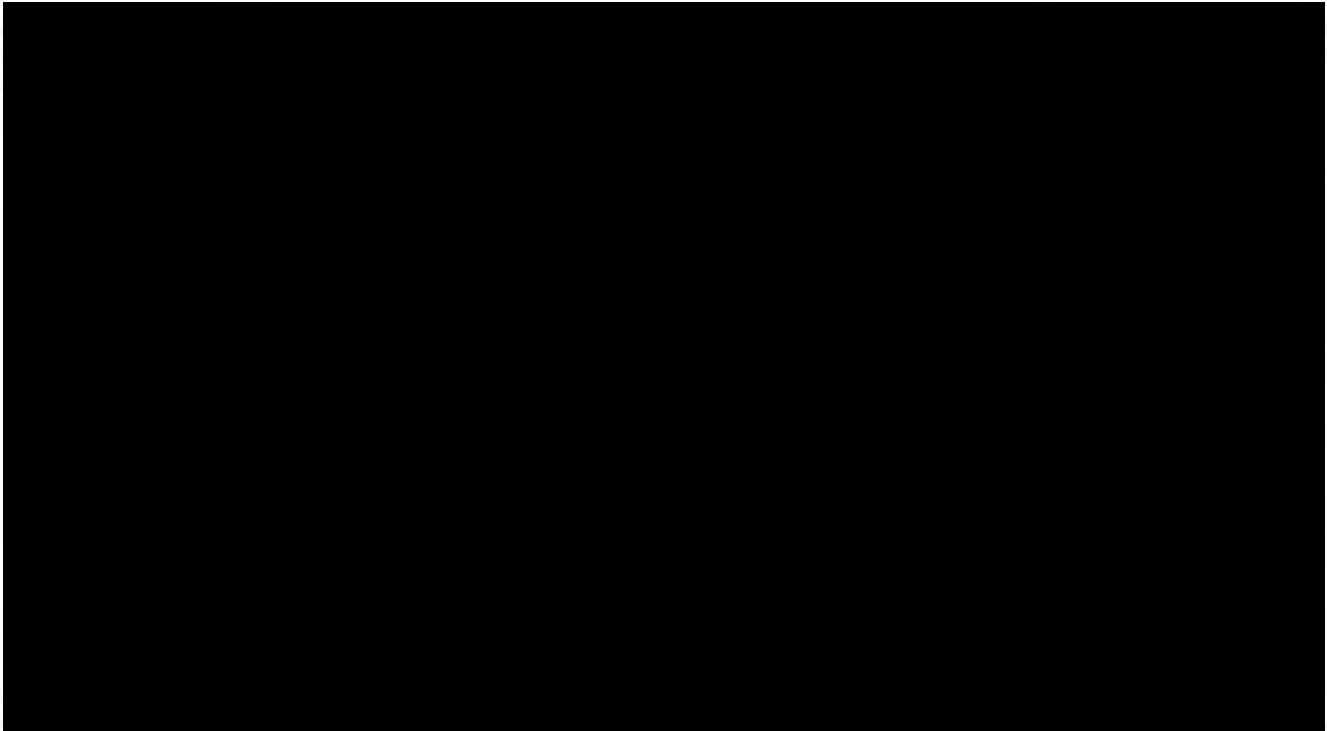
²⁰ (U) The average number of facilities subject to acquisition during the reporting period remains classified and is different from the unclassified estimated number of Section 702 targets released by ODNI in its Annual Statistical Transparency Report Regarding the Intelligence Community's Use of National Security Surveillance Authorities ("ASTR"). The classified numbers estimate the number of facilities subject to Section 702 acquisition, whereas the unclassified numbers provided in the ASTR estimate the number of Section 702 targets. As noted in the ASTR, the number of Section 702 "targets" reflects an estimate of the number of known users of particular facilities, however, each "target" may use multiple facilities. The classified number of facilities accounts for the average number of those facilities subject to acquisition under Section 702 during the current six-month reporting period, whereas the ASTR estimates the number of Section 702 targets during the calendar year.

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number of facilities under collection has steadily increased during each reporting period, with the exception of two reporting periods that experienced minor decreases.²¹

(U) Figure 2: Average Number of Facilities under Collection



~~(TS//SI//NF)~~ NSA reports that, on average, approximately [REDACTED] facilities²² were under collection pursuant to Section 702 on any given day during this reporting period. This represents a 5.8 percent increase from the approximately [REDACTED] facilities under collection on any given day in the last reporting period. The 5.8 percent increase is smaller than the 8.9 percent increase in the prior reporting period, but continues the upward trend [REDACTED]

~~(S//NF)~~ NSA advises that approximately [REDACTED] of the facilities subject to acquisition in this reporting period were tasked [REDACTED] certification (2020-A and 2021-A); approximately [REDACTED] were tasked [REDACTED] certification (2020-B and 2021-B); and approximately [REDACTED] were tasked [REDACTED] certification (2020-C and 2021-C). NSA further reports that, on average, approximately [REDACTED] of the facilities that were subject to acquisition during this period [REDACTED] while on average, approximately [REDACTED]. In the reporting period covered by the 19th Joint Assessment, June 2017 through November 2017, approximately [REDACTED] percent of the facilities subject

²¹ (U) The two previous reporting periods in which the average number of facilities under collection decreased are not captured in Figure 2, as both occurred prior to 2017.

²² ~~(TS//SI//NF)~~ The Government counts the tasking of [REDACTED] as a single tasking decision to ensure consistency with how it counts other tasked facilities.

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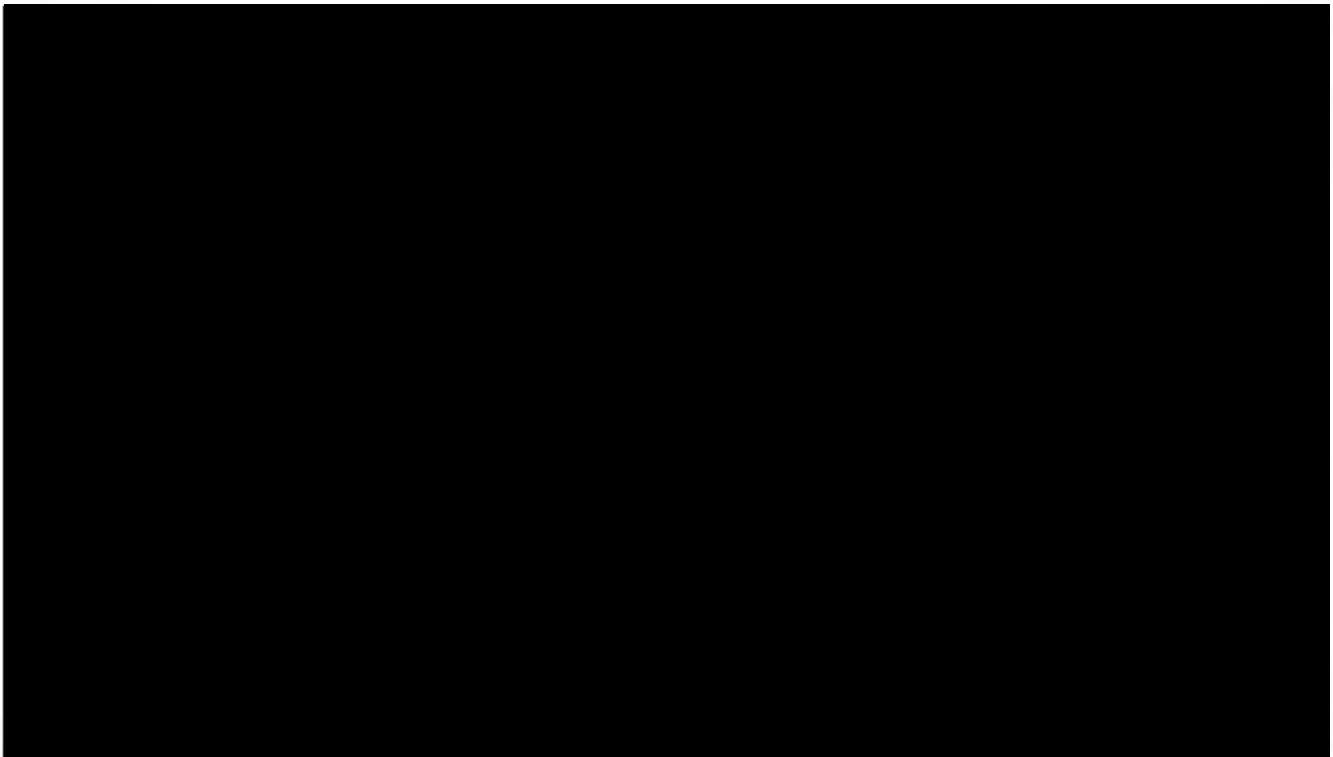
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to acquisition were tasked [REDACTED] In contrast, during this reporting period, those percentages [REDACTED]

As these percentages show, [REDACTED]

(U) Whereas Figure 2 presents the *average* number of facilities under collection at any given time during the reporting period, Figure 3 provides the monthly average of *newly* tasked facilities from 2017 through 2021, and the total numbers of *newly* tasked facilities each month from December 2021 through May 2022.²³

(U) Figure 3: New Taskings by Month and Monthly Average for Years 2017 through 2021



~~(S//SI//NF)~~ NSA provided documentation for a total of [REDACTED] new taskings during this reporting period. This represents a 13.5 percent increase from the [REDACTED] new taskings from the previous reporting period. When compared to the prior reporting period, the number of newly tasked electronic communication accounts increased 12.7 percent and the number of newly tasked

²³ (U) The term “newly tasked facilities” refers to any facility that was added to collection under a certification pursuant to the Section 702 targeting procedures; some of these newly tasked facilities are facilities that had been previously tasked for collection, were detasked, and then retasked.

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telephony facilities increased 13.9 percent. As illustrated by Figure 3, the number of new taskings, which decreased during 2020, grew again during 2021 and through the first five months of 2022.

[REDACTED]

(U) Under Section 702, NSA may request that FBI acquire communications from certain designated facilities (hereinafter, “Designated Accounts”) that have been previously approved for Section 702 acquisition under the NSA targeting procedures.²⁴ FBI applies its own targeting procedures with regard to these Designated Accounts. FBI reports to the joint oversight team the number of facilities designated by NSA and the number of Designated Accounts.²⁵

(U) Figure 4 compares the number of facilities newly *tasked* by NSA during a given period with the number of accounts *designated* by NSA to FBI for acquisition of communications and the number of accounts *approved* by FBI for acquisition. The monthly average of Designated Accounts approved by FBI increased each year from 2016 through 2019. The yearly average of Designated Accounts approved by FBI decreased in 2020, likely due, at least in part, to the coronavirus pandemic. In 2021, the yearly average of Designated Accounts approved by FBI exceeded the previous high reported in 2019.

²⁴ (S//NF) The number of facilities designated for acquisition referenced here specifically deals with the acquisition of [REDACTED]

²⁵ [REDACTED]

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~~(S//NF)~~ **Figure 4: In-Transit Taskings, [REDACTED]**
[REDACTED] Approvals by Month and Monthly Average for Years 2017 through 2021



~~(S//SI//NF)~~ FBI reports that NSA designated [REDACTED] accounts [REDACTED] [REDACTED] during this reporting period—an average of approximately [REDACTED] Designated Accounts per month—which represents an 11.1 percent increase over the prior reporting period, when NSA designated [REDACTED]. FBI further reports that it approved approximately [REDACTED] requests [REDACTED] during the reporting period, a 2.2 percent decrease from the prior period, when FBI approved [REDACTED] such requests. Both numbers for this reporting period surpassed pre-pandemic levels.

(U) As Figure 4 illustrates, FBI approves the vast majority of NSA's Designated Accounts and the percentage of approved Designated Accounts has been consistently high across reporting periods. The high rate of approval can be attributed to the fact that the Designated Accounts have already satisfied the NSA targeting procedures. FBI might not approve NSA's request for acquisition of a Designated Account for several reasons, including withdrawal of the request because the potential data to be acquired is no longer of foreign intelligence interest, or because FBI has uncovered information causing NSA and/or FBI to question whether the user or users of the

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Designated Account are non-United States persons located outside the United States. Over the existence of the Section 702 authority, only a small portion²⁶ of Designated Accounts were rejected on the basis that they were ineligible for Section 702 collection.

²⁶ ~~(S//NF)~~ Only approximately [REDACTED] such accounts has been rejected on the basis that it is ineligible for Section 702 collection.

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~~TOP SECRET//SI//NOFORN~~**(U) SECTION 3: ASSESSMENT OF SECTION 702 ACTIVITIES – NSA**

(U) All Section 702 targeting is initiated pursuant to NSA’s targeting procedures. Accordingly, NSA is responsible for conducting post-tasking checks of all Section 702-tasked facilities once collection begins. NSA must also minimize its collection in accordance with its minimization procedures and conduct queries in accordance with its querying procedures. Given its central role in the Section 702 process, NSA has devoted substantial oversight and compliance resources to monitoring its implementation of the Section 702 authorities. NSA’s internal oversight and compliance mechanisms are further described in the Appendix.

(U) I. Joint Oversight of NSA Activities

(U) The joint oversight team conducts periodic compliance reviews, which NSA’s targeting procedures require. During this reporting period, reviews were conducted at NSA on the dates shown in Figure 5.

(U) Figure 5: NSA Reviews

(U) Figure 5 is UNCLASSIFIED.

Approximate Dates of Review	Targeting, Minimization, and Querying Reviewed
25 February 2022	1 December 2021 – 31 January 2022
29 April 2022	1 February 2022 – 31 March 2022
17 June 2022	1 April 2022 – 31 May 2022

(U) NSA electronically sends the tasking record (known as a tasking sheet) for *each* facility tasked during the reporting period to NSD and ODNI. Members of the joint oversight team review the tasking sheets to determine whether each tasking satisfied the targeting procedures and statutory requirements, including whether the tasking sheet meets the documentation standards required by NSA’s targeting procedures and provides sufficient information to ascertain the basis for NSA’s foreignness determinations. The joint oversight team then identifies the tasking sheets that did not, on their face, provide sufficient information and requests additional information.

(U) The joint oversight team examines the cited documentation underlying these identified tasking sheets, together with NSA’s Office of Compliance for Cyber and Operations, NSA attorneys, and other NSA personnel, as required. The joint oversight team works with NSA to answer questions, identify issues, clarify ambiguous entries, and provide guidance on areas of potential improvement. As noted above, an action by one agency can result in an incident of non-compliance with another agency’s procedures. This is true, for example, for targeting incidents where the underlying issue might be caused by typographical or other errors contained in another agency’s nomination to NSA for tasking. For this reason, incident resolution often involves investigation and coordination with other agencies.

(U) The joint oversight team also reviews NSA’s minimization of Section 702-acquired information. NSD currently reviews all (and ODNI reviews a sample) of the serialized reports that NSA has disseminated and identified as containing Section 702-acquired United States person information. The joint oversight team also reviews a sample of serialized reports that NSA has disseminated and identified as containing Section 702-acquired *non*-United States person information. The joint oversight team further reviews a sample of NSA disseminations to certain

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foreign government partners made outside of NSA's serialized reporting process. These disseminations consist of information that NSA has evaluated for foreign intelligence and minimized, but that may not have been translated into English. Reviewers ensure that United States person information is appropriately masked and that any decisions to disseminate United States person information or unmask United States person information are because the United States person identity is necessary to understand the foreign intelligence information included in the dissemination, as required by NSA's minimization procedures.

(U) NSA is authorized to query both Section 702-acquired content and metadata information to retrieve foreign intelligence information. NSA's Section 702 querying procedures provide that any use of United States person identifiers as terms to query unminimized Section 702-acquired information must be accompanied by a statement of facts establishing that the use of any such identifier as a selection term is reasonably likely to retrieve foreign intelligence information, as defined in FISA. NSA regularly provides NSD and ODNI with documentation related to queries that NSA identifies as using United States person identifiers as query terms. The joint oversight team then reviews the documentation and works with NSA to answer questions, identify issues, clarify ambiguous entries, and provide guidance on areas of potential improvement. With respect to queries of Section 702-acquired *content* using a United States person identifier, NSA's querying procedures require that the United States person identifier first be approved as a query term by NSA OGC. The joint oversight team reviews all approved United States person identifiers to ensure compliance with NSA's querying procedures.²⁷ For each approved identifier, NSA also provides information detailing why the proposed use of the United States person identifier would be reasonably likely to retrieve foreign intelligence information, the date that the United States person identifier was authorized to be used as a query term,²⁸ and any other relevant information. With respect to queries of Section 702-acquired *metadata* using a United States person identifier, NSA's querying procedures require that NSA analysts document the basis for each such metadata query prior to conducting the query. NSD reviews the documentation for all such metadata queries that NSA provides to NSD.²⁹

(U) ~~(S//NF)~~ Based on the joint oversight team's findings during these reviews, NSD prepares a detailed report, which it circulates to ODNI, NSA, CIA, and FBI, that documents the relevant time period of the review, describes the number and types of facilities tasked, and provides a detailed

²⁷ (U) On 29 April 2022, ODNI publicly released its ninth ASTR, for calendar year 2021 (hereinafter, the "CY 2021 ASTR"), which provided the "estimated number of search terms concerning a known United States person used to retrieve the unminimized contents of communications obtained under Section 702" (emphasis added) for the entire calendar year of 2021. ODNI reported this statistic for calendar year 2022 as part of the tenth ASTR, publicly released on 27 April 2023 (hereinafter, the "CY 2022 ASTR").

²⁸ (U) NSA's Section 702 querying procedures provide that NSA may approve the use of a United States person identifier to query Section 702-acquired *content* for no longer than a period of one year and that such approvals may be renewed for periods of up to one year.

²⁹ (U) Also pursuant to reporting requirements prescribed by the USA FREEDOM Act (*see* 50 U.S.C. § 1873(b)(2)(C)), the CY 2021 ASTR provided the "estimated number of queries concerning a known United States person used to retrieve the unminimized noncontents (*i.e.*, metadata) information obtained under Section 702" (emphasis added) for the entire calendar year of 2021. ODNI reported this statistic for calendar year 2022 as part of the CY 2022 ASTR.

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summary of the findings for that review. These reports are provided to the congressional committees with the Section 707 Report.

(U) Additionally, throughout the reporting cycle, the joint oversight team investigates and reports incidents of non-compliance with NSA's targeting, minimization, and querying procedures, as well as with the Attorney General Acquisition Guidelines. While some incidents may be identified during the reviews, most are identified by NSA analysts or by NSA's internal compliance program and proactively reported to NSD. NSA is also required to report certain events that may not be incidents of non-compliance. For example, NSA is required to report to NSD and ODNI *all* instances in which Section 702 acquisition continued while a targeted individual was in the United States, whether or not NSA had any knowledge of the target's travel to the United States.³⁰ The purpose of such reporting is to allow the joint oversight team to assess whether a compliance incident has occurred and to confirm that any necessary remedial action is taken. Investigations of these incidents sometimes result in requests for supplemental information. All compliance incidents identified by these investigations are reported to the congressional committees in the Section 707 Report and to the FISC.

(U) **II. NSA Training**

(U) In addition to specific instructions to personnel directly involved in certain incidents of non-compliance discussed in Section III, NSA and the joint oversight team have continued their training efforts to ensure compliance with the targeting, minimization, and querying procedures. During this reporting period, NSA continued to administer the compliance training course dated November 2016.³¹ All NSA personnel who require access to Section 702 data are required to complete this course on an annual basis in order to gain and/or maintain that access. Additionally, NSA continued providing training on a more informal and ad hoc basis by issuing training reminders and compliance advisories to analysts concerning new or updated guidance to maintain compliance with the Section 702 procedures. Those training reminders and compliance advisories are e-mailed to individual analysts and targeting adjudicators and maintained on internal agency

³⁰ (U) If NSA had no prior knowledge of the target's travel to the United States and, upon learning of the target's travel, "detasked" (stopped collection against) the target's facility without delay, as is required by NSA's targeting procedures, the fact that collection occurred while the target was in the United States would not be considered a compliance incident under NSA's targeting procedures, although the collection would generally be subject to purge under the applicable minimization procedures. The joint oversight team carefully considers, and where appropriate, obtains additional facts regarding every reported detasking decision to ensure that NSA's tasking and detasking complied with its targeting procedures.

³¹ (U) NSA released the transcript associated with this training, dated August 2016, in response to a Freedom of Information Act (FOIA) case filed in the United States District Court, Southern District of New York, ACLU v. National Security Agency, et al. (hereinafter, the "ACLU FOIA"). The transcript was posted, in redacted form, on ODNI's *intel.gov* website via the *IC on the Record* database on 11 April 2017. The transcript is titled, *OVSC1203: FISA Amendments Act Section 702* (Document 17, NSA's Training on FISA Amendments Act Section 702). NSA began administering an updated version of this training course in September 2022.

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websites³² where personnel can obtain information about specific types of Section 702-related issues and compliance matters.

(U) **III. Section 702 Data and Compliance Trends**

(U) As has been true historically, most of the compliance incidents occurring during this reporting period—excluding FBI querying incidents—involved non-compliance with NSA’s targeting, minimization, or querying procedures.³³ This largely reflects the centrality of NSA’s role in the Government’s implementation of the Section 702 authority.

(U) The compliance incidents involving NSA’s targeting, minimization, or querying procedures have generally fallen into the categories below.³⁴ However, in some instances, an incident may involve more than one category of non-compliance and would typically be reported as multiple errors.

(U) Types of incidents of non-compliance with NSA’s Targeting Procedures:

- (U) *Tasking Incidents*. Incidents where non-compliance resulted in an error in the initial tasking of the facility.
- (U) *Detasking Incidents*. Incidents in which the facility was properly tasked, but errors in the detasking of the facility caused non-compliance.
- (U) *Overcollection*. Incidents in which NSA’s collection systems, in the process of attempting to acquire the communications of properly tasked facilities, also acquired data regarding untasked facilities, resulting in “overcollection.”
- (U) *Notification Delays*. Incidents in which a notification requirement was not satisfied.³⁵
- (U) *Documentation Incidents*. Incidents where the determination to target a facility was not properly documented.

³² (U) Examples of these documents were posted, in redacted form, on ODNI’s [intel.gov](https://www.intel.gov) website via the IC on the Record database on 23 August 2017, in response to the aforementioned ACLU FOIA case: NSA’s 702 Targeting Review Guidance (Document 10), NSA’s 702 Practical Applications Training (Document 11), NSA’s 702 Training for NSA Adjudicators (Document 12), and NSA’s 702 Adjudication Checklist (Document 13).

³³ (U) As is discussed in the Section 707 Report and below, some compliance incidents involve more than one agency. Incidents have therefore been grouped not by the agency “at fault,” but instead by the set of procedures that such actions violated.

³⁴ (U) While these categories specifically pertain to NSA incidents, the FBI’s targeting incident categories and all agencies’ minimization and querying incident categories generally align with these NSA categories.

³⁵ (U) A compliance incident may involve both a failure to meet the notification requirement and a substantive error (for example, a tasking or detasking error). In those instances, the substantive error was counted separately from the notification delay. For the majority of delayed notification incidents, the only incident of non-compliance was the failure to comply with the notification requirement.

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(U) Types of incidents of non-compliance with NSA’s Minimization Procedures and NSA’s Querying Procedures:

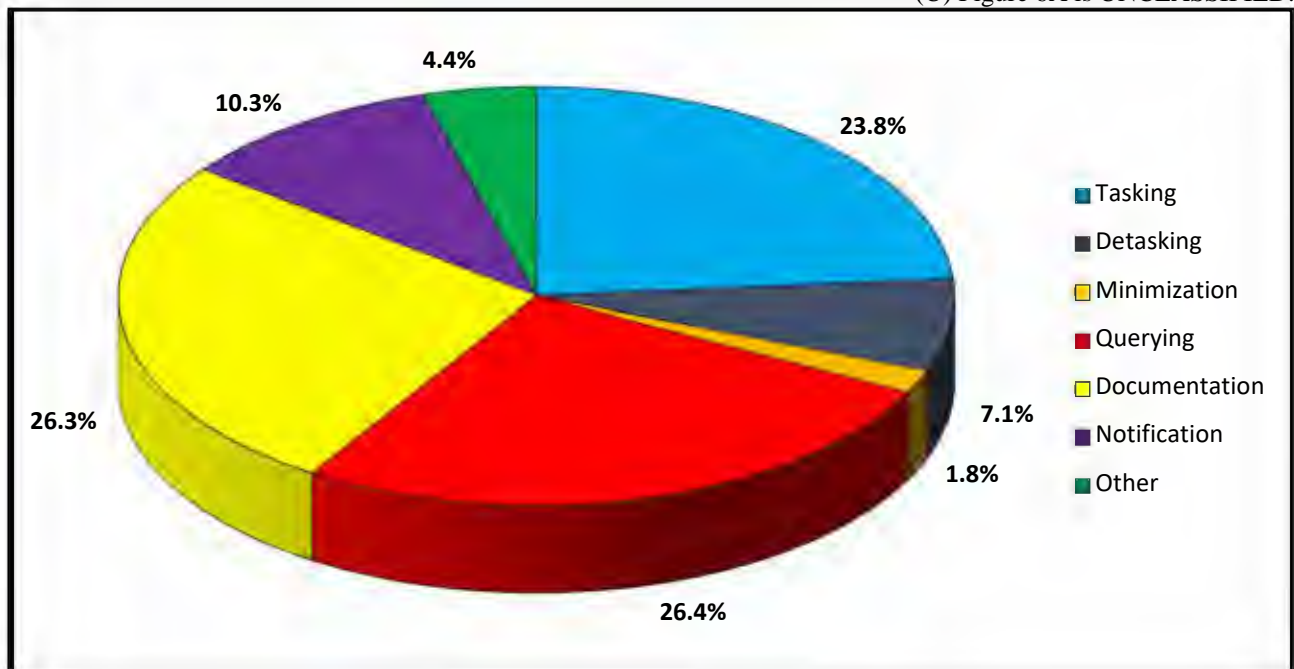
- (U) *Minimization Incidents.* Incidents relating to improper acquisition, retention, use, or dissemination.
- (U) *Querying Incidents.* Incidents relating to improper queries of unminimized Section 702-acquired information—generally, queries that were either (i) not reasonably likely to retrieve foreign intelligence information, or (ii) United States person queries of content that were not pre-approved by NSA OGC, as required by NSA’s querying procedures.

(U) *Other Incidents.* This category involves incidents that do not fall into one of the above categories. In these instances, the joint oversight team assesses each incident to determine if it resulted from non-compliance with NSA’s targeting, minimization, or querying procedures and account for those incidents accordingly.

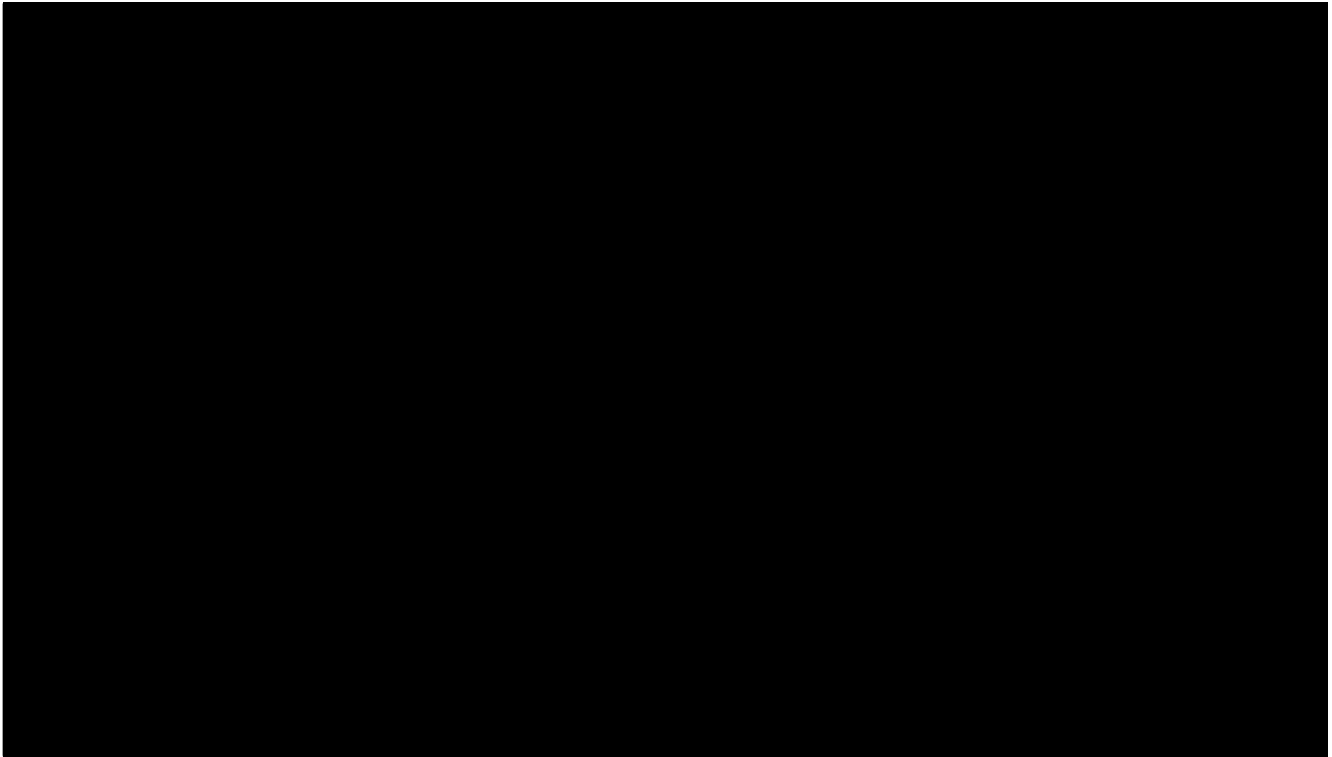
(U) Because the actual number of incidents remains classified, Figure 6A presents the percentage of NSA compliance incidents in each category during this reporting period; Figure 6B presents the classified number of NSA incidents in each category over the last five reporting periods.

(U) **Figure 6A: Percentage Breakdown of Compliance Incidents Involving NSA’s Targeting, Minimization, and Querying Procedures**³⁶

(U) Figure 6A is UNCLASSIFIED.



³⁶ (S//NF) During this reporting period, the overall number of NSA incidents declined [REDACTED] the previous reporting period [REDACTED] this reporting period. The number of tasking incidents decreased [REDACTED] detasking incidents [REDACTED]

~~TOP SECRET//SI//NOFORN~~**(U) Figure 6B: Numerical Breakdown of Compliance Incidents Involving NSA’s Targeting, Minimization, and Querying Procedures**

~~(S//NF)~~ As demonstrated by Figure 6B, the number of compliance incidents in each category varied widely [REDACTED]

[REDACTED] While the joint oversight team has not identified any overarching trends in compliance by incident type, the joint oversight team continues to track this breakdown in case it reveals a need for additional oversight or training.

(U) A. Incidents Involving NSA’s Targeting Procedures

(U) The number of NSA’s “targeting incidents” includes the following categories of incidents that implicate NSA’s targeting procedures: tasking errors, detasking delays, documentation errors, notification delays, overcollection incidents (if any), and any “other” incidents that involve the targeting procedures. Figure 7 provides the NSA targeting compliance

decreased [REDACTED] minimization incidents decreased [REDACTED] querying incidents decreased [REDACTED] documentation incidents increased [REDACTED] and “other” incidents increased [REDACTED] The number of notification delays increased [REDACTED] There were no overcollection incidents in this period or the two prior periods.

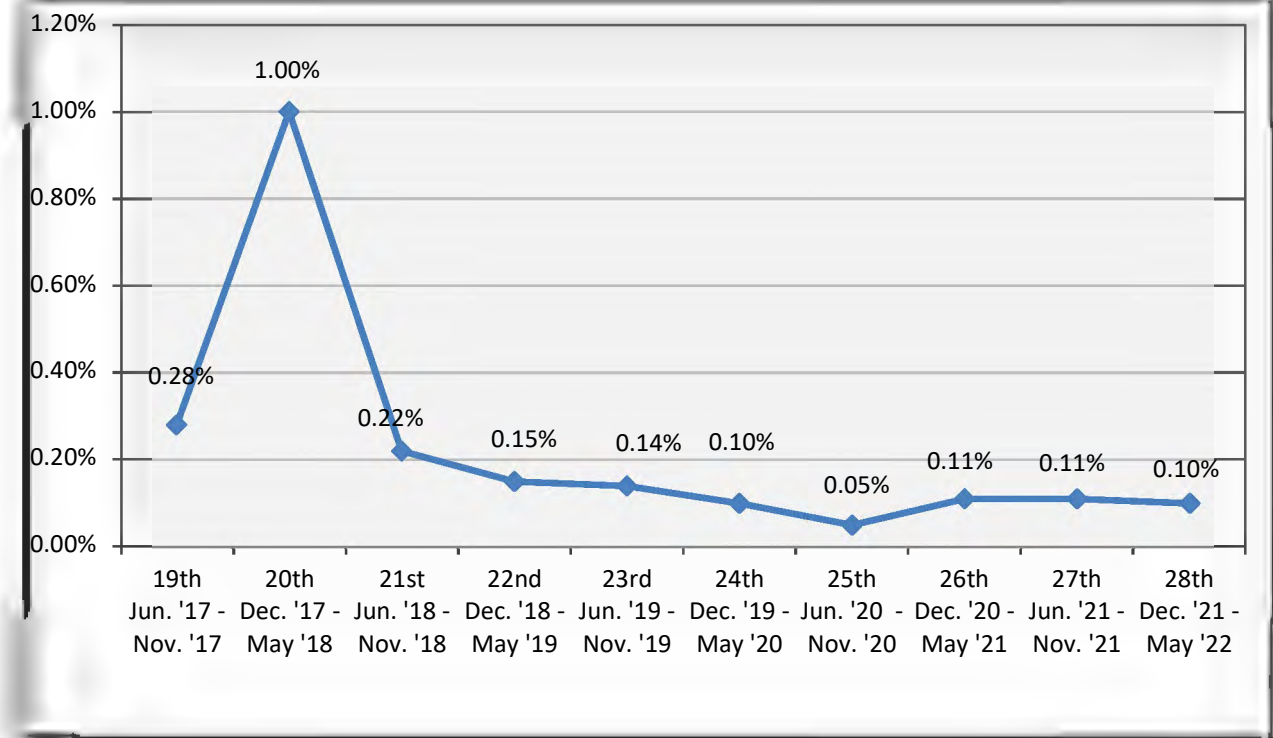
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incident rate for the last ten reporting periods. This metric is calculated as NSA’s number of “targeting incidents,” expressed as a percentage of the average number of tasked facilities.³⁷

(U) **Figure 7: NSA Targeting Compliance Incident Rate**³⁸

(U) Figure 7 is UNCLASSIFIED.



(U) Figure 7 provides a visual representation of trends of non-compliance. The targeting compliance incident rate is less than 1 percent and has remained at or below 1 percent for over ten reporting periods, varying by only fractions of a percentage point as compared to the average size of Section 702 collection. While the NSA targeting compliance incident rate suffers from some limitations—for example, a single targeting incident may involve multiple facilities, and a single action may result in numerous incidents—the joint oversight team has found it to be a useful metric for assessing NSA’s targeting compliance both within this review period and as compared to previous review periods. The joint oversight team assesses that the consistently low NSA targeting compliance incident rate is a result of a focus on compliance, as well as training, internal due diligence processes designed to prevent improper taskings, automated systems designed to provide timely alerts to NSA personnel when facilities need to be detasked, and internal processes for remediating compliance incidents through additional training and counseling.

³⁷ ~~(TS//SI//NF)~~ As noted above, on average, approximately [REDACTED] facilities were under collection pursuant to Section 702 on any given day during this reporting period.

³⁸ (U) The increase in the NSA targeting compliance incident rate reported in the 20th Joint Assessment (December 2017 to May 2018) was primarily due to a single NSA targeting office misunderstanding how to use a targeting tool.

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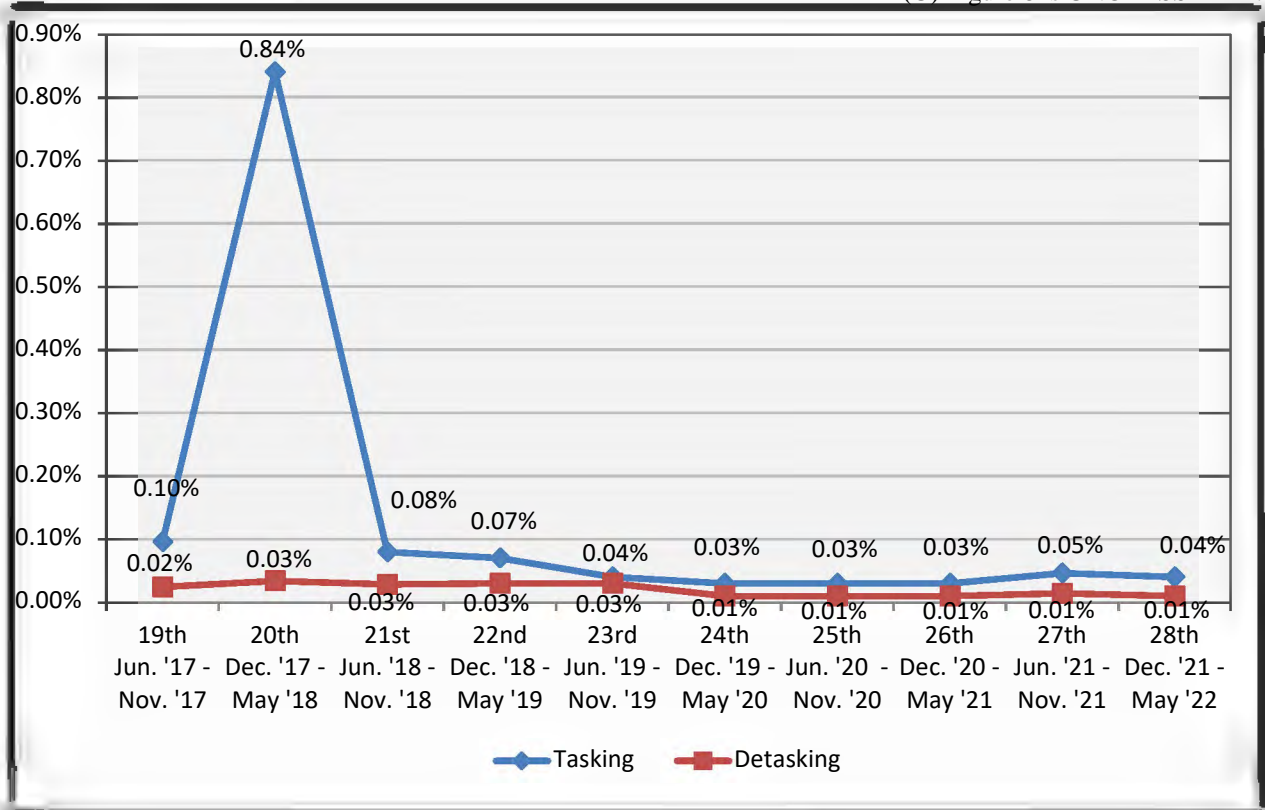
(U) Tasking and Detasking Incident Trends

(U) Figure 8 separates out tasking and detasking incidents and presents the compliance incident rate for each, allowing for analysis of their respective trends. The tasking and detasking incident rates compare the number of tasking errors and detasking delays, as applicable, to the average number of facilities tasked for collection on any given day during the reporting period. While these tasking and detasking incidents are grouped in a single chart for comparison, the tasking and detasking incidents are not relational to each other—an increase or decrease in the rate of tasking incidents does not result in an increase or decrease in the detasking incident rate. Tasking and detasking incidents are particularly important because they often involve targeting of United States persons or persons located in the United States.

(U) Tasking errors cover a variety of incidents, ranging from the tasking of an account that the Government reasonably should have known was used by a United States person or a person located in the United States, to typographical errors in the initial tasking of the account that do not affect United States persons or persons located in the United States. Detasking errors more often involve facilities used by United States persons or persons located in the United States, including users who may not have been the intended target. In addition, a single detasking delay may involve multiple facilities that were not timely detasked.

(U) Figure 8: Tasking and Detasking Incident Compliance Rates

(U) Figure 8 is UNCLASSIFIED.



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(U) As with Figure 7, Figure 8 provides a visual representation of trends of non-compliance with the tasking and detasking requirements. With one exception, the non-compliance rate has been less than or equal to one tenth of one percent over the past ten reporting periods. The tasking and detasking compliance incident rates have varied by fractions of a percentage point, as compared to the average size of the collection. During this reporting period, the tasking incident rate decreased slightly to 0.04 percent³⁹ which generally comports with its historically low rate,⁴⁰ and the detasking compliance incident rate remained steady at 0.01 percent.

(U) Most of the compliance incidents involving NSA's targeting procedures during this reporting period did not involve United States persons. With respect to those that did, United States persons were primarily impacted by (1) tasking errors that led to the tasking of facilities used by United States persons, and (2) delays in detasking facilities after NSA determined that the user of the facility was a United States person. Consistent with previous reporting periods, the number of such errors remains low—the tasking incident rate involving United States persons was 0.004 percent and the detasking compliance incident rate involving United States persons was 0.002 percent. Nonetheless, the impact of compliance incidents on United States persons incidents involving United States persons is a primary concern of the joint oversight team. Accordingly, the following sections disaggregate tasking and detasking incidents impacting United States persons.

(U) *Tasking Incidents*

(U) *(1) Tasking Incidents Impacting United States Persons*

(U) During this reporting period, 10.4 percent of the total number of tasking errors involved the direct or indirect targeting of United States persons,⁴¹ representing an increase over the 5.2 percent rate reported in the previous period.⁴² The increase relative to the previous reporting period

³⁹ ~~(TS//SI//NF)~~ Subsequent to the filing of the Section 707 Report in September 2022, the joint oversight team determined that ■ incidents reported as documentation errors in the Section 707 Report were actually tasking errors, in that the targets were not reasonably expected to possess foreign intelligence information. To maintain consistency with the corresponding Section 707 Report, these errors are treated as documentation errors in this joint assessment. These ■ tasking errors are part of a larger group of tasking errors that were reported in the subsequent Section 707 Report and will be covered by the corresponding joint assessment.

⁴⁰ (U) As noted above, the increase in the tasking incident rate reported in the 20th Joint Assessment (December 2017 to May 2018) was primarily due to a single NSA targeting office misunderstanding how to use a targeting tool.

⁴¹ (U) NSA's targeting procedures require that NSA apply certain presumptions regarding United States person status. For example, NSA's targeting procedures provide that “[a] person known to have been at any time an alien admitted for lawful permanent residence will be presumed to be a United States person, unless a determination that the person is no longer a United States person is made . . . 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)[.]”

⁴² ~~(S//NF)~~ There were ■ tasking errors during this reporting period that involved the direct or indirect targeting of United States persons, ■ more incidents than the ■ in the prior reporting period. See NSA Incidents ■

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is primarily due to a single incident involving multiple targets that is still under investigation by the joint oversight team.⁴³

(U) The errors impacting United States persons involved the tasking of facilities where the Government knew or should have known at the time of tasking that at least one user of the tasked facility was a United States person. These incidents represent isolated instances of insufficient due diligence, or other oversights, and did not involve an intentional effort to target a United States person. The majority of these tasking errors involved situations where an analyst made an erroneous assessment, overlooked information, and/or conducted insufficient research prior to tasking a facility and, as a result, tasked a facility used by a United States person.

[REDACTED]

[REDACTED]

(U) (2) Other Common Tasking Incidents Not Impacting United States Persons

(U) As discussed above, most of the compliance incidents during this reporting period did not involve United States persons. During this reporting period, errors in establishing a sufficient

⁴³ ~~(S//NF)~~ This incident, (*see* NSA Incident [REDACTED]), involving [REDACTED] Section 702 targets, is still being investigated by NSD. Based on the current status of that investigation, it appears that the majority of facilities associated with these [REDACTED] targets were not tasked in error, but instead were not timely detasked and are therefore likely to be assessed as detasking delays in a forthcoming final notice to the FISC. However, consistent with the corresponding Section 707 Report, and pending the conclusion of NSD's investigation of this incident, the joint assessment counts [REDACTED] tasking errors associated with this incident.

⁴⁴ ~~(S//NF)~~ *See* NSA Incidents [REDACTED].

⁴⁵ ~~(S//NF)~~ *See* NSA Incident [REDACTED].

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basis to assess that a target was located outside the United States accounted for the largest portion of tasking errors (31.8 percent), followed by errors in establishing a sufficient basis to assess that a target would possess, receive, or communicate foreign intelligence (28.9 percent). These and other common types and causes of tasking errors not impacting United States persons are discussed below.

- (U) “Foreignness determination” errors: Certain tasking errors result from NSA not properly establishing a sufficient basis to assess that a target was located outside the United States (otherwise referred to as the “foreignness determination”).⁴⁶ Certain of these incidents involved the failure to conduct a necessary foreignness check prior to tasking, or involved too long of a delay between the necessary foreignness checks and the tasking of the facility. The total number of foreignness determination tasking errors increased by approximately 19.6 percent, as compared to the prior reporting period. The increase was due primarily to two incidents involving multiple facilities.⁴⁷
- (U) “Foreign intelligence information purpose” errors: Certain tasking errors result from NSA’s failure to establish a valid “foreign intelligence information purpose” for the tasking—*i.e.*, that the targeted user is reasonably expected to possess, receive, and/or is likely to communicate foreign intelligence information as defined in 50 U.S.C. § 1801(e), in relation to the categories of foreign intelligence information specified in the Section 702 certifications.⁴⁸ In some cases, this was because the tasking did not relate to one of the specific categories of foreign intelligence information authorized pursuant to the Section 702(h) certifications; in other cases, this was because there was not a sufficient connection between the targeted individual and the Section 702(h) certification, such that the user was not reasonably expected to possess, receive, and/or was not likely to communicate foreign intelligence information. The total number of such tasking errors decreased by 29.1 percent, as compared to the prior reporting period, in which a few tasking decisions involving multiple facilities accounted for the majority of this type of tasking error. In all of the instances, at the time of tasking, NSA had sufficiently established that the users were non-United States persons located outside the United States.
- (U) Typographical errors: Certain tasking errors result from typographical or similar errors. During this reporting period, the total number of such tasking errors decreased

⁴⁶ ~~(TS//SI//NF)~~ During this reporting period, there were [REDACTED] of these types of tasking errors in which NSA failed to conduct a necessary foreignness check prior to tasking, or there was too long of a delay between the necessary foreignness check and the tasking of the facility. See NSA Incidents [REDACTED]. In addition, there were [REDACTED] incidents in which NSA otherwise failed to establish a sufficient basis to assess that a target was located outside of the United States or did not sufficiently account for conflicting information indicating a target was located inside the United States. See NSA Incidents [REDACTED].

⁴⁷ ~~(S//NF)~~ See NSA Incidents [REDACTED].

⁴⁸ ~~(TS//SI//NF)~~ See NSA Incidents [REDACTED]. As noted above in footnote 39, subsequent to filing of the Section 707 Report that corresponds to this joint assessment, [REDACTED] incidents that were reported as documentation incidents in the Section 707 Report were determined to be tasking incidents. These tasking incidents are part of a larger group of tasking incidents that were reported in the subsequent Section 707 Report and will be covered in the corresponding joint assessment.

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by 24.2 percent. In 84 percent of these incidents, NSA advised that there was no indication that the relevant facilities were used by a United States person or by someone in the United States.⁴⁹

- (U) Administrative updates: Certain tasking errors stem from the incorrect processing of administrative updates to tasking records in NSA systems, which results in NSA retasking the facility pursuant to Section 702 without fully applying its targeting procedures. During this reporting period, the total number of such tasking errors decreased by 32.1 percent,⁵⁰ though the number of facilities impacted by these incidents increased by 55.8 percent.⁵¹
- (U) Inter- and intra-agency miscommunications: Section 702 compliance requires good communication and coordination within and between agencies. During this reporting period, only one tasking error was attributable to miscommunications or delays in communicating relevant facts. The tasking error involved an inter-agency miscommunication that resulted in the tasking of a facility.⁵²

(U) In all of the above tasking incidents, personnel were reminded of the Section 702 tasking requirements, and any applicable collection was purged, or is in the process of being purged, as required by NSA's targeting and minimization procedures.

(U) *Detasking Incidents*

(U) *(1) Detasking Incidents Impacting United States Persons*

(U) During the reporting period, the total number of detasking incidents decreased by 22.2 percent, and the number of incidents involving facilities used by a United States person decreased by 25.0 percent, as compared to the prior reporting period.⁵³ Detasking incidents involving facilities used by a United States person accounted for 19.0 percent of all detasking incidents, a slight decrease from the 19.8 percent reported in the prior period. The detasking incidents impacting United States persons in this reporting period were caused by unintentional human errors, including oversights and misunderstandings of the detasking requirements. In all of the incidents,

⁴⁹ ~~(TS//SI//NF)~~ See NSA Incidents [REDACTED] and NSA Incidents [REDACTED]
[REDACTED]

⁵⁰ ~~(S//NF)~~ See NSA Incidents [REDACTED]

⁵¹ ~~(S//NF)~~ The [REDACTED] tasking errors reported this period involving administrative updates to tasking records impacted [REDACTED] facilities. See NSA Incidents [REDACTED]. The [REDACTED] tasking errors reported the previous period involving administrative updates to tasking records impacted [REDACTED] facilities. See NSA Incidents [REDACTED]

⁵² ~~(TS//SI//NF)~~ In this incident, a nominating agency requested that NSA task a facility. While the nomination was pending, the nominating agency requested the facility be detasked for reasons not related to compliance. However, because the facility had not yet been tasked, the request to detask could not be effectuated. As a result, NSA was not aware that the nominating agency had essentially withdrawn its nomination of the facility, and moved forward tasking the facility. See NSA Incident [REDACTED]

⁵³ ~~(TS//SI//NF)~~ There were [REDACTED] detasking delays in this reporting period that involved facilities used by United States persons. [REDACTED] of these detasking delays were also tasking errors. See NSA Incidents [REDACTED]
[REDACTED]
[REDACTED]

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personnel were reminded of the Section 702 tasking requirements, any applicable collection was purged, and no reporting was identified based on the collection.

(U) ~~(TS//SI//NF)~~ Twenty-five percent of the detasking incidents impacting United States persons involved an NSA analyst researching a target's status as a United States person rather than detasking promptly, in circumstances where prompt detasking was required, because of a misunderstanding of the detasking requirements.⁵⁴ The total number of such incidents was less than half the total number when compared to the prior reporting period. For example, in one such incident, an NSA analyst discovered content indicating that the targeted user of the facilities may have been a United States person. The relevant analyst did not detask the target's facilities at that time and instead contacted the Department of Homeland Security (DHS) to inquire about the target's United States person status. However, despite not receiving a response from DHS, the analyst failed to detask the facilities the same day.⁵⁵

(U) (2) *Other Common Detasking Incidents not Impacting United States Persons*

(U) The majority of the detasking incidents during this reporting period involved (i) non-United States persons who either traveled to the United States or appeared to have traveled to the United States, or (ii) unexplained indications that a Section 702-tasked facility appeared to have been accessed from within the United States. Some of the common types and causes of detasking errors from this reporting period, along with the corresponding compliance trends, are discussed below.

- ~~(TS//SI//NF)~~ Incomplete detaskings: Certain detasking delays result from NSA detasking (or another agency requesting that NSA detask) some, but not all, of a target's facilities. During this reporting period, [REDACTED] percent of detasking incidents involved such incidents where certain of a target's facilities used by non-United States persons were not timely detasked (an increase from [REDACTED] percent in the previous reporting period). The total number of such incidents also increased by [REDACTED] percent during this reporting period.⁵⁶
- ~~(TS//SI//NF)~~ Staffing Issues: Certain detasking errors result from competing mission demands [REDACTED]. During this reporting period, no detasking errors occurred as a result [REDACTED] down from the single incident of this type reported during the previous period. However, during this reporting period, [REDACTED] percent of detasking incidents involved [REDACTED] competing mission demands, including [REDACTED] errors resulting from [REDACTED] that processes detaskings for CIA.⁵⁷

⁵⁴ ~~(TS//SI//NF)~~ There were [REDACTED] such incidents during this reporting period. See NSA Incidents [REDACTED]

⁵⁵ ~~(TS//SI//NF)~~ See NSA Incident [REDACTED]

⁵⁶ ~~(TS//SI//NF)~~ See NSA Incidents [REDACTED]

⁵⁷ ~~(TS//SI//NF)~~ See NSA Incidents [REDACTED]

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- (U) System errors: Certain detasking errors result from system errors. There was only one such error reported this reporting period.⁵⁸

(U) **B. Minimization Incidents**

(U) NSA's minimization procedures detail requirements concerning the circumstances under which Section 702-acquired information may be *disseminated* and rules regarding how long unminimized Section 702-acquired information may be *retained*. During this reporting period, NSA minimization incidents accounted for approximately 1.8 percent of all NSA incidents of noncompliance, as compared to 17.9 percent in the previous reporting period.⁵⁹ Particular issues of non-compliance with NSA's minimization procedures are detailed below.

(U) *(1) Dissemination Data and Incidents*

(U) To provide context to the joint oversight team's review of dissemination incidents, Figure 9 presents two sets of information for the last ten reporting periods: (1) the classified total number of serialized reports identified by NSA as containing Section 702-acquired and (2) the number of those serialized reports identified as containing United States person information. These disseminations are not compliance incidents but are provided to enhance transparency and understanding of the scope of incidents reported. During this reporting period, the overall number of serialized reports identified by NSA as containing Section 702-acquired information increased when compared to the prior reporting period, but remained lower than the number of reports identified in reporting periods prior to the pandemic. In addition, the number of serialized reports NSA has identified as containing United States person information decreased slightly when compared with the previous reporting period.⁶⁰

⁵⁸ ~~(TS//SI//NF)~~ See NSA Incident [REDACTED]. That incident involved a format change implemented by the relevant provider that prevented NSA's systems from properly processing instances in which that provider flagged a Section 702-tasked facility. As a result, NSA analysts were not aware of the provider flags and did not detask the facilities or promptly begin researching the flags. NSA detasked all impacted facilities in connection with remediating this incident.

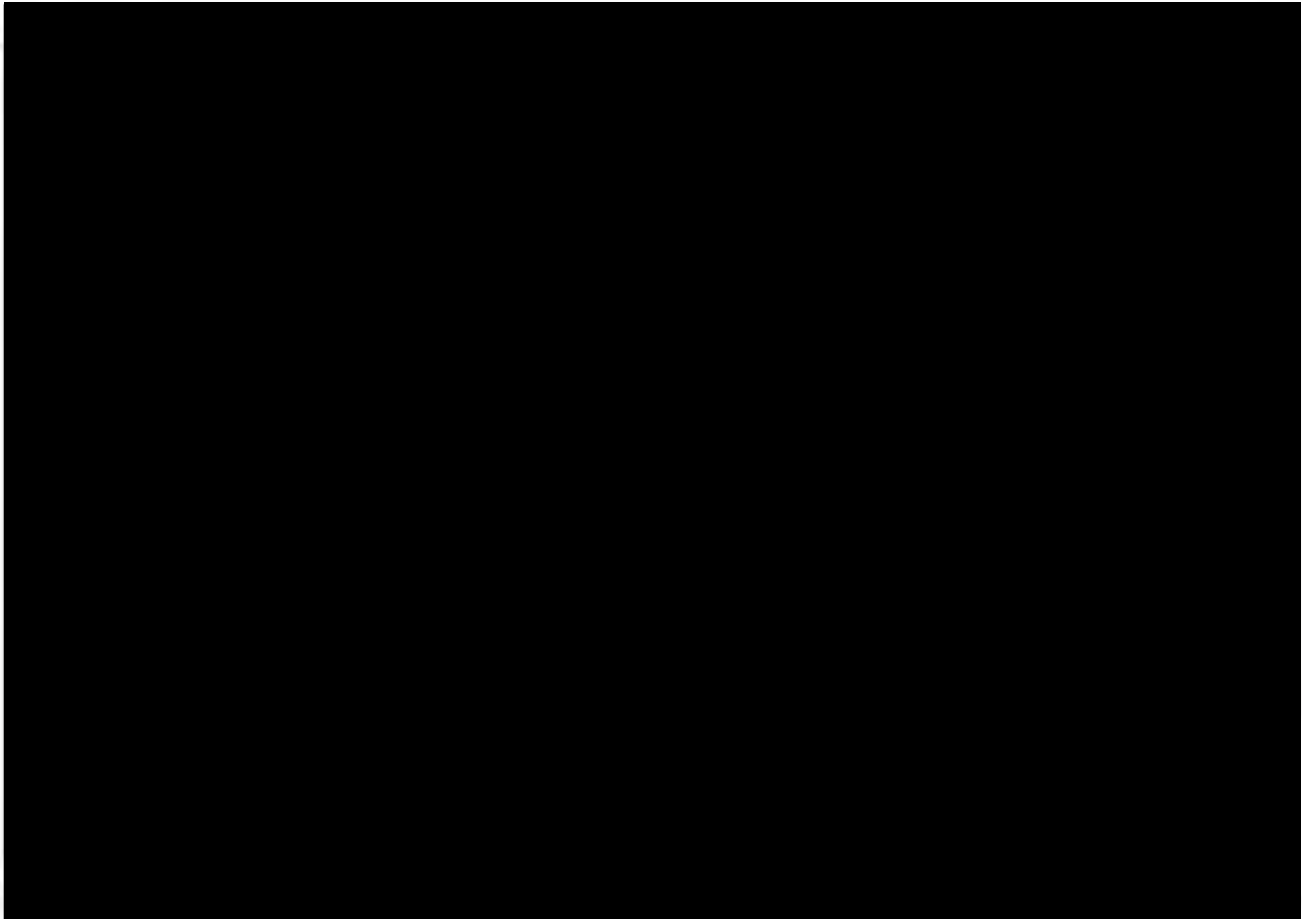
⁵⁹ ~~(S//NF)~~ Minimization incidents decreased to [REDACTED] from [REDACTED] in the previous reporting period.

⁶⁰ (U) NSA does not maintain records that allow it to readily determine, in the case of a report that includes information from several sources, from which source a reference to a United States person was derived. Accordingly, the references to United States person identities may have resulted from collection pursuant to Section 702 or from other authorized signals intelligence activity conducted by NSA that was reported in conjunction with information acquired under Section 702. Thus, the number provided in Figure 9 is likely over-inclusive.

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(U) Figure 9: Total Disseminated NSA Serialized Reports Based on Section 702-acquired Information and Number of Such Reports NSA Identified as Containing USP Information



(U) NSA’s minimization procedures set forth requirements for the dissemination of United States person information. In most circumstances, NSA initially “masks” United States person information. United States person information is masked by replacing the name or other identifying information of the United States person with a generic term, such as “United States person #1.” Recipients may request that NSA “unmask” the United States person identity. Prior to such unmasking, NSA must determine that the United States person’s identity meets the applicable standards in NSA’s minimization procedures, which generally require that (i) the United States person identity must be, or must be necessary to understand or assess the importance of, foreign intelligence information and (ii) the entity requesting the unmasking must have a need to know the United States person identity.

(U) Incidents involving NSA’s dissemination of United States person information that was not necessary to understand or assess the importance of foreign intelligence information or evidence of a crime represented 1.1 percent of the total number of NSA compliance incidents (compared to 17.4 percent of NSA incidents during the prior reporting period).⁶¹ The significant decrease in the

⁶¹~~(TS//SI//NF)~~ There were ■ incidents involving NSA’s dissemination of Section 702-acquired information that was not necessary to understand or assess the importance of foreign intelligence information or evidence of a crime, compared to ■ in the previous reporting period.

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number of improper disseminations of United States person information is mostly attributable to one large incident reported during the previous reporting period, which accounted for 72.2 percent of the minimization incidents in that period.⁶²

(U) Improper disseminations of United States person information are often the result of human errors or oversights. For example, 20.0 percent of the incidents involving the dissemination of United States person information that was not necessary to understand or assess the importance of foreign intelligence information or evidence of a crime during this reporting period were caused by NSA target offices incorrectly using a software tool to redact United States person identities in reports.⁶³ The responsible personnel attempted to redact the relevant United States person identity in the dissemination by using a particular feature in a software tool. However, based on the way the software tool was utilized by the target office, it was possible for recipients to remove the redactions and view the United States person identity.

(U) NSA's minimization procedures also set forth specific requirements for the handling and dissemination of attorney-client communications. During this reporting period, there was one incident in which NSA improperly disseminated Section 702-acquired information in a manner contrary to the requirements of NSA's minimization procedures that govern the handling of attorney-client communications.⁶⁴

(U) As with previous reporting periods, there were no identified NSA incidents of an analyst intentionally violating the dissemination rules.

(U) (2) *Improper Retention Incidents*

~~(TS//SI//NF)~~ During this reporting period, there were [REDACTED] incidents in which NSA improperly retained information acquired pursuant to Section 702 for longer than permitted by NSA's minimization procedures.⁶⁵ In one such incident, NSA discovered that a software program that performs machine translations of foreign language text was creating error log files that contained segments of text that had failed to translate properly. NSA advised that these error log

⁶² [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

⁶³ ~~(S//NF)~~ These incidents correspond to [REDACTED] of the [REDACTED] incidents reported as NSA Incidents [REDACTED]

⁶⁴ ~~(TS//SI//NF)~~ This incident corresponds to [REDACTED] of the [REDACTED] incidents reported as NSA Incidents [REDACTED]. In this incident, an NSA analyst issued a report that contained privileged information from a communication in which a United States person was a party. NSA's Office of General Counsel (OGC) reviewed the relevant communications and approved the dissemination of the report. However, the responsible NSA target office issued the report using a dissemination tool that could not limit the recipients to the Intelligence Community (IC) and the Department of Defense (DOD). The report was accordingly disseminated outside the IC and DOD without obtaining approval from the Assistant Attorney General for National Security, as required by Section 5(f) of the NSA minimization procedures in effect at the relevant time. NSA advised that it recalled the report. NSA further advised that the relevant personnel have been reminded of the Section 702 requirements regarding the acquisition and handling of attorney-client communications.

⁶⁵ ~~(S//NF)~~ These incidents correspond to [REDACTED] of the [REDACTED] incidents reported as NSA Incidents [REDACTED]

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files did not have authority markings, and therefore NSA was unable to determine the authorities under which the data was acquired. Furthermore, the error log files were not subject to purge or age-off processes. Therefore, if an analyst had used the translation software to translate content obtained pursuant to FISA authorities, and that translation triggered the creation of an error log file, it is possible that FISA-derived data was retained in the log files beyond age-off requirements or improperly retained despite being subject to purge. NSA advised that only NSA system developers and administrators had access to the potentially over-retained error logs. NSA developers implemented a software change to prevent text segments from being stored in error logs and deleted all [REDACTED] error log files containing the text segments.⁶⁶

(U) C. Querying Incidents

(U) NSA's querying procedures detail requirements governing queries of unminimized Section 702-acquired information, including two principal restrictions.

- 1) (U) NSA's Section 702 querying procedures in effect during this reporting period permitted queries of unminimized Section 702-acquired content using United States person identifiers, provided that such terms must *be approved by NSA OGC* prior to the query being executed. If an NSA analyst uses a United States person identifier that has not been approved by NSA OGC to query Section 702-acquired content, it constitutes a compliance incident.
- 2) (U) NSA's Section 702 querying procedures in effect during this reporting period required that queries of unminimized Section 702-acquired collection must be "*reasonably likely to retrieve foreign intelligence information.*" If a query does not meet this standard due to a typographical or comparable error in the construction of the query term,⁶⁷ such an error constitutes a compliance incident, regardless of whether the query term used a non-United States person identifier or a United States person identifier.

(U) During this reporting period, improper queries accounted for 26.4 percent of all NSA incidents of noncompliance, as compared to 23.8 percent in the prior period.⁶⁸ However, the total number of NSA improper queries decreased by 12 percent, as compared to the prior reporting period.

- (U) Approximately 60.7 percent of the querying errors involved NSA analysts conducting queries of unminimized Section 702-acquired content using a United States person identifier without prior NSA OGC approval.⁶⁹

⁶⁶ ~~(S//NF)~~ See NSA Incidents [REDACTED]

⁶⁷ (U) For example, this type of query incident occurs when an analyst mistakenly inserts an "or" instead of an "and" in constructing a Boolean query, resulting in an improperly tailored query that would potentially receive overly broad results and was unlikely to retrieve foreign intelligence information.

⁶⁸ ~~(S//NF)~~ NSA querying incidents decreased to [REDACTED] from [REDACTED] incidents in the previous reporting period.

⁶⁹ ~~(TS//SI//NF)~~ There were [REDACTED] United States person query incidents involving NSA analysts using United States person identifiers that had not been approved by OGC to query unminimized Section 702-acquired content during this reporting period, compared to [REDACTED] in the previous reporting period. These incidents correspond to [REDACTED] of the [REDACTED] incidents reported as NSA Incidents [REDACTED]. In one such incident, an NSA analyst

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- (U) Approximately 1.3 percent of the querying errors involved NSA analysts conducting queries of unminimized Section 702-acquired content using a United States person identifier that exceeded the scope of the approval from NSA OGC—for example, because the responsible NSA analyst conducted the query outside of the time period permitted by the relevant approval.⁷⁰
- (U) Approximately 38.0 percent of the querying errors involved queries that were not reasonably likely to retrieve foreign intelligence information.⁷¹

(U) The joint oversight team assesses that NSA’s training and guidance to its personnel have contributed to its overall compliance with its querying procedures. Although individuals continue to make mistakes, the joint oversight team has reviewed the human errors that caused the querying errors during this reporting period and has not identified any discernible patterns in the types or causes of these errors.

(U) As with previous reporting periods, there were no identified NSA incidents of an analyst intentionally running improper queries.

(U) D. Other Incidents

~~(TS//SI//NF)~~ **Incomplete Purge Incidents:** During this reporting period, there were [REDACTED] incidents in which NSA improperly retained information acquired pursuant to Section 702 that was subject to purge as unauthorized collection.⁷² This represents a [REDACTED] percent increase over the [REDACTED] such incidents reported during the prior reporting period. The joint oversight team attributes the increase, in part, to NSA’s recent efforts to conduct periodic reviews of its purge activities to verify their efficacy. [REDACTED] of the [REDACTED] such incidents reported this period involved data arriving in NSA’s systems after the purge process was completed, known as “latent data.” The remaining incidents were typically caused by NSA system errors or human errors that resulted in information subject to purge not being completely removed from NSA’s systems.

(U) **Documentation Incidents:** The NSA targeting procedures require that for each tasked facility NSA document the source of the “foreignness determination” and identify the foreign power or foreign territory about which NSA expects to obtain foreign intelligence information. The targeting procedures also require a written explanation of the basis for its assessment, at the time of targeting, that the target is expected to possess, receive, and/or is likely to communicate foreign

conducted a query on a corporate e-mail account used by a valid foreign target; however, the e-mail account was associated with a United States corporation, and the United States person identifier had not been approved in accordance with the NSA querying procedures.

⁷⁰ ~~(TS//SI//NF)~~ There were [REDACTED] such non-compliant queries during this reporting period, compared to zero in the previous reporting period. These incidents correspond to [REDACTED] incidents reported as NSA Incidents [REDACTED]. In these [REDACTED] incidents, an NSA analyst [REDACTED]. While NSA OGC had approved the United States person identifier to be queried for information from a two-year period, the analyst ran the [REDACTED] noncompliant queries for information from a five-year period.

⁷¹ ~~(TS//SI//NF)~~ There were [REDACTED] such non-compliant queries during this reporting period, compared to [REDACTED] in the previous reporting period. See NSA Incidents [REDACTED].

⁷² ~~(S//NF)~~ These incidents correspond to [REDACTED] of the [REDACTED] incidents reported as NSA Incidents [REDACTED].

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intelligence information concerning the foreign power or foreign territory that is covered by the certification under which the accounts were tasked (“foreign intelligence purpose”). In these incidents, while the actual tasking of each facility was appropriate, the analyst failed to sufficiently document the “foreignness determination” or the “foreign intelligence purpose” on the tasking sheet, or the Section 702(h) certification to which the facility was tasked was not appropriate based on the documented foreign intelligence purpose.

(U) The number of documentation errors increased by 15.9 percent during this reporting period.⁷³ NSA routinely reminds relevant personnel to review tasking sheet data thoroughly prior to submission and to select the appropriate certification based on the foreign intelligence they want to receive from the user.

(U) **Notification Delays:** Finally, there were a number of reported incidents where NSA failed to timely provide the required notice to NSD and ODNI after NSA discovered that a tasked facility was used from within the United States or by a United States person. Notification delays accounted for 10.3 percent of NSA compliance incidents in this reporting period. This represents an increase from the 5.5 percent in the prior reporting period, with the total number of notification delays increasing 49.2 percent from the prior reporting period.⁷⁴ The significant increase in the number of notification delays during this reporting period is not attributable to a single cause.⁷⁵ The total number of notification delays during this reporting period, nevertheless, remained below the number of notification delays reported during the reporting periods preceding the pandemic.

(U) **IV. Compliance Assessment**

(U) During this reporting period, the joint oversight team found that NSA continued to implement the procedures and follow the guidelines in a manner that reflects a focused and concerted effort by agency personnel to comply with the requirements of Section 702. Additionally, NSA continues to proactively identify, report, and address compliance incidents as they arise. In response to compliance incidents, NSA routinely reminds its personnel about the

⁷³ ~~(S//NF)~~ During this reporting period, NSD reported [REDACTED] incidents resulting from documentation errors in the Section 707 report submitted to the FISC, relative to [REDACTED] such incidents reported in the prior period. However, as discussed above in footnote 39, subsequent to the filing of the Section 707 report, NSD determined that [REDACTED] of these documentation errors were actually part of a larger set of incidents for which NSA did not have a sufficient basis to assess that tasking the facility would result in the acquisition of foreign intelligence information. These [REDACTED] incidents have been reported to the FISC as tasking errors, were discussed in the subsequent Section 707 Report, and will be covered in the corresponding joint assessment.

⁷⁴ ~~(S//NF)~~ See NSA Incidents [REDACTED]. There were [REDACTED] notification delays in this reporting period and [REDACTED] notification delays in the prior reporting period.

⁷⁵ ~~(S//NF)~~ In [REDACTED] of these incidents, a facility that NSA reasonably believed was being used outside of the United States either (1) was found to have been used inside the United States, or (2) NSA could not resolve conflicting information indicating that the facility was being used from within the United States with information indicating that the target was located outside the United States. In the remaining [REDACTED] incidents, a facility NSA reasonably believed to be used by a non-United States person was found to be used by a United States person. Reporting delays ranged from [REDACTED] [REDACTED], with an average delay of approximately [REDACTED] and a median delay of approximately [REDACTED]. In January 2023, NSA transitioned from a centralized compliance reporting process to a one in which NSA analysts directly document potential compliance incidents into NSA’s reporting tool. NSA believes that this revised process may assist NSA in minimizing any delays in reporting potential compliance incidents to NSD and ODNI.

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requirements in the Section 702 procedures and to exercise care when completing processes. The joint oversight team assesses that the low NSA targeting compliance incident rate is a result of training, internal processes designed to identify and remediate potential compliance issues, and a continued focus by internal and external oversight personnel to ensure compliance with the applicable procedures. The joint oversight team will continue to be attentive to trends that may indicate that additional training or guidance would be helpful.

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~~TOP SECRET//SI//NOFORN~~**(U) SECTION 4: ASSESSMENT OF SECTION 702 ACTIVITIES – FBI**

(U) FBI fulfills various roles in the implementation of Section 702, which are set forth in further detail in the Appendix.

~~(S//NF)~~ First, FBI is authorized under the certifications to acquire foreign intelligence information. Pursuant to its own authority, FBI is authorized to [REDACTED] from electronic communication service providers by targeting facilities that NSA designates. Those acquisitions must be conducted pursuant to FBI's Section 702 targeting procedures. FBI also conveys [REDACTED] from the electronic communication service providers to NSA—and to itself and CIA and NCTC—for processing in accordance with the agencies' FISC-approved minimization procedures.

~~(S//NF)~~ Second, FBI provides [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(U) Third, as described below, FBI is authorized to receive and use Section 702-acquired information. FBI has a process for nominating to NSA new facilities to be targeted pursuant to Section 702. FBI may also receive dual-routed,⁷⁶ unminimized Section 702-acquired information. FBI is authorized to retain, analyze, and disseminate the information obtained from these taskings in compliance with its minimization procedures, as well as query unminimized Section 702-acquired information, in compliance with its querying procedures.

(U) I. Joint Oversight of FBI Activities

(U) NSD and ODNI's oversight program is designed to ensure FBI's compliance with statutory and procedural requirements for each of the roles described above. During this review period, NSD conducted reviews of FBI's compliance with its targeting procedures approximately every 60 days as well as quarterly reviews of compliance by FBI headquarters components with the FBI's minimization procedures. During this review period, ODNI did not participate in these reviews. Reports for each of those reviews have previously been provided to the congressional committees with the Section 707 Report. NSD also conducts periodic minimization and query reviews of FBI field offices. For this reporting period, the joint oversight team conducted reviews of FBI's application of its targeting, minimization, and querying procedures during the dates shown in Figure 10.

(U)⁷⁶ ~~(S//NF)~~ Dual-routing is the process whereby CIA, FBI, or NCTC requests that NSA route collection to them from already-tasked Section 702 facilities.

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(U) **Figure 10: FBI Reviews**

(U) Figure 10 is ~~SECRET//NOFORN~~.

Approximate Dates of Review	Type	Targeting, Minimization, and Querying Reviewed ⁷⁷
March 2022	Field Office	[REDACTED] (querying)
		[REDACTED] (querying)
		[REDACTED] (querying)
April 2022	Headquarters	1 December 2021 – 31 January 2022 (targeting); 1 December 2021 – 28 February 2022 (minimization)
	Field Office	[REDACTED] (querying)
		[REDACTED] (querying)
		[REDACTED] (querying)
		[REDACTED] (querying)
May 2022	Field Office	[REDACTED] (querying)
June 2022	Headquarters	1 February 2022 – 31 March 2022 (targeting)
July 2022	Headquarters	1 March 2022 – 31 May 2022 (minimization)
August 2022	Headquarters	1 April 2022 – 31 May 2022 (targeting)

~~(S//NF)~~ Upon receipt of a request to acquire the [REDACTED] from a facility, FBI queries its non-FISA databases to ensure that it does not have information indicating that the target is ineligible for tasking pursuant to Section 702.⁷⁸ If those queries return information from the non-FISA databases, then FBI provides a checklist to the joint oversight team that shows the results of its database queries. If FBI’s database queries returned results that FBI identifies as relevant to the target’s location or citizenship status, then FBI also provides the joint oversight team with supporting documentation. Supporting documentation may include, among other things,

[REDACTED]

~~(S//NF)~~ During this reporting period, NSD reviewed a sample of the targeting checklists completed by FBI analysts and supervisory personnel involved in the targeting process, together with supporting documentation provided by FBI for approved requests for which information is

⁷⁷ (U) In addition to the reviews noted in Figure 10, during the previous reporting period and this reporting period, NSD reviewed the results of an internal audit of FBI queries conducted by FBI’s Office of Internal Auditing (OIA). OIA’s audit, and NSD’s subsequent review of the results, revealed certain query incidents, many of which were reported during this reporting period. The OIA audit reviewed queries conducted between April 2020 and March 2021, prior to this reporting period and prior to the implementation of the compliance-related remedial measures discussed below.

⁷⁸ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

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returned by FBI's database queries.⁷⁹ FBI analysts, supervisory personnel, and attorneys from FBI's National Security and Cyber Law Branch (NSCLB) are available to answer questions and provide additional documentation. As necessary, the joint oversight team provides guidance on areas of potential improvement.

~~(S//NF)~~ Separately, in order to evaluate FBI's [REDACTED] acquisition of [REDACTED] and provision of [REDACTED], the joint oversight team conducts an annual process review with FBI's technical personnel to ensure that those activities comply with applicable Section 702 procedures. The most recent annual process review occurred in June 2023.

(U) In conducting minimization reviews of FBI *headquarters components*, the joint oversight team reviews documents related to FBI's application of its Section 702 minimization procedures. The team reviews a sample of communications that FBI has marked in its systems as both meeting the retention standards and containing United States person information. The team also reviews disseminations by certain FBI headquarters units of information acquired under Section 702 that FBI identified as potentially containing non-publicly available information concerning unconsenting United States persons. During this reporting period, ODNI did not participate in these reviews.

(U) Prior to the start of the pandemic, NSD conducted minimization reviews at FBI *field offices* in order to review retention and dissemination decisions made by field office personnel with respect to Section 702-acquired information. During those reviews, NSD reviewed a sample of retention decisions made by FBI field personnel in connection with investigations involving the acquisition of data pursuant to Section 702 and a sample of disseminations of information acquired pursuant to Section 702 that FBI identified as potentially containing non-publicly available information concerning unconsenting United States persons. NSD temporarily suspended these field office reviews in or around March 2020 in response to the coronavirus pandemic and did not conduct these reviews during this reporting period. NSD re-started these reviews in mid-2022.

(U) During this reporting period, NSD conducted query reviews of nine FBI field offices and also completed its review of the results of a query audit conducted by FBI's Office of Internal Auditing (OIA). ODNI received written summaries regarding all of the reviews from NSD, as well as copies of any compliance notices filed by NSD in connection with those reviews. Those reviews are further discussed in Part III of this Section and in the Section 707 Report.

(U) During its query reviews, NSD reviews a sample of the queries conducted by FBI field office personnel in FBI systems that contain unminimized FISA-acquired information, including Section 702-acquired information. NSD evaluates whether queries of Section 702-acquired information complied with the requirements in FBI's Section 702 querying procedures, as well as any court-mandated or statutory requirements. NSD also reviews United States person queries in

(U)⁷⁹ ~~(S//NF)~~ As noted above, FBI may nominate potential Section 702 targets to NSA. As NSA routinely relies on FBI's lead information to task a number of facilities under Section 702, the joint oversight team may conduct onsite visits at FBI headquarters to review FBI's original source documentation underlying that lead information. Because those reviews ultimately impact NSA targeting and the application of NSA's targeting procedures, the results of those visits are included in bimonthly NSA review reports.

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which the documented justification to access the results of the query indicated *evidence of-a-crime* only purpose. During the reporting period, such queries were subject to the reporting requirements set forth in the FISC's 18 November 2020 Memorandum Opinion and Order and 21 April 2022 Memorandum Opinion and Order.⁸⁰ Pursuant to these orders, certain evidence-of-a-crime-only queries of United States person identifiers not conducted in connection with a predicated criminal investigation must be reported to the FISC, even if the queries comply with the requirements in FBI's querying procedures. If conducted in connection with a predicated criminal investigation, such queries may be subject to certain additional requirements set forth in Section 702(f)(2) of FISA. Pursuant to Section 702(f)(2) of FISA, FBI generally must obtain an order from the FISC before accessing the contents of Section 702-acquired communications retrieved by *evidence-of-a-crime only queries of United States person identifiers* conducted in connection with a *predicated criminal investigation*, not related to national security; such queries would be reported as compliance incidents if such an order was not obtained.

(U) The joint oversight team also investigates potential incidents of non-compliance with FBI's targeting, minimization, and querying procedures, the Attorney General's Acquisition Guidelines, or other agencies' procedures in which FBI is involved.⁸¹ Those investigations are coordinated with FBI OGC and the FBI headquarters component that manages the FBI's Section 702 program and may involve requests for further information; meetings with FBI legal, analytical, and/or technical personnel; or review of source documentation. Compliance incidents identified through those investigations are reported to the congressional committees in the Section 707 Report and to the FISC.

(U) Additionally, in order to address recent compliance issues involving FBI queries of unminimized Section 702 information, the joint oversight team leads regular meetings with FBI representatives. Such meetings include discussions of remedial measures, compliance trends, training updates and development, and other initiatives to enhance compliance and training.

(U) **II. FBI Training**

(U) During this reporting period, FBI continued implementing its online training programs regarding Section 702 nominations, minimization, querying, and other related requirements. Completion of those FBI online training programs is required of all FBI personnel who request

⁸⁰ (U) The 2020 Opinion approved the 2020 Section 702 Certifications, and the 2022 Opinion approved the 2021 Section 702 Certifications. The DNI, in consultation with the Attorney General, released the 2020, 2022, and 2023 Opinions in redacted form on the ODNI public website *intel.gov* via the "IC on the Record" database on 26 April 2021, 19 May 2023, and 21 July 2023, respectively. The 2023 Opinion carried forward the query reporting requirements from the 2021 Opinion, with minor adjustments.

(U) ~~(S//NF)~~ The full title of the 2020 Opinion is *In re DNI/AG 702(g) Certifications 2020-A, 2020-B, 2020-C, and Its Predecessor Certifications*, and the full title of the 2022 Opinion is *In re DNI/AG 702(g) Certifications 2021-A, 2021-B, 2021-C, and Its Predecessor Certifications*. The 2022 Opinion modified query reporting requirements set forth in the 2020 Opinion, which modified the query reporting requirements in the December 2019 Opinion and Order approving the 2019 Section 702 Certifications. In turn, the 2019 Opinion modified the query reporting requirements first set forth in the 6 November 2015 Opinion and Order approving the 2015 Section 702 Certifications.

⁸¹ (U) Insofar as FBI nominates facilities for tasking and reviews content that may indicate that a target is located in the United States or is a United States person, some investigations of possible non-compliance with NSA's targeting procedures can also involve FBI.

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access to Section 702 information. As part of its efforts to address certain issues causing a large number of non-compliant queries, in December 2021, FBI deployed revised query training that was mandatory for its personnel with access to unminimized FISA-acquired information. Access to unminimized Section 702-acquired information was temporarily suspended for those users who did not complete the training by the end of January 2022, pending their completion of the training. Additionally, NSD provided query training at multiple FBI field offices in 2022. More information about efforts on the part of the joint oversight team and FBI to avoid non-compliant queries is provided below.

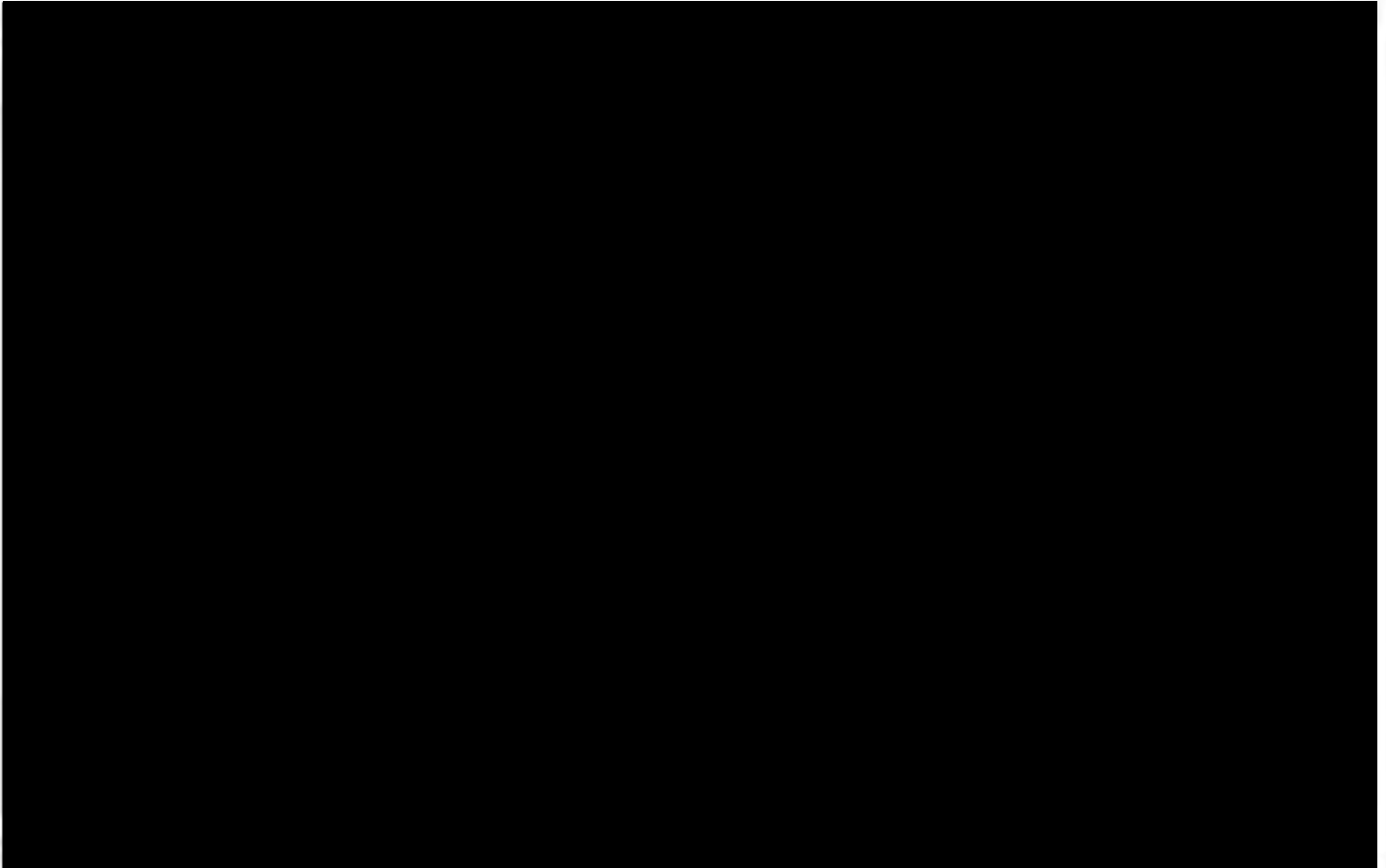
(U) **III. Section 702 Data and Compliance Trends**

(U) The number of incidents relating to FBI's targeting procedures decreased slightly relative to the previous period, while the number of incidents relating to FBI's minimization procedures increased slightly. The vast majority of FBI compliance incidents reported this period related to FBI's querying procedures, though the number of such incidents, and the number of FBI compliance incidents overall, both declined significantly relative to the previous reporting period. The previous reporting period (the 27th) saw a return to pre-pandemic levels of FBI query compliance incidents, following a steep decline in the number of such incidents identified in the three preceding reporting periods (the 24th through 26th reporting periods). The joint oversight team believes that the relatively low number of FBI compliance incidents reported during the peak of the coronavirus pandemic (covered by the 24th through 26th reporting periods) was driven by the temporary suspension of NSD's FBI field office query reviews between March 2020 and February 2021. This suspension led to a decrease in the number of reported FBI querying incidents because, historically, a significant portion of query incidents have been discovered through NSD's FBI field office reviews. NSD resumed conducting query reviews of FBI field offices in February 2021.

(U) As with the previous reporting period, in addition to reporting query incidents identified during FBI field office query reviews, during this reporting period NSD reported query incidents discovered through OIA's audit of queries conducted between April 2020 and March 2021 and through NSD's subsequent review of the audit results. **Queries reviewed as part of this review of OIA's audit were conducted prior to this reporting period and prior to the implementation of the below-described remedial measures designed to enhance compliance.**

~~(S//NF)~~ Figure 11 shows the classified number of FBI targeting and minimization incidents for the last ten reporting periods. [REDACTED], the number of FBI targeting errors has remained in the single digits for each of the last ten reporting periods. The number of FBI minimization errors has also remained relatively low over the last ten reporting periods, though it has typically been higher than the number of targeting errors. While the reverse was true for the four most recent reporting periods, the joint oversight team assesses that this is because it did not conduct reviews of minimization activities by FBI field offices for Section 702-acquired information between March 2020 and mid-2022.

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~~TOP SECRET//SI//NOFORN~~**(U) Figure 11: Number of Compliance Incidents Involving FBI Targeting and Minimization Procedures**

(U) Figure 12 shows the classified number of FBI querying incidents for the last ten reporting periods. Figures 11 and 12 have been separated in this joint assessment, as well as in the 27th, for ease of reading, as the number of FBI querying incidents is generally orders of magnitude higher than the numbers of targeting and minimization incidents. As Figure 12 demonstrates, the number of FBI querying incidents has varied considerably over the past five years.

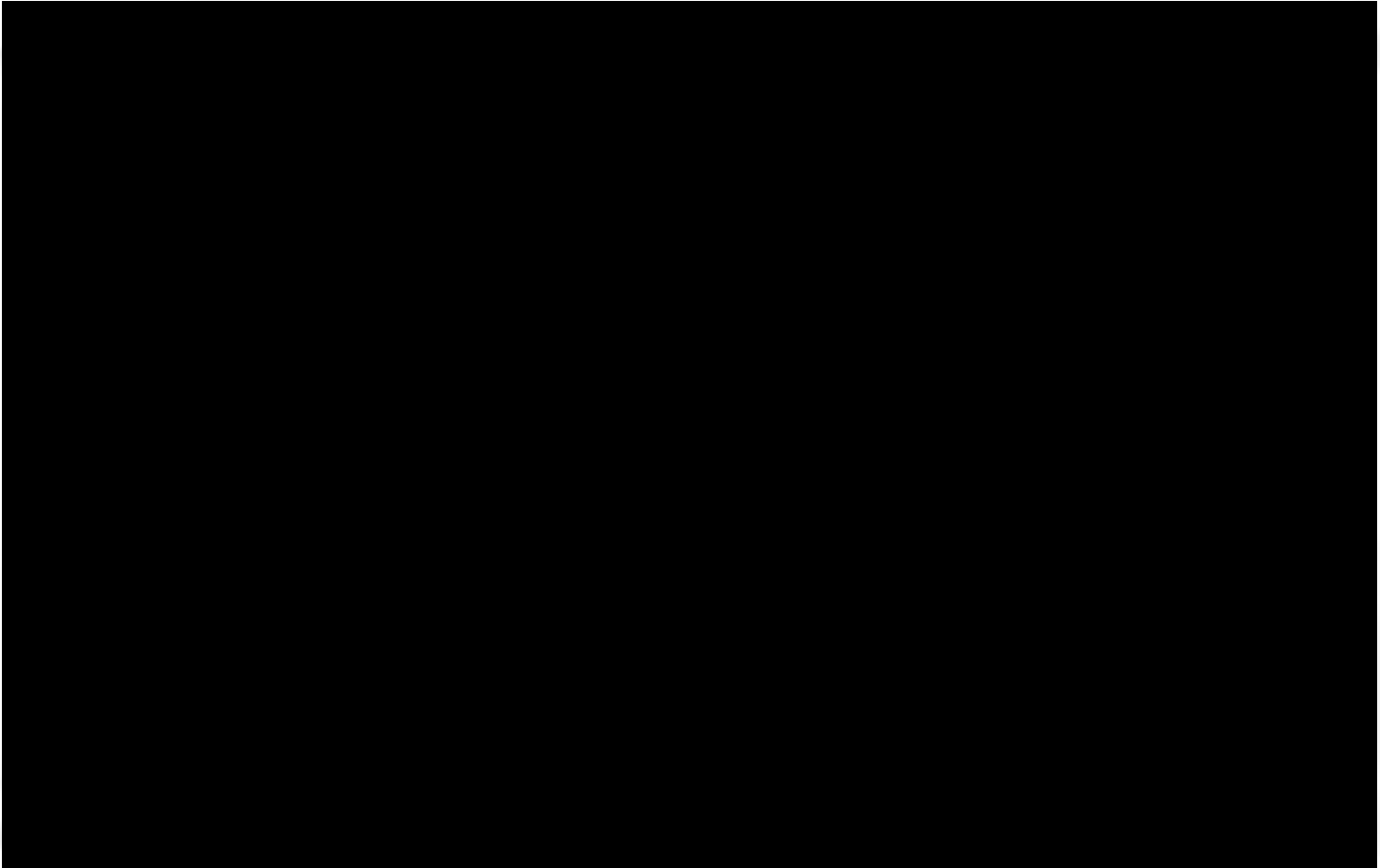
(U) To understand trends in FBI query compliance, it is important to understand the two most common kinds of FBI query incidents: misapplication incidents and mislabeling incidents. With respect to the first category, the FBI querying procedures require that queries of Section 702-acquired information be reasonably likely to retrieve foreign intelligence information or evidence of a crime—and must, accordingly, be supported by an authorized purpose, have a reasonable justification, and be appropriately designed to retrieve the information sought without unnecessarily retrieving other information. Queries that do not meet this standard are counted as query incidents involving FBI’s “misapplication” of the query standard. As for the second category of common incidents, the FBI querying procedures require that FBI apply certain presumptions regarding a person’s United States person status when that status is unknown, and that FBI generate and maintain a record of each United States person query term used to query Section 702-acquired

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information.⁸² Each instance of FBI's failure to meet these requirements concerning United States person queries is counted as a query incident involving the "mislabeling" of a United States person query term, even if the error involves labeling a non-United States person query as a United States person query.

(U) Figure 12: Number of Compliance Incidents Involving FBI Querying Procedures⁸³



(U) Beginning with the reporting period covering December 2020 – May 2021, Figure 12 shows the numbers of incidents involving misapplication of the query standard and mislabeling of

⁸² (U) In addition, the FBI querying procedures require that, "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."

⁸³ (U) The 25th Section 707 Report, covering the period from June 2020 through November 2020, identified 910 incidents of noncompliance with the FBI querying procedures. Subsequent to the completion of that report, additional investigation revealed that the actual number of incidents of noncompliance with the FBI querying procedures during the 25th reporting period was 1,266. However, due to a drafting error, the 910 number appeared in Figure 16 in the 26th Joint Assessment and in Figure 12 in the 27th Joint Assessment. In addition, due to a separate calculation error, the 25th Joint Assessment incorrectly reported the figure as 1,262 rather than 1,266.

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United States person query terms, in addition to the overall number of FBI query incidents.⁸⁴ FBI's querying procedures did not require FBI to differentiate between United States person and non-United States person queries prior to December 2019. After resuming its FBI query reviews in February 2021, NSD began reporting query incidents relating to FBI's mislabeling of United States person queries, in addition to incidents relating to FBI's misapplication of the query standard. The vast majority of incidents involving the FBI querying procedures reported in the first seven reporting periods shown in Figure 12 resulted from misapplication of the FBI querying procedures.

(U) The joint oversight team assesses that the increase in the number of FBI query incidents reported between December 2017 and November 2019 was attributable in part to NSD's increased focus on and experience with reviewing FBI querying practices, which resulted in NSD identifying a larger number of non-compliant queries. As noted above, the joint oversight team also assesses that the suspension during the height of the coronavirus pandemic of NSD's review of query activities by FBI field offices was the principal cause of the decreased number of FBI query incidents reported between December 2019 and May 2021.

(U) The number of reported FBI query incidents returned to pre-pandemic levels in the previous reporting period, in which NSD reported the results of its review of a sample of queries conducted between 1 October 2020 and 31 March 2021 using the batch job tool. The joint oversight team assesses that batch jobs have contributed to the historical variability in both the total number of FBI query incidents and the overall FBI query compliance incident rate. As discussed below in section IV, since June 2021, batch jobs resulting in 100 or more queries have been subject to an attorney pre-approval requirement, and in September 2023, FBI expanded that requirement to apply to all batch jobs.

(U) The total number of FBI query incidents reported this reporting period declined significantly relative to the previous reporting period. The vast majority of FBI query incidents reported this reporting period were identified as part of NSD's review of OIA's audit of queries conducted between April 2020 and March 2021, prior to the implementation of the remedial measures discussed below in section IV. As shown in Figure 12, and as discussed in greater detail below, compliance incidents relating to the failure to properly label United States person and non-United States person identifiers accounted for a significant majority of the FBI querying incidents reported over this reporting period and the previous reporting period.

(U) A. Targeting Errors

~~(S//SI//NF)~~ As noted above in Section 2, NSA designated ██████████ for acquisition of ██████████ during the reporting period, an increase over the prior reporting period when NSA designated ██████████. FBI further reports that it approved approximately

⁸⁴ (U) For the reasons noted in this paragraph, query incidents involving the mislabeling of United States person query terms were first reported in the reporting period covering December 2020 – May 2021. Figure 12 separately shows query incidents involving mislabeling of United States person query terms and incidents involving a misapplication of the query standard because these are the most common types of FBI query incidents. However, because these are not the only types of FBI query incidents, the overall number of FBI query incidents over the three most recent reporting periods exceeds the sum of incidents involving mislabeling of United States person query terms and incidents involving a misapplication of the query standard.

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██████████ for ██████████ during this reporting period, which represents a decrease over the prior period when FBI approved ██████████.⁸⁵

~~(S//NF)~~ During this reporting period, there were ██████████ incidents involving non-compliance with FBI's targeting procedures, compared to ██████████ incidents in the previous reporting period.⁸⁶ All ██████████ incidents involved the failure to complete certain diligence checks required by the FBI Section 702 targeting procedures prior to acquiring ██████████ from a designated account. The FBI targeting compliance incident rate remained the same (0.01 percent) as the previous reporting period.⁸⁷ Historically, this rate has remained well below one percent. The joint oversight team assesses that FBI's compliance with respect to targeting is a result of its training, systems, and processes.

(U) B. Minimization Errors

~~(S//NF)~~ During this reporting period, there were ██████████ incidents involving non-compliance with FBI's minimization procedures. As noted above, NSD suspended its reviews of minimization activities by FBI field offices in March 2020 due to the pandemic. NSD resumed its minimization reviews in mid-2022. Therefore, during this reporting period, NSD only conducted quarterly reviews of compliance by FBI headquarters with the FBI Section 702 minimization procedures.

~~(S//NF)~~ ██████████ FBI minimization incidents involved noncompliance with Section III(D)(5)(a) of the FBI minimization procedures, which provides that, once a Section 702 target has been charged with a federal crime, FBI must establish a review team or "taint team" to review Section 702 collection relating to the target to ensure that attorney client privilege is protected with respect to the target. ██████████ FBI failed to establish a review team at the time a Section 702 target was charged with federal crimes in a sealed indictment, as the relevant FBI personnel misunderstood the requirement and believed a review team was not necessary until the target was arrested.⁸⁸ ██████████, a review team was promptly established following a Section 702 target's indictment on federal charges, but one of the target's facilities tasked under Section 702 had inadvertently not been included in the list of facilities to be placed in the review team space.⁸⁹

⁸⁵ ~~(S//NF)~~ During the prior reporting period, FBI approved more requests for ██████████ than the number of accounts designated by NSA. This was likely a result of FBI's continued processing of requests submitted by NSA in prior months.

⁸⁶ ~~(S//NF)~~ See FBI Incidents ██████████

⁸⁷ ~~(S//NF)~~ The FBI targeting compliance incident rate is calculated as the total number of FBI targeting errors reported during the reporting period, expressed as a percentage of the total number of facilities for which FBI approved a request to acquire ██████████ during the reporting period. The joint oversight team does not review all such approved requests. The joint oversight team only reviews checklists and supporting documentation relating to approved requests for which information was returned by FBI's database queries. In addition, during this reporting period, the NSD reviewed checklists and supporting documentation for a sample of such approved requests. During this reporting period, ODNI did not participate in these reviews.

⁸⁸ ~~(S//NF)~~ See FBI Incident ██████████

⁸⁹ ~~(S//NF)~~ See FBI Incident ██████████

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~~TOP SECRET//SI//NOFORN~~**(U) C. Querying Data and Querying Incidents****(U) *United States Person Querying Data Trends***

(U) Figure 13A provides the total number of queries conducted by FBI per quarter that contained United States person and “presumed” United States person identifiers for this reporting period and the two prior reporting periods. Because the quarterly counts in Figure 13A reflect the total number of such queries per quarter, rather than the number of unique United States person query terms used per quarter, and as FBI does not currently calculate the number of unique United States person query terms used on a quarterly basis,⁹⁰ Figure 13A indicates that the numbers contained therein reflect a “duplicative” counting method.

(U) Subsequent to the reporting period covered by this joint assessment, FBI developed the capability to identify the number of unique United States person query terms used by FBI on an annual basis.⁹¹ This new capability allows for Figure 13B to provide both the total number of queries of United States person and “presumed” United States person identifiers that FBI conducted during 2020, 2021, and 2022 (using the “duplicative” counting method), and the number of unique United States person and “presumed” United States person identifiers used during those years

⁹⁰ (U) The FISC requires that the government report to it on a quarterly basis the “number of U.S.-person queries run by the FBI against Section 702-acquired information.” See the 2023 Opinion at 113.

⁹¹ (U) While FBI has developed the capability to count the number of unique United States person query terms used on an annual basis, it has not done so for the quarterly numbers; therefore, for the quarterly numbers, if FBI runs the same query term five times against Section 702-acquired content, this is counted as five queries, not one query term. This is true for FBI queries whether they are run against content or metadata.

(U) Additionally, for both the quarterly and annual statistics, the number of FBI queries does not necessarily reflect the number of United States persons associated with these queries. For example, a single United States person might be associated with 10 unique query terms including name, social security number, passport number, telephone number, multiple e-mail addresses, etc. These 10 identifiers could be run 10 different times throughout the reporting period, resulting in 100 queries associated with a single individual. It should also be noted that query terms associated with a United States company are counted as United States person query terms.

(U) Finally, certain steps FBI has taken to ensure United States person protections apply to all United States person queries result in an over-counting of United States person queries. More specifically, FBI has the capability to run queries in which a single query action might include hundreds or thousands of query terms, often referred to as a “batch job.” FBI systems execute such query actions as hundreds or thousands of queries, not one query. However, because FBI systems apply a single United States person label to an entire batch job, if even one query term in such a batch job is associated with a United States person, every term in the batch job carries the United States person label. This means that if one term in a 100-term batch job is associated with a United States person, the query action will be counted as 100 United States person queries, even if the other 99 query terms are not associated with a United States person. This system design ensures that United States person protections are applied to all United States person queries but results in an over-counting of the number of United States person queries actually conducted by the FBI. In addition, the FBI querying procedures require FBI to apply certain presumptions regarding United States person status if an FBI user does not know the status of the relevant person. Therefore, many United States person queries involve queries of identifiers used by individuals who are presumed to be, but may not actually be, United States persons.

(U) It should also be noted that the numbers of United States person queries reported in Figures 13A and 13B do not correct for mislabeling incidents identified by the joint oversight team or FBI. Accordingly, the numbers reported in Figures 13A and 13B are underinclusive in that they do not include queries FBI did not identify as containing United States person query terms that were subsequently determined to contain such terms by the joint oversight team, and are overinclusive in that they do not exclude queries identified as containing United States person query terms that were later determined to not contain any United States person query terms.

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(using the “de-duplicated” counting method).⁹² The totals are provided to enhance transparency and provide context for FBI query incidents and compliance metrics.

⁹² (U) For more information regarding FBI’s methodology, *see* the CY 2022 ASTR at 23-25.

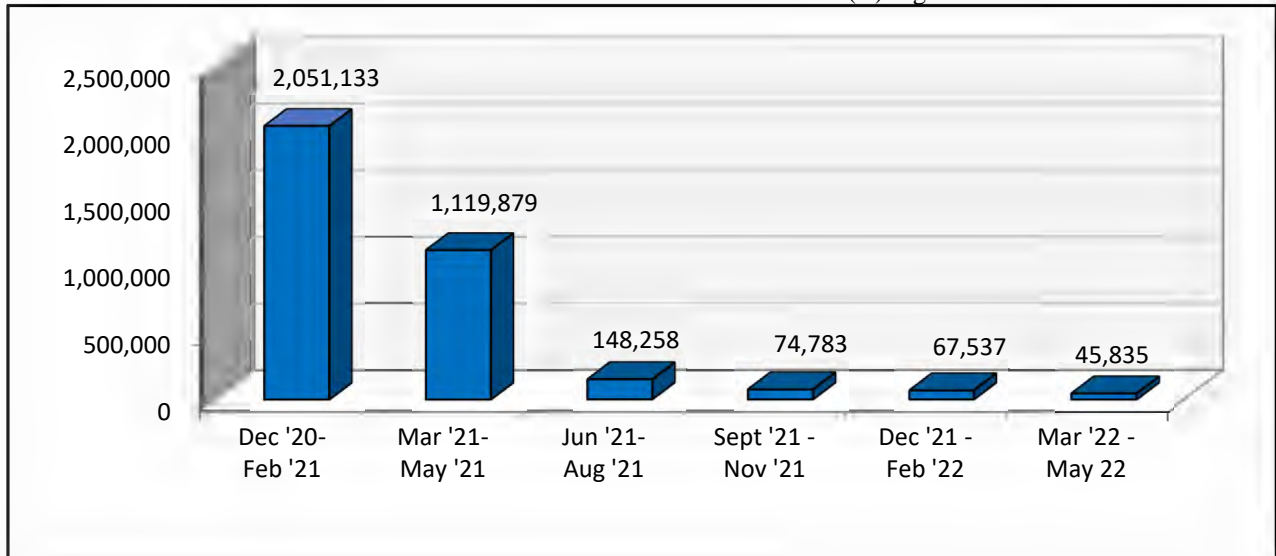
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(U) Figure 13A: FBI United States Person and “Presumed” United States Person Queries Conducted by Quarter, Duplicative Counting Method

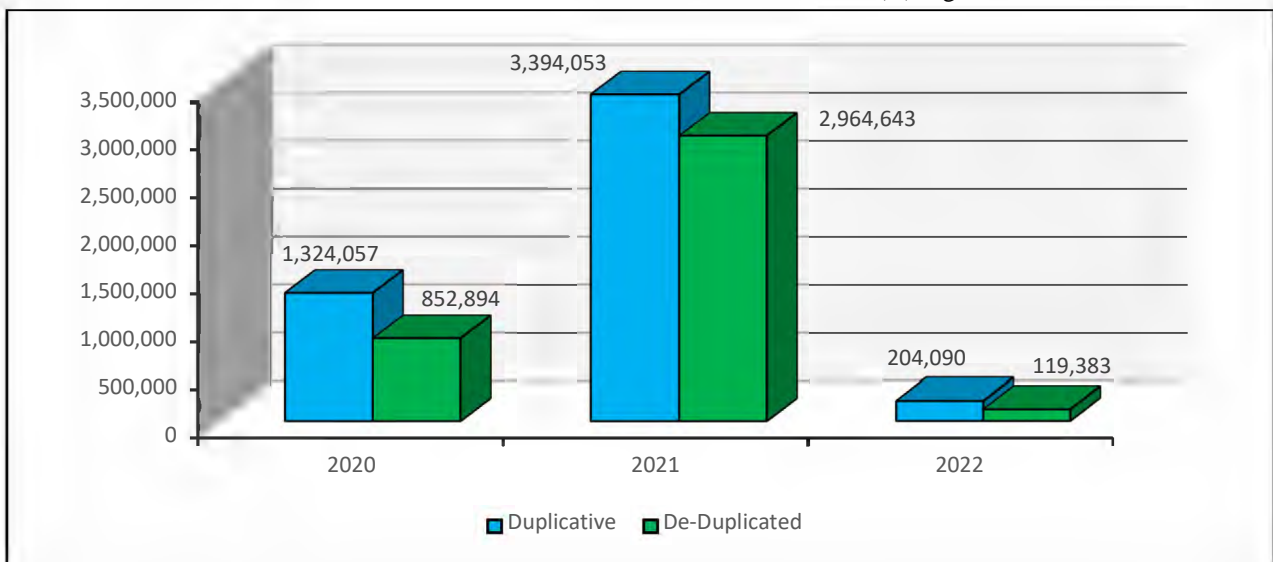
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(U) Figure 13A is ~~SECRET//NOFORN~~.



(U) Figure 13B: FBI United States Person and “Presumed” United States Person Queries Annual Totals⁹³ for 2020, 2021, and 2022, Duplicative and De-Duplicated Counting Methods

(U) Figure 13B is UNCLASSIFIED.



⁹³ (U) The information in Figure 13B regarding FBI queries is tracked and reported quarterly from 1 December to 30 November and, therefore, does not align precisely with calendar year reporting.

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(U) Following a spike in United States person queries in the first half of 2021, driven by several large batch jobs comprising nearly two million total queries,⁹⁴ Figure 13A shows a continuing decline in the number of such queries in the following four quarters. **Notably, the number of United States person queries declined by 96.7 percent quarter over quarter between December 2020 – February 2021 and December 2021 – February 2022.** The joint oversight team assesses this decline was likely due, in part, to the large batch jobs discussed above not being repeated, as well as two remedial measures FBI implemented in summer 2021. The first is that FBI systems now require FBI personnel to expressly opt-in to querying unminimized Section 702-acquired data when running queries. The second is the requirement that, except in exigent circumstances, all batch jobs resulting in 100 or more queries be pre-approved by an FBI attorney. Unlike the overall FBI query compliance incident rate discussed below, which is almost entirely reflective of queries conducted prior to the reporting period, the numbers in Figures 13A and 13B include more recent data, reflecting the number of United States person queries actually conducted during this reporting period and beyond.

(U) *Querying Incidents*

(U) ~~(S//NF)~~ As noted in Figure 12 above, the total number of FBI query compliance incidents reported to the FISC during this period was 16,036. Over 15,000 of those incidents were discovered in connection with the audit conducted by FBI's OIA. Figure 14 provides FBI query compliance incident rates. For reasons discussed below, the FBI query compliance incident rates exclude the results of NSD's review of the query audit conducted by FBI's OIA.

⁹⁴ (U) Those batch jobs concerned one particular cyber threat from Russia related to attempts to compromise United States critical infrastructure. The justification for these queries was reviewed by NSD and found to be compliant with the FBI Section 702 querying procedures. See the CY 2021 ASTR at 20 for additional discussion of these batch jobs.

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~~TOP SECRET//SI//NOFORN~~**(U) Figure 14: FBI Query Compliance Incident Rates (exclusive of queries from OIA audit)⁹⁵**

(U) Figure 14 is UNCLASSIFIED.

Number of FBI queries reviewed by NSD in connection with NSD query reviews during which NSD identified the FBI query compliance incidents reported to the FISC during this reporting period	13,223 ⁹⁶
Number of FBI query incidents identified by NSD and reported to the FISC during this reporting period	994 ⁹⁷
Number of FBI query standard incidents identified by NSD and reported to the FISC during this reporting period	290
Number of FBI query mislabeling incidents identified by NSD and reported to the FISC during this reporting period	702
Overall FBI query compliance incident rate: number of query incidents identified by NSD, divided by number of queries reviewed during NSD query reviews ⁹⁸	7.52 percent
FBI query standard compliance incident rate ⁹⁹	2.19 percent
FBI query mislabeling rate ¹⁰⁰	5.31 percent

⁹⁵ (U) Neither the number of incidents reported in Figure 12, nor the FBI query compliance incident rates in Figure 14, are based on the number of compliance incidents that occurred during a given reporting period. Rather, each is based on incidents that were reported to the FISC as compliance incidents during the reporting period. There may be delays in resolving and reporting compliance incidents after they are first identified, in part, because of delays in the Government's investigation while FBI gathers the relevant facts, or while FBI and NSD discuss whether the facts of a matter constitute a compliance incident. Incidents that occur during a given reporting period may, accordingly, be reported over multiple joint assessments, and the number of incidents reported in a given assessment may include incidents that occurred during multiple periods. The number of query compliance incidents reported in Figure 12 and the FBI query compliance incident rates in Figure 14 may, therefore, include queries and personnel audited by NSD during the reporting period for a prior joint assessment.

(U) In addition, because of the delays in resolving and reporting certain compliance incidents, incidents discovered at a single field office review may be reported in different reporting periods. When that occurs, the total number of FBI queries (or personnel) reviewed by NSD in connection with the relevant query review is included in the denominator of the FBI query compliance incident rates for both reporting periods, even though the total number of FBI query compliance incidents discovered as a result of auditing those queries is split between reporting periods.

(U) It is possible that some of the queries in the logs provided by FBI were not run against Section 702-acquired information but were instead run against other FISA datasets, as NSD's query audits are designed to review compliance with FBI's query requirements in all of its applicable FISA procedures. The FBI query compliance incident rates may also include identical queries that were conducted multiple times. For example, if NSD discovered that the same improper query was conducted on two separate occasions, those would be counted as two queries reviewed and two compliance incidents.

(U) ~~(S//NF)~~⁹⁶ The number of FBI queries reviewed by NSD in connection with NSD query reviews during which NSD identified the FBI query compliance incidents reported to the FISC during this reporting period is lower than the FBI query compliance incidents reported to the FISC during this reporting period because, as discussed below, the vast majority of the query compliance incidents reported to the FISC were part of compliance incidents initially identified by FBI in the course of an FBI audit.

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(U) The FBI query compliance incident rates for this reporting period exclude the results of NSD's review of the query audit conducted by FBI's OIA, discussed further below, which reviewed queries conducted by FBI personnel between 1 April 2020 and 31 March 2021. During the first step in that review, NSD reviewed the same queries that OIA had reviewed as part of its audit and reported a number of noncompliant queries within that sample to the FISC. These noncompliant queries were reported to the FISC during the previous reporting period. As a second step in its review, if any noncompliant queries identified by OIA or during NSD's review of OIA's findings were part of larger batch jobs, NSD requested the logs from those batch jobs because NSD assessed these batches were likely to contain additional noncompliant queries. NSD reviewed these query logs and reported the additional noncompliant queries that were run as part of those batch jobs to the FISC during this reporting period. However, as part of the second step in its review, NSD did not request and review the batch job query logs for any of the compliant queries it had reviewed during the first step in its review that were part of a batch. Because NSD only reviewed batches that NSD knew contained one or more noncompliant queries, and that NSD assessed were likely to contain additional noncompliant queries, any effort to calculate the error rates from the second step of NSD's review would result in figures that were not representative of FBI's compliance with the FBI querying procedures. Accordingly, the query incidents identified in the course of the second step of NSD's review of the OIA query audit are excluded from the calculation of the 7.52 percent overall FBI query compliance incident rate that appears in Figure 14 but are included in the percentages reported in Figure 15 below.

(U) The overall FBI query compliance incident rate of 7.52 percent reported this period is an increase from the prior reporting period's 3.22 percent. The rate increase reflects that query compliance remained a challenge for the FBI through the summer and fall of 2021, when FBI

⁹⁷ ~~(S//NF)~~ For this reporting period, FBI query incidents involving misapplication of the query standard or mislabeling the United States person status of a query term accounted for █████ of the █████ FBI query incidents identified by NSD in connection with FBI query reviews during which NSD identified the FBI query compliance incidents. The remaining █████ FBI query incidents involved violations of Section 702(f)(2).

⁹⁸ ~~(S//NF)~~ The overall query compliance incident rate for FBI represents the total number of FBI query compliance incidents identified by NSD and reported to the FISC during the reporting period, (excluding, for reasons discussed above, the OIA audit incidents), expressed as a percentage of the total number of FBI queries reviewed by NSD in connection with FBI query reviews during which NSD identified such FBI query compliance incidents (excluding queries reviewed in connection with the OIA audit). The number of queries reviewed and included in this total are queries contained in query logs provided to NSD by FBI that were run in FBI's █████. NSD has, in prior query reviews, found that a small percentage of queries that were included in particular query logs were not run against unminimized FISA-acquired information, to include unminimized Section 702-acquired information.

⁹⁹ (U) The FBI query standard compliance incident rate represents the number of FBI query compliance incidents involving a misapplication of the query standard, expressed as a percentage of the total number of FBI queries reviewed by NSD in connection with FBI query reviews during which NSD identified such FBI query compliance incidents. This metric includes all incidents that involved a misapplication of the query standard, some of which may have also involved incorrectly labeling the United States person status of a query term.

¹⁰⁰ (U) The FBI query mislabeling rate represents the number of FBI query compliance incidents involving only incorrectly labeling the United States person status of a query term, expressed as a percentage of the total number of FBI queries reviewed by NSD in connection with FBI query reviews during which NSD identified such FBI query compliance incidents. This metric does not include queries that both violated the query standard and improperly labeled the United States person status of the query term.

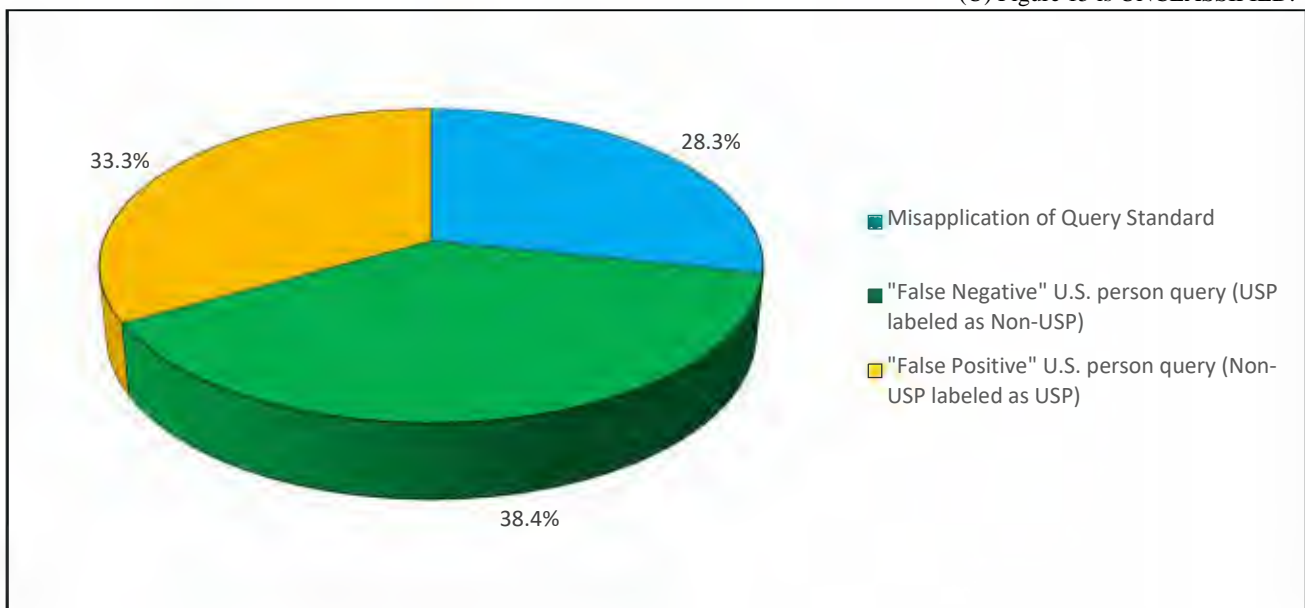
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conducted the queries that were reviewed by NSD during its query reviews at FBI field offices. However, when considering this increase, variations in the size of the denominator used to calculate the FBI query compliance incident rates should be kept in mind. During the previous reporting period, the joint oversight team reported the results of NSD’s agency-wide review of a sample of batch jobs conducted by FBI. As part of this review, NSD reviewed queries associated with approximately 1.9 million query terms related to potential victims of attempts to compromise U.S. critical infrastructure by foreign cyber actors. These queries were included in the denominator used to calculate the FBI query compliance incident rates for the previous reporting period. Because the queries reviewed by NSD and reported this reporting period did not include batch jobs of comparable magnitude, the denominator used to calculate the FBI query compliance incident rates for this reporting period was significantly smaller than it was in the previous reporting period. Variations in the sample size of queries reviewed by NSD, which are influenced by the presence or absence of large batch jobs, can impact the FBI query compliance incident rates.

(U) Figure 15 breaks down the total number of FBI query incidents reported this reporting period into three different incident categories. The first category, “misapplication incidents,” involves FBI’s improper application of the FBI query standard. The latter two incident categories break down the United States person query term “mislabeling incidents” referred to above into two types: first, incidents in which FBI incorrectly labeled a **United States person query term as a non-United States person query term**, referred to as “false negative” incidents; and second, incidents in which FBI incorrectly labeled a **non-United States person query term as a United States person query term**, referred to as “false positive” incidents. Together, these three categories of FBI query incidents account for 99.9 percent of all FBI query incidents reported this reporting period. **There were no identified incidents of FBI personnel intentionally running improper queries during this reporting period.**

(U) **Figure 15: FBI Query Incidents by Type (including queries from OIA audit)**

(U) Figure 15 is UNCLASSIFIED.



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(U) As demonstrated by Figure 15, approximately 72 percent of FBI query incidents reported this reporting period involved only mislabeling of the United States person status of the relevant query term. **These queries all satisfied the query standard.** 38.4 percent of FBI query compliance incidents reported this reporting period involved queries using **United States person query terms** that were mislabeled as queries using **non-United States person query terms**. Many of these incidents involved FBI's failure to correctly apply the querying procedures' presumptions regarding United States person status (which are applied when FBI is unable to determine the status of a user of an identifier). An additional 33.3 percent of all FBI query incidents reported this reporting period involve queries using **non-United States person query terms** that were mislabeled as queries using **United States person query terms**. These errors resulted in the provision of **additional privacy protections, not required by FISA or the querying procedures, to non-United States persons; they did not negatively impact United States person privacy or civil liberties interests.**

(U) Only 28.3 percent of FBI query incidents reported this reporting period involved a misapplication of the FBI query standard. These queries were non-compliant because they were not reasonably likely to return foreign intelligence information or evidence of a crime in unminimized Section 702-acquired information.

~~(S//NF)~~ Excluding the query incidents identified through the OIA audit (which involved queries conducted prior to this reporting period), and as is reflected above in Figure 14, NSD reported [REDACTED] query incidents to the FISC during this reporting period. Of those [REDACTED] query incidents, [REDACTED] were identified during NSD's 2022 FBI field office reviews and involved queries conducted between August and November 2021. The remaining [REDACTED] query incidents were discovered as part of NSD's periodic review of queries identified as being conducted for an evidence-of-a-crime-only purpose. **The [REDACTED] query incidents identified during NSD's 2022 field office reviews largely post-date the batch job and opt-in query reforms FBI implemented in the summer of 2021 (discussed in section IV below). However, these query incidents largely pre-date updated query guidance issued by the joint oversight team, and entirely pre-date the mandatory FBI training based on that query guidance.** Because the query incidents identified by NSD in the course of FBI field office reviews are more indicative of the recent status of FBI query practices than the older queries identified by the OIA audit, the discussion below begins with those query incidents. The discussion then turns to query incidents arising out of special requirements that apply to queries conducted solely to retrieve evidence of a crime, and concludes with an analysis of the FBI query incidents reported by NSD during this reporting period based on a review of FBI's OIA audit.

(U) FBI Query Incidents Identified During NSD's 2022 FBI Field Office Reviews

(U) The following types of query incidents were identified during NSD's reviews of FBI queries conducted at FBI field offices. Certain incidents involve queries that were improper for multiple reasons—for example because they both mislabeled the United States person or non-United States person status of a relevant query term and because they otherwise failed to satisfy the FBI Section 702 query standard. A query that is improper for multiple reasons is only counted as one incident and is generally counted as an incident caused by misapplication of the query standard.

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~~TOP SECRET//SI//NOFORN~~**(U) (1) Query Incidents Caused by Mislabeling United States Person Query Terms**

(U) During this reporting period, 67.5 percent of FBI query incidents identified during NSD reviews of FBI field offices resulted from FBI personnel mislabeling United States person query terms. 55.4 percent of these query incidents involved FBI incorrectly labeling a United States person query term as a non-United States person query term, while 44.6 percent of mislabeling incidents involved the opposite error—incorrectly labeling a non-United States person query term as a United States person query term. In other words, 30.1 percent of all FBI query incidents identified by NSD in connection with NSD field office reviews were “false positive” query incidents, in which FBI reported the use of United States person query terms when there was in fact no United States person query term to report. The joint oversight team has found that a common issue involves FBI users mislabeling FBI case file numbers or identification numbers of FISA-acquired products (both of which are FBI-generated numbers that do not identify individual persons) as United States person query terms when they should have been identified as non-United States person query terms. The joint oversight team is working with FBI to address this issue.

~~(S//NF)~~ In one example, NSD’s review of the [REDACTED] identified [REDACTED] queries conducted by eight users in FBI’s [REDACTED] against unminimized Section 702-acquired information for which the relevant user did not correctly identify the United States person status of the query terms used.¹⁰¹ Of the [REDACTED] total queries with mislabeled query terms, [REDACTED] queries used FBI case file numbers or [REDACTED] product identification numbers as query terms that the users mislabeled as United States person or presumed United States person query terms. The mislabeled identifiers also included query terms labeled as non-United States person query terms when facts known to FBI at the time of the queries indicated that they should have been labeled as United States person or presumed United States person identifiers. For example, due to a misunderstanding about the definition of United States person, one query used the name of a United States company and mislabeled the query as containing a non-United States person identifier. Conversely, NSD identified queries for which the query terms were mislabeled as United States person or presumed United States person identifiers when facts known to FBI at the time of the queries indicated that they should have been labeled as non-United States person query terms, including one query [REDACTED] of a non-United States person and [REDACTED] queries of the full name of a non-United States person. Additionally, NSD [REDACTED] queries that used various types of identifiers associated with evacuees from a foreign country and their family members. FBI explained that there was confusion among those participating in a related FBI program regarding the United States person status of the nationals from that foreign country, because it was believed that those evacuees had an unusual United States immigration status. Although FBI did not have facts indicating that these individuals qualified as United States persons or as presumed United States persons under the FBI querying procedures, FBI labeled these individuals’ identifiers as United States person or presumed United States person query terms.

(U) (2) Query Incidents Caused by Misapplication of the Query Standard

(U) During this reporting period, 32.5 percent of FBI query incidents identified during NSD reviews of FBI field offices resulted from FBI personnel misunderstanding or misapplying the

¹⁰¹ ~~(S//NF)~~ See FBI Incidents [REDACTED].

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querying standard. Even though the queries were conducted for work-management or work-related purposes, these queries were not reasonably likely to retrieve foreign intelligence information or evidence of a crime in unminimized Section 702-acquired information, because there were no specific facts linking the individual or query term to the type of information generally found in FBI's unminimized Section 702 collection and, thus, such queries constituted compliance incidents. In most of the instances, FBI personnel did not fully understand how to apply or interpret the query standard. The joint oversight team and FBI continue to work to address these types of incidents through regular and remedial training.

~~(S//NF)~~ In one example, during NSD's review of FBI's ██████████, NSD identified ██████████ non-compliant queries conducted by an agent that used identifiers of a United States person against unminimized FISA collection.¹⁰² When interviewed, the agent explained that he had met the United States person outside of his FBI job duties, and that the United States person had invited the agent to speak to his company's security team about the kind of work the agent did for FBI. The agent then conducted a query in ██████████ using the United States person's name and opted in to querying unminimized Section 702-acquired information, in order to see if FBI's systems contained any derogatory information on the United States person before the agent agreed to speak with the security team of the United States person's company. NSD assessed that the queries did not satisfy the justification requirement of the query standard because FBI did not have a specific factual basis to believe that the queries were reasonably likely to retrieve foreign intelligence information or evidence of a crime from unminimized Section 702-acquired information.

~~(S//NF)~~ In another example, NSD's review of the ██████████ revealed that an FBI analyst conducted one query using the name of a United States person as a query term.¹⁰³ The individual had family in a foreign country, and the FBI user conducted the query in order to vet the individual, whom the FBI was considering as a potential confidential human source. FBI did not have specific information connecting the individual to the government in the foreign country, a terrorist group in that country, or another foreign power. NSD assessed that this query did not satisfy the justification requirement of the query standard because FBI did not have a specific factual basis to believe the query was reasonably likely to retrieve foreign intelligence information or evidence of a crime from unminimized Section 702-acquired information.

~~(S//NF)~~ Further, some noncompliant queries were conducted in connection with immigration vetting, domestic terrorism investigations, or criminal investigations unrelated to national security, in which FBI lacked a specific factual basis to believe that the queries were reasonably likely to retrieve foreign intelligence information or evidence of a crime from the unminimized Section 702 collection. For example, NSD's review of the ██████████ identified ██████████ non-compliant queries of evacuees from a specific foreign country for immigration vetting purposes, one non-compliant query related to an individual who was reportedly planning a domestic terrorism attack at a religious establishment, and ██████████ non-compliant queries as part of an assessment of someone who exited an airplane before takeoff and was overheard stating that he "did not feel like crashing the

¹⁰² ~~(S//NF)~~ See FBI Incidents ██████████
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¹⁰³ ~~(S//NF)~~ See FBI Incidents ██████████
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plane that day.”¹⁰⁴ In each case, NSD assessed that FBI did not have did not have a specific factual basis to believe that the queries were reasonably likely to retrieve foreign intelligence information or evidence of a crime from unminimized Section 702-acquired information.

(U) (3) *Query Incidents Caused by Unintentional Queries of FISA-Acquired Information*

(U) There were no errors reported this period that NSD assessed resulted from FBI personnel inadvertently querying unminimized Section 702-acquired information. The joint oversight team assesses this is likely due to the change to FBI systems implemented in summer 2021 requiring FBI personnel to intentionally opt-in to unminimized Section 702-acquired information if the user wants to query that dataset.

(U) Incidents Related to Queries Conducted Solely for an Evidence of a Crime Purpose

(U) There are several requirements associated with queries conducted solely to retrieve evidence of a crime. The first is a statutory approval requirement that pertains to United States person queries conducted in connection with a predicated criminal investigation unrelated to national security. The second is a FISC-mandated quarterly reporting requirement and pertains to all United States person queries conducted solely to retrieve evidence of a crime, whether or not associated with a predicated criminal investigation.¹⁰⁵

(U) With respect to the first requirement, Section 702(f)(2)(A) of FISA provides that FBI may not access the results of a query conducted in connection with a predicated criminal investigation not related to national security, using a United States person query term, that was not designed to find and extract foreign intelligence information, unless FBI applies for an order from the FISC, based on probable cause, and the FISC enters an order approving the application. During this reporting period, and consistent with the previous reporting period, a small number of compliance incidents involved violations of Section 702(f)(2)(A).¹⁰⁶ However, these types of incidents have been a recurring compliance issue for FBI, and since 2018, when Section 702(f)(2)(A) was added to FISA, FBI has never applied for a Section 702(f)(2)(A) order from the FISC.

(U) In one such incident, an FBI special agent accessed Section 702-acquired information returned by a query that used a United States person query term solely to retrieve evidence of a crime unrelated to national security.¹⁰⁷ The special agent conducted the query based on a lead that was sent by another FBI field office related to the 6 January 2021 breach of the U.S. Capitol (the

¹⁰⁴ ~~(S//NF)~~ See FBI Incidents ██████████

¹⁰⁵ (U) As noted above in footnote 80, in its order approving the 2021 Certifications, the FISC revised and added to these quarterly reporting requirements.

¹⁰⁶ ~~(S//NF)~~ There were ██████ such incidents during this reporting period, up from ██████ such incidents during the prior reporting period. See FBI Incidents ██████████. As noted above in footnote 95, the number of compliance incidents reported in joint assessments reflect the number of compliance incidents that were reported to the FISC during the relevant reporting period, rather than the number of compliance incidents that occurred during the reporting period. Accordingly, the number of incidents involving Section 702(f)(2) reported in ODNI’s CY 2022 ASTR may differ from the number of such incidents reported in the corresponding joint assessments.

¹⁰⁷ ~~(S//NF)~~ See FBI Incidents ██████████

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“Capitol Breach”). At the time of the query, that other field office had opened a predicated criminal investigation relating to the Capitol Breach. The special agent believed that the Capitol Breach was an event that implicated the national security of the United States. However, NSD assessed that the query was conducted solely to retrieve evidence of a crime unrelated to national security. FBI advised that it has not used the query results for any further analytical, investigative, or evidentiary purpose.

(U) With regard to the second requirement, the FISC has mandated quarterly reporting of all United States person queries not designed to find and extract foreign intelligence information, whether or not they involve predicated criminal investigations. During this period, NSD discovered one query using a United States person query term solely to find and extract evidence of a crime that was not timely reported to the FISC. NSD also assessed that there were no specific facts linking the terms used in this query to the type of information generally found in FBI’s unminimized Section 702 collection and, accordingly, NSD reported this query to the FISC as a violation of the query standard.¹⁰⁸

(U) Following the quarterly reporting of queries conducted solely to retrieve evidence of a crime to the FISC, NSD reviews those queries to determine if they were compliant with the FBI querying procedures. Through these reviews, NSD identified 10.9 percent of the non-OIA audit query incidents reported during this reporting period. Almost all of those query incidents involved “false positive” query incidents, in which FBI mislabeled non-United States person queries as United States person queries.

(U) **FBI Query Incidents Identified During NSD’s Review of the FBI OIA Query Audit**

~~(S//NF)~~ As reported in the 27th Section 707 Report, FBI established OIA in fall 2020 to augment FBI’s internal compliance functions. OIA commenced an audit of FBI queries of unminimized FISA-acquired information in May 2021 and conducted interviews and data gathering through June 2021. The queries audited by OIA were conducted by users in multiple FBI field offices, as well as FBI headquarters elements. In the 27th Section 707 Report, NSD reported that, through an initial review of OIA’s findings, NSD had identified █████ queries of Section 702-acquired data that did not comply with the FBI Section 702 querying procedures. NSD subsequently completed its review of all queries audited by OIA, and identified an additional approximately █████ queries of unminimized Section 702-acquired information in █████ that did not comply with the FBI Section 702 querying procedures, including one query that did not comply with the requirements of Section 702(f)(2) of FISA. Approximately 94 percent of the FBI query incidents reported during this reporting period were discovered in connection with this review, and more than 99 percent of those query incidents involved batch jobs. This subsection discusses the errors identified as part of NSD’s review of the OIA audit that were reported this reporting period.¹⁰⁹

¹⁰⁸ ~~(S//NF)~~ See FBI Incidents █████ On 29 October 2020, an intelligence analyst with FBI’s █████ accessed content acquired pursuant to Section 702 of FISA in response to a query of an online account username associated with a United States person who had been involved in a physical altercation between protestors. FBI has confirmed that this query was not run in connection with a predicated criminal investigation.

¹⁰⁹ ~~(S//NF)~~ See FBI Incidents █████ for discussion of the FBI query incidents identified through NSD’s review of the FBI OIA query audit.

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(U) (1) Query Incidents Caused by Mislabeling United States Person Query Terms Identified as part of OIA Audit

(U) Approximately 71.8 percent of FBI query incidents identified through NSD's review of the FBI OIA query audit resulted from FBI personnel mislabeling United States person query terms. Approximately 54 percent of these mislabeling query incidents resulted from FBI personnel mislabeling United States person query terms as non-United States person query terms ("false negative" incidents), while the remaining 46 percent of mislabeling incidents resulted because FBI personnel mislabeled non-United States person query terms as a United States person query terms ("false positive" incidents). Stated alternatively, approximately one-third of the query incidents reported as a result of NSD's review of the OIA audit involved mislabeling queries of non-United States person identifiers as queries of United States person identifiers; these queries did not impact United States person privacy interests and did not involve a misunderstanding or misapplication of the query standard.

~~(S//NF)~~ These mislabeling query incidents include, for example, a query conducted by an FBI staff operations specialist (SOS) in FBI's [REDACTED] as part of a larger batch job [REDACTED] [REDACTED] the batch as containing exclusively non-United States person query terms. NSD assessed that based on the information known to the SOS, [REDACTED] this was a misapplication of the presumptions regarding United States person status included in Section III(B) of the FBI querying procedures and that these queries should have been treated as United States person query terms.

~~(S//NF)~~ In an example of FBI mislabeling a non-United States person query term as a United States person query term, an FBI special agent in FBI's [REDACTED] mislabeled a query [REDACTED] a United States person identifier. In another such example, an intelligence analyst in FBI's [REDACTED] [REDACTED] mislabeled [REDACTED] [REDACTED] as a United States person identifier.

(U) (2) Query Incidents Caused by Misapplication of the Query Standard Identified as part of OIA Audit

(U) Of the FBI query incidents identified through NSD's review of the FBI OIA query audit, 28.2 percent resulted from FBI personnel misunderstanding or misapplying the querying standard. As with the query incidents of the same type identified as part of NSD field office reviews, even though these queries were conducted for work-management or work-related purposes, the queries were not reasonably likely to retrieve foreign intelligence information or evidence of a crime because there were insufficient facts linking the individual or query term to the type of information generally found in FBI's unminimized Section 702 collection and, thus, such queries constituted compliance incidents. In most of the instances, FBI personnel did not fully understand the application of the query rules.

~~(S//NF)~~ In one example of FBI query misapplication incidents identified through NSD's review of the FBI OIA query audit, an FBI SOS in FBI's [REDACTED] ran a batch job of [REDACTED] queries [REDACTED]

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[REDACTED] The SOS ran these queries [REDACTED]

NSD assesses that the user did not have a specific factual basis to believe that any individual query within the batch job was reasonably likely to retrieve foreign intelligence information or evidence of a crime from unminimized FISA information.

(U) IV. Compliance Assessment

(U) The joint oversight team finds that during this reporting period, FBI has continued to implement its targeting and minimization procedures and follow the guidelines in a manner that reflects a focused and concerted effort by agency personnel to comply with the targeting and minimization requirements of Section 702. The personnel involved in implementing the Section 702 authorities are appropriately directing their targeting efforts at non-United States persons reasonably believed to be located outside the United States for the purpose of acquiring foreign intelligence information. Processes have been put in place to implement these authorities and to impose internal controls for compliance and verification purposes.

(U) With respect to FBI queries of unminimized Section 702 collection, mislabeling of United States person queries and misapplication of the query standard continued to cause a significant number of query incidents. The overall FBI query compliance incident rate reflects that these errors persisted through summer and fall of 2021, when FBI conducted the queries that were reviewed by NSD during its query reviews at FBI field offices. While this period post-dates some of the remedial measures undertaken to address FBI query compliance (discussed further below), all of the noncompliant queries reported during this period were conducted prior to the FBI mandatory query training in December 2021 and January 2022. Additionally, **while the overall FBI query compliance incident rate more than doubled from the previous reporting period compared to this reporting period, the total number of FBI query compliance incidents, including those identified as part of FBI's OIA audit, declined by a factor of five relative to the previous period.** In addition, the overall FBI query compliance incident rate for the prior period was impacted by the nearly two million queries, resulting from several batch jobs, that were determined to be compliant by NSD. These queries drove down the overall FBI query compliance incident rate for the prior period by adding zero to the numerator used to calculate the rate and adding nearly two million to the denominator.

(U) More recent data, reflecting FBI queries that were *conducted* during this reporting period (December 2021 through May 2022), suggest that FBI querying practices have undergone a significant change. Most notably, the total number of United States person queries conducted by FBI declined by 96.7 percent quarter over quarter between December 2020 – February 2021 and December 2021 – February 2022. The joint oversight team assesses that this dramatic reduction in United States person queries, as well as the overall decline in FBI query incidents, are likely the result of remedial efforts to promote query compliance, discussed further below. NSD's query reviews have also revealed a decrease in the number of large batch jobs being run by FBI personnel. Although outside this reporting period, the FBI's overall FBI query compliance incident rate decreased during the next joint assessment period, and, in fact, the FBI query standard compliance incident rate decreased to approximately 1.04 percent. Similarly, the FISC in its 2023 Section 702 certification opinion calculated an FBI query standard compliance incident rate of approximately

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1.7 percent.¹¹⁰ The joint oversight team assesses that the remedial measures described herein have had a positive impact on FBI's overall query compliance. The joint oversight team will continue to assess the efficacy of these remedial measures based on ongoing query audit data.

(U) A. Query Guidance

(U) As a result of the findings from NSD's reviews and observations of the FISC related to these query incidents, NSD, in consultation with ODNI, developed guidance on the query standard for FBI personnel. This guidance document is designed to supplement training on the querying standard and provides a fulsome explanation of the query standard. The guidance document also includes multiple examples of the application of the guidance to particular factual scenarios. On 1 November 2021, NSD provided this guidance document to FBI, and FBI has provided this guidance document to users with access to unminimized FISA-acquired information. NSD anticipates that this additional guidance document will facilitate the correct application of the querying standard. The joint oversight team works closely with FBI to provide additional guidance as query compliance trends become apparent. For example, based on its 2022 query reviews, NSD identified certain compliance trends and areas where additional guidance was warranted for users. NSD and FBI's Office of General Counsel conveyed this information to FBI field office Chief Division Counsels for distribution to their personnel.

(U) B. Enhanced Training

(U) Based on the above guidance regarding the querying standard, FBI has undertaken additional training for FBI personnel focused specifically on the querying requirements. FBI developed mandatory training on the query standard, as well as the Section 702 querying procedures and statutory requirements, and deployed the training in December 2021. At the end of 2022, FBI deployed a new, three-part, interactive training on the query standard. As with the query training FBI deployed in 2021, the new training is mandatory and must be completed on an annual basis—users who do not complete the training will lose their ability to query unminimized FISA-acquired information. In addition, NSD resumed its onsite query-related training at FBI field offices in early 2022, which covers the elements of the FBI query standard as well as the United States person query term labeling requirements. FBI continues to work closely with the joint oversight team to revise and refine its trainings, and to identify ways to flag compliance advisories for FBI personnel in the course of their day-to-day operational work.

(U) C. Attorney Review of Batch Jobs

(U) To address query compliance incidents resulting from batch jobs, where a single improper decision or assessment by FBI personnel can result in a large number of compliance incidents, in June 2021, FBI implemented a new policy requiring that individual queries conducted using the batch job tool in an FBI system resulting in 100 or more queries receive FBI attorney approval prior to the queries being conducted. This added layer of review is designed to mitigate the risk that queries with a significant potential to impact privacy and civil liberties equities will not comply with FBI's Section 702 querying procedures. In September 2023, FBI expanded this pre-approval requirement to apply to all batch jobs.

¹¹⁰ (U) See the 2023 Opinion at 84.

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~~TOP SECRET//SI//NOFORN~~**(U) D. System Changes**

(U) ~~(S//NF)~~ Prior to June 2021, the main FBI systems containing unminimized Section 702-acquired information were configured to automatically include FISA datasets, including data acquired pursuant to Section 702 of FISA, and any other datasets the user was authorized to access unless personnel intentionally excluded, or opted-out of, such data. In June and August of 2021, FBI implemented system changes altering the default setting in these systems to exclude Section 702-acquired information from queries. Pursuant to this change, a user must now affirmatively opt-in to unminimized Section 702-acquired information, thus decreasing the likelihood that the user will unintentionally query Section 702-acquired data.

(U) During the prior reporting period, FBI also implemented a system change that requires users to write their own free-text justification for a query of unminimized Section 702-acquired information if the user seeks to access Section 702 content returned from such a query and the query includes United States person identifiers. Prior to this change, users selected a justification from a pre-populated drop down menu of options. The joint oversight team assesses that reviewing these case-specific justifications will enable both internal FBI overseers and external overseers at NSD and ODNI to better determine whether FBI personnel understand the querying standard and will require FBI personnel to more actively engage with and think about the query standard.

(U) E. Pre-approval for Sensitive Queries

(U) In March 2022, FBI put in place requirements for users to obtain pre-approval from senior FBI officials prior to conducting certain sensitive queries, such as queries of domestic public officials and members of the news media. These pre-approvals are documented and subject to audit by the joint oversight team.

(U) F. 2023 Reforms

(U) On 12 June 2023, FBI notified Congress of additional remedial measures, including measures aimed at ensuring accountability for FBI's compliance with the query requirements. As of September 2023, FBI systems require that FBI personnel document the justification for United States person queries of unminimized Section 702-acquired information prior to executing the query, instead of prior to accessing the contents of any Section 702 collection that was retrieved by the query. Additionally, as stated above, as of September 2023, FBI expanded the attorney pre-approval requirement for batch jobs of unminimized Section 702-acquired information resulting in 100 or more queries to apply to all batch jobs, regardless of the number of resulting queries.

(U) FBI has also established a new policy with escalating consequences for performance incidents involving negligence related to FISA queries. Under this policy, following an instance of employee negligence with respect to running a query, the employee's access to FISA will be suspended until the employee retakes all mandatory FISA training, executes a signed performance remediation certification, and receives one-on-one training with an FBI attorney. Subsequent incidents trigger more intensive training (*e.g.*, attending a DOJ-led query review), and may result in the employee's indefinite loss of FISA access, reassignment to a different role, or referral to FBI's Inspection Division. The policy makes clear that, subsequent to a determination by FBI of intentional or reckless misconduct when conducting queries of unminimized FISA collection, the suspension of FISA access and a referral to the FBI's Inspection Division for investigation of a

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potential violation of FBI's Offense Codes and Penalty Guidelines Governing FBI's Internal Disciplinary Process is required.

(U) In addition, FBI is in the process of implementing a new "Field Office Health Measure" that requires the leadership of FBI field offices to convene meetings at least semiannually to assess FISA compliance and the potential for proactively implementing compliance-enhancing measures within their respective field offices. The new Field Office Health Measure took effect in October 2023.

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~~TOP SECRET//SI//NOFORN~~**(U) SECTION 5: ASSESSMENT OF SECTION 702 ACTIVITIES – CIA****(U) I. Joint Oversight of CIA**

(U) CIA is authorized to collect Section 702 information under all certifications. While it does not engage directly in targeting or acquisition, it nominates potential targets to NSA for review and processing. If approved for targeting, NSA will either task CIA facilities associated with the target to an electronic communication service provider or pass the request on to FBI for processing.

(U) CIA may also request dual-routed collection for targets originally nominated by another agency. CIA provides NCTC with access to certain unminimized collection and disseminates minimized collection through intelligence reporting. Finally, CIA may query its collection using United States person and non-United States person identifiers for the purpose of retrieving foreign intelligence information.

(U) Because CIA nominates potential Section 702 targets to NSA, and because NSA routinely relies on CIA lead information to target a number of facilities pursuant to Section 702, the joint oversight team typically conducts reviews of CIA, including of its original source documentation underlying lead information. Because those reviews ultimately impact NSA's targeting and the application of NSA's targeting procedures, the results of those reviews are included in the bimonthly NSA review reports discussed previously. CIA has established internal compliance mechanisms and procedures to oversee proper implementation of its Section 702 authorities. Those processes are further described in the Appendix.

(U) The reviews also focus on CIA's application of its Section 702 minimization and querying procedures. Reports for each of those reviews have previously been provided to the congressional committees with the Section 707 Report. For this reporting period, the joint oversight team conducted reviews of CIA's application of its minimization and querying procedures during the dates shown in Figure 16.

(U) Figure 16: CIA Reviews

(U) Figure 16 is UNCLASSIFIED.

Approximate Dates of Review	Minimization and Querying Reviewed
March 2022	1 December 2021 – 31 January 2022
May 2022	1 February 2022 – 31 March 2022
July 2022	1 April 2022 – 31 May 2022

(U) Section 702-acquired communications received by CIA must be minimized pursuant to CIA's minimization procedures. As a part of the typical reviews, the joint oversight team examines documentation related to CIA's retention and dissemination of Section 702-acquired information. NSD reviews all justifications regarding communications acquired under Section 702 and identified as containing United States person information that have been minimized and retained by CIA. Reviewers ensure that communications have been properly minimized and coordinate with CIA personnel if they identify any issues involving the proper application of CIA's minimization

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procedures. The team also reviews all disseminations of information acquired under Section 702 that CIA identified as potentially containing United States person information.¹¹¹

(U) NSD reviews CIA's written foreign intelligence justifications for all queries using United States person identifiers of unminimized Section 702-acquired information to assess whether those queries were compliant with CIA's querying procedure requirements, including that such queries were reasonably likely to retrieve foreign intelligence information, as defined by FISA.

(U) In addition to the bimonthly reviews, throughout the reporting period, the joint oversight team investigates and reports incidents of non-compliance with CIA's minimization and querying procedures, the Attorney General Acquisition Guidelines, or other agencies' procedures in which CIA is involved.¹¹² Investigations are coordinated through CIA's FISA Program Office and CIA OGC, and when necessary, may involve requests for further information, meetings with CIA legal, analytical and/or technical personnel, or the review of source documentation. All compliance incidents identified through those investigations are reported to the congressional committees in the Section 707 Report and to the FISC.

(U) II. CIA Training

(U) During this reporting period, CIA provided targeted FISA training for attorneys it embeds with CIA operational personnel who regularly handle FISA matters, and continued to provide FISA training to any attorney beginning an assignment that may involve the provision of legal advice on FISA matters. Additionally, CIA provided required training to anyone handling unminimized Section 702-acquired information, as well as anyone participating in the Section 702 nomination process. Furthermore, CIA has issued guidance to its personnel about how to properly conduct United States person queries that are reasonably likely to retrieve foreign intelligence information.¹¹³

(U) III. Section 702 Data and Compliance Trends

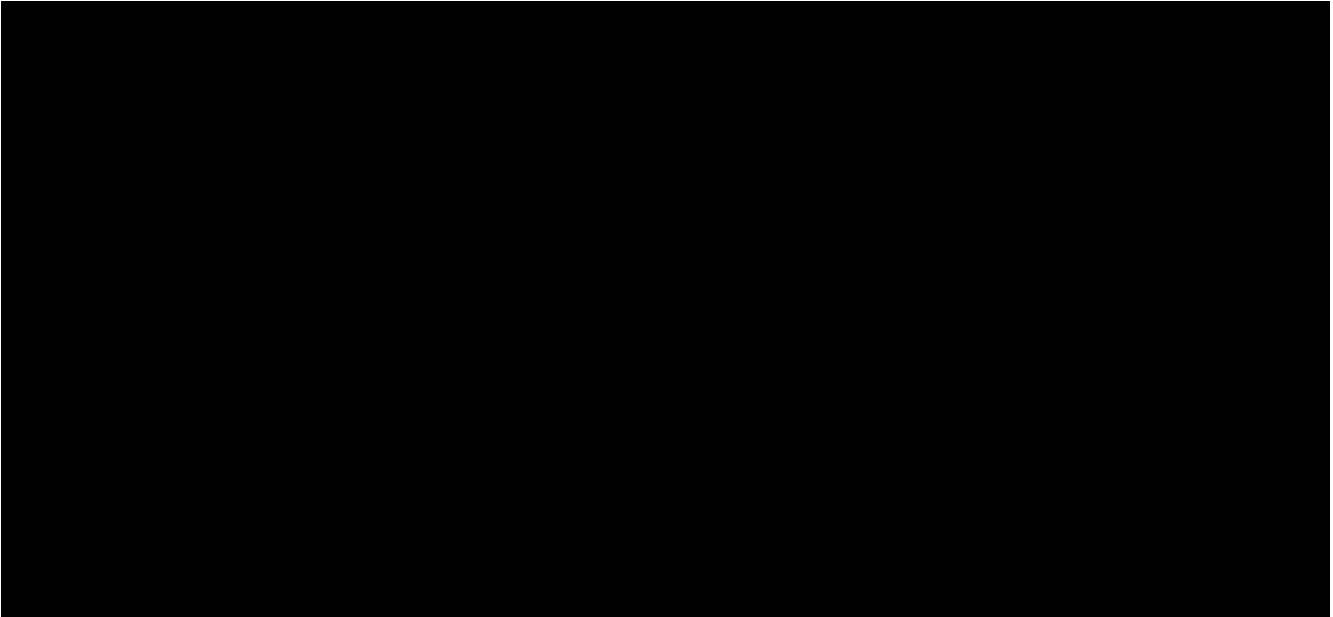
(U) ~~(S//NF)~~ Figure 17 provides the classified number of minimization and querying incidents that involved CIA for the last ten reporting periods. As Figure 17 indicates, there were zero compliance incidents reported to the FISC during this reporting period that involved CIA's minimization and querying procedures, consistent with the generally low number of such incidents.

¹¹¹ ~~(S//NF)~~ Due to the sensitive nature of these disseminations, they must be reviewed [REDACTED]

¹¹² (U) Insofar as CIA nominates facilities for tasking and reviews content that may indicate that a target is located in the United States or is a United States person, some investigations of possible non-compliance with NSA's targeting procedures can also involve CIA.

¹¹³ (U) See "USP Query Guidance for Personnel with Access to Unminimized FISA Section 702 Data." As discussed in previous joint assessments, in response to the aforementioned ACLU FOIA case, CIA's guidance document was posted, in redacted form, on ODNI's [intel.gov](https://www.intel.gov) website via the IC on the Record database on 11 April 2017, see Document 15 "CIA's United States Person Query Guidelines for Personnel."

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~~TOP SECRET//SI//NOFORN~~**(U) Figure 17: Number of Compliance Incidents Involving CIA's Minimization and Querying Procedures****(U) A. Minimization Data and Incidents**

(U) Figure 18 provides the number of disseminations containing United States person information identified by CIA in the last ten reporting periods, excluding certain disseminations to NCTC. Although CIA Section 702 nominations were appropriately focused on non-United States persons located overseas, United States person information may be incidentally collected when the target of collection communicates with or talks about a United States person. Such information may be disseminated if it constitutes foreign intelligence or evidence of crime. While the vast majority of these disseminations have been compliant, the total number of disseminations identified by CIA are provided for context when assessing compliance incidents over time. The number of CIA-identified disseminations containing United States person information has fluctuated over the years, but those fluctuations, whether upward or downward, generally have been incremental.

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(U) Figure 18: Disseminations Identified by CIA as Containing Minimized Section 702-Acquired United States Person Information (excluding Certain Disseminations to NCTC)



~~(S//NF)~~ During this reporting period, CIA identified [REDACTED] disseminations of Section 702-acquired information containing minimized United States person information, a significant decrease from the prior period. CIA also permits some NCTC personnel to have access to a database containing certain CIA operational cables. These cables have not been included in the above numbers because some of the operational cables were duplicative of the other disseminations CIA has already identified, while a number of others were determined to not contain United States person information.

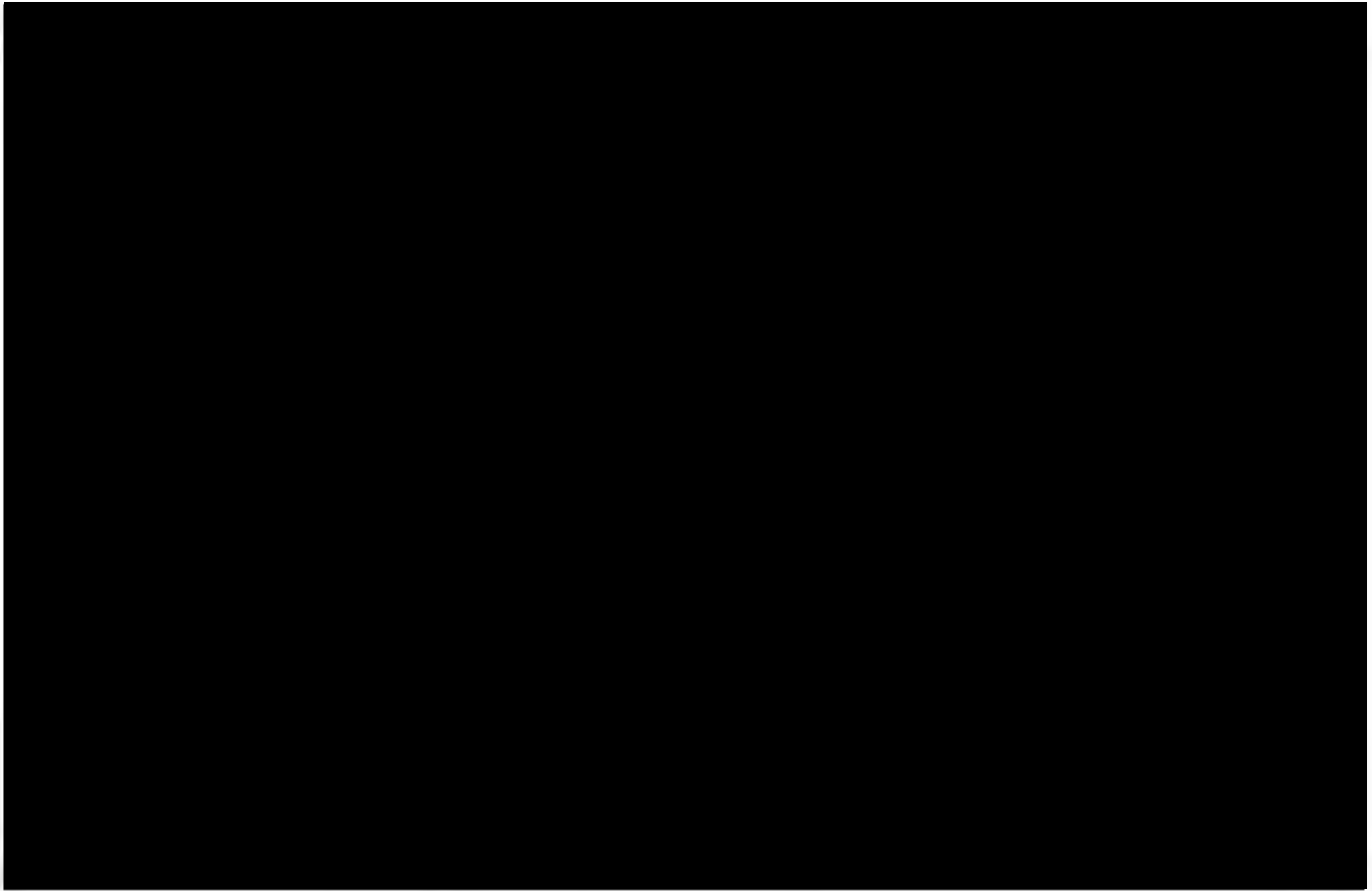
(U) CIA also tracks the number of files its personnel determine are appropriate for broader access and longer-term retention. The CIA minimization procedures must be applied to those files before they are retained or transferred to systems with broader access.¹¹⁴ Figure 19 presents the total number of files that were either retained or transferred, as well as the number of those retained or transferred files that contain identified United States person information. The percentage of retained or transferred files identified by CIA as potentially containing United States person information has remained consistently low over the last ten reporting periods.

¹¹⁴ ~~(S//NF)~~ The files retained may contain [REDACTED]. In making those retention decisions, CIA personnel are required to identify any files potentially containing United States person information.

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(U) Figure 19: Total CIA Files Retained or Transferred and Total Retained or Transferred Files that Contained Potential United States Person Information¹¹⁵





(U) B. Querying Incidents

(U) ~~(S//NF)~~ During this reporting period, there were zero incidents involving non-compliance with CIA's querying procedures.

(U) IV. Compliance Assessment

(U) During this reporting period, the joint oversight team found that CIA continued to implement the procedures and follow the guidelines in a manner that reflects a focused and concerted effort by agency personnel to comply with the requirements of Section 702. The joint oversight team assesses that CIA's achievement of zero compliance incidents in this reporting period is a result of training, internal processes designed to identify and remediate potential compliance issues, and a continued focus by internal and external oversight personnel to ensure compliance with the applicable minimization and querying procedures.

¹¹⁵ ~~(S//NF)~~ Increases noted in Figure 18 during the prior reporting period (June 2021 – November 2021), as compared to the 26th reporting period (December 2020 – May 2021) were likely due, at least in part, to 


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~~TOP SECRET//SI//NOFORN~~**(U) SECTION 6: ASSESSMENT OF SECTION 702 ACTIVITIES – NCTC****(U) I. Joint Oversight of NCTC**

(U) NCTC is authorized to receive unminimized Section 702-acquired information and has access to certain systems administered by other agencies that contain minimized Section 702 information pertaining to counterterrorism. NCTC may also receive dual-routed unminimized Section 702-acquired communications. NCTC's processing, retention, dissemination, and querying of such information is subject to its Section 702 minimization and querying procedures.

(U) Unlike NSA, FBI, and CIA, NCTC does not directly engage in targeting or acquisition, nor does it nominate potential Section 702 targets to NSA. NCTC has established internal compliance mechanisms and procedures to oversee proper implementation of its Section 702 authorities. Because NCTC acquires unminimized Section 702 information, the joint oversight team typically conducts minimization and query reviews of NCTC, and the results of those reviews are included in bimonthly NCTC review reports. Separately, the joint oversight team also conducts an annual review of NCTC's processes and systems for handling Section 702-acquired information. The most recent such annual process review occurred in July 2022.

(U) Reports for each of those reviews have been provided to the congressional committees with the Section 707 Report. For this reporting period, reviews of NCTC's application of its minimization and querying procedures were conducted during the dates shown in Figure 20.

(U) Figure 20: NCTC Reviews

(U) Figure 20 is UNCLASSIFIED.

Approximate Dates of Review	Minimization and Querying Reviewed
January 2022 – February 2022	1 November 2021 – 31 December 2021
March 2022 – April 2022	1 January 2022 – 28 February 2022
May 2022 – June 2022	1 March 2022 – 30 April 2022

(U) As a part of the bimonthly reviews, the joint oversight team examines documents related to NCTC's retention, dissemination, and querying of Section 702-acquired information. The joint oversight team reviews logs of all communications intercepts acquired under Section 702 that have been minimized and retained by NCTC, irrespective of whether they contain United States person information, but only reviews the contents of those communications intercepts if they contain United States person information. Reviewers ensure that those communications intercepts have been properly minimized and discuss with NCTC personnel issues involving the proper application of NCTC's minimization procedures. The team also reviews all NCTC disseminations containing United States person information acquired under Section 702. Last, the joint oversight team reviews all of NCTC's queries of unminimized Section 702-acquired information and the associated written foreign intelligence justifications for those queries.

(U) In addition to the regularly scheduled reviews, throughout the reporting period, the joint oversight team investigates and reports incidents of non-compliance with NCTC's minimization and

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querying procedures or other agencies' procedures in which NCTC is involved.¹¹⁶ Investigations are coordinated through the NCTC Compliance and Transparency Group and NCTC Legal, a forward-deployed component of ODNI OGC, and when necessary may involve requests for further information; meetings with NCTC legal, analytical, and/or technical personnel; or the review of source documentation. All compliance incidents identified by those investigations are reported to the congressional committees in the Section 707 Report and to the FISC.

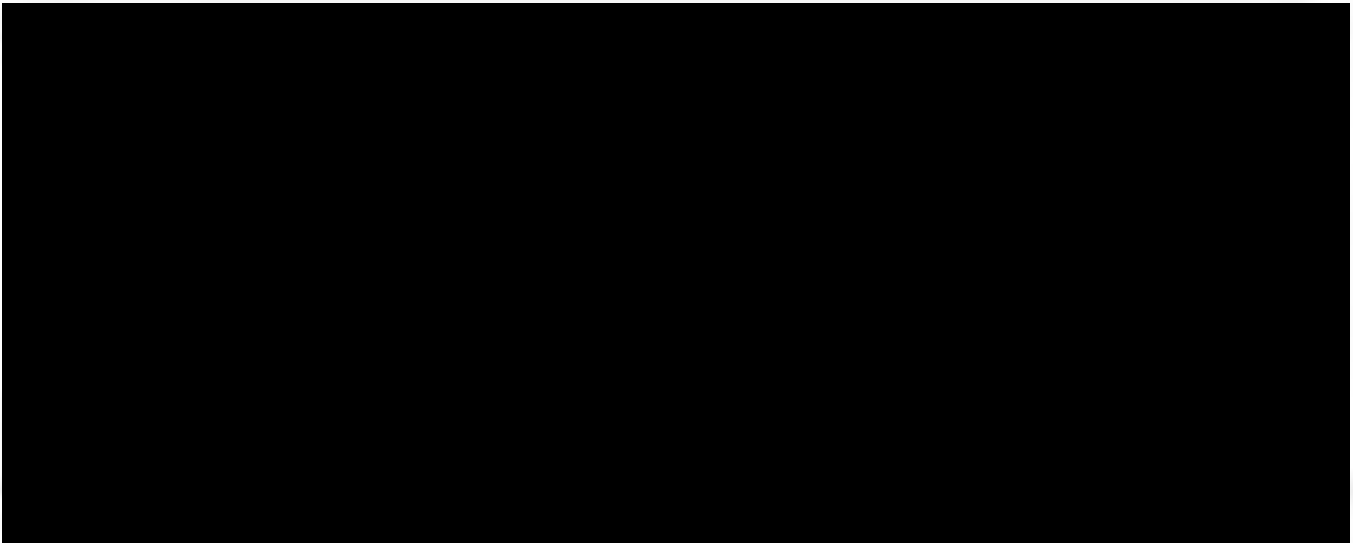
(U) **II. NCTC Training**

(U) During this reporting period, NCTC provided training on NCTC's Section 702 minimization and querying procedures to all of its personnel who will have access to unminimized Section 702-acquired information. NCTC uses a training tracking system through which NCTC can verify that its users have received the appropriate Section 702 training before being given access to unminimized Section 702-acquired information. In addition, NCTC conducts audits of personnel at NCTC who have access to unminimized Section 702-acquired information to confirm that those personnel have received training on NCTC's Section 702 minimization and querying procedures.

(U) **III. Section 702 Data and Compliance Trends**

~~(S//NF)~~ Figure 21 provides the classified number of minimization and querying incidents that involved NCTC for the last nine reporting periods. As Figure 21 indicates, there were zero compliance incidents reported to the FISC during this reporting period involving NCTC's minimization procedures and [REDACTED] incidents involving NCTC's querying procedures.

(U) **Figure 21: Number of Compliance Incidents Involving NCTC's Minimization and Querying Procedures**

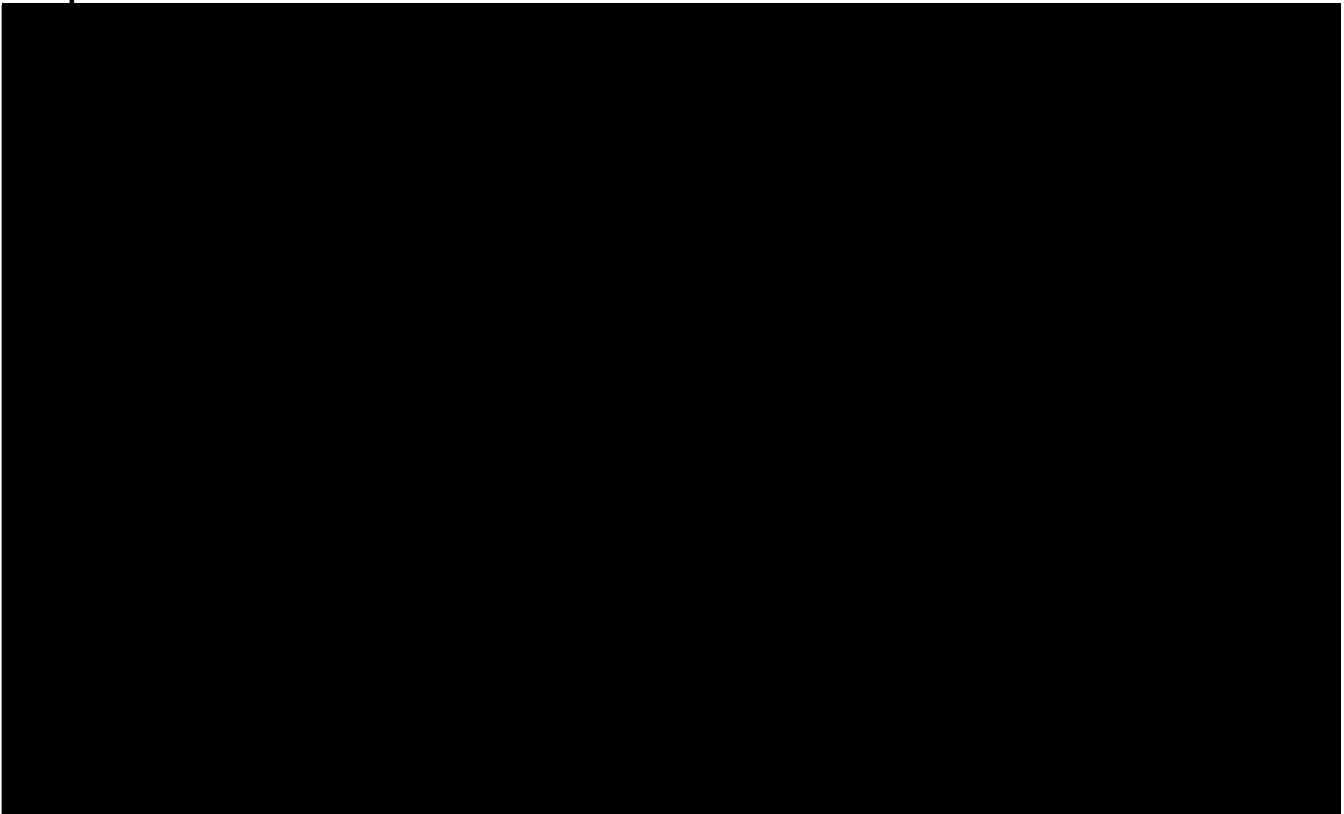


¹¹⁶ (U) Insofar as NCTC reviews content that may indicate that a target is located in the United States or is a United States person, some investigations of possible non-compliance with NSA's targeting procedures can also involve NCTC.

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~~TOP SECRET//SI//NOFORN~~**(U) A. Minimization Data and Incidents**

(U) ~~(S//NF)~~ During this reporting period, there were zero incidents involving a violation of NCTC's minimization procedures, consistent with the relatively low number of such incidents over the last reporting periods, notwithstanding fluctuations in the number of disseminations identified by NCTC as containing minimized Section 702-acquired information. Figure 22 provides classified statistics regarding the number of disseminations identified by NCTC as containing Section 702-acquired information, the vast majority of which were proper disseminations. For reporting periods prior to November 2018, the statistics in Figure 22 include all disseminations identified as containing Section 702-acquired information. Starting in November 2018, NCTC identified and provided to NSD and ODNI only disseminations containing minimized United States person information. Because NCTC only began obtaining unminimized Section 702-acquired data in May 2017, Figure 22 provides data for only nine six-month periods.¹¹⁷

(U) Figure 22: Disseminations Identified by NCTC as Containing Minimized Section 702-Acquired Information

~~(S//NF)~~ During this reporting period, NCTC identified and provided to NSD and ODNI approximately [REDACTED] disseminations of Section 702-acquired information containing minimized United States person information. This represented a 2.4 percent decrease in disseminations containing minimized United States person information when compared to the previous reporting period.

¹¹⁷ ~~(S//NF)~~ The FISC's April 2017 opinion approved NCTC's 2016 Minimization Procedures, allowing NCTC to obtain unminimized Section 702-acquired information. NCTC began receiving unminimized Section 702-acquired information on [REDACTED] May 2017.

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~~TOP SECRET//SI//NOFORN~~**(U) B. Querying Errors**

~~(S//NF)~~ During the reporting period, there were [REDACTED] incidents involving violations of NCTC's querying procedures. These incidents all relate to one matter in which an NCTC analyst who had been recently trained on a specific system performed [REDACTED] "test" queries to understand how the system worked. The queries were not reasonably likely to retrieve foreign intelligence information.¹¹⁸

(U) IV. Compliance Assessment

(U) During this reporting period, the joint oversight team found that NCTC continued to implement the procedures and follow the guidelines in a manner that reflects a focused and concerted effort by agency personnel to comply with the requirements of Section 702. The joint oversight team assesses that the relatively low number of compliance incidents involving NCTC's Section 702 procedures is a result of training, internal processes designed to identify and remediate potential compliance issues, and a continued focus by internal and external oversight personnel to ensure compliance with the applicable minimization and querying procedures.

¹¹⁸ ~~(TS//SI//NF)~~ See NCTC Incidents [REDACTED]

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(U) **SECTION 7: ASSESSMENT OF SECTION 702 ACTIVITIES –
ELECTRONIC COMMUNICATION SERVICE PROVIDERS**

(U) During this reporting period, as with the previous period, there were no incidents of non-compliance caused by errors made by electronic communication service providers. The joint oversight team assesses that this is the result of continuous efforts by the Government and providers to ensure that lawful intercept systems effectively comply with the law while protecting the privacy of the providers' customers.

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~~TOP SECRET//SI//NOFORN~~**(U) SECTION 8: CONCLUSION**

(U) During this reporting period, the joint oversight team found that the agencies continued to implement the procedures and follow the guidelines in a manner that reflects a focused and concerted effort by agency personnel to comply with the requirements of Section 702. Nevertheless, a continued focus is needed to address the underlying causes of the incidents that did occur, especially those incidents relating to improper queries. In its ongoing efforts to reduce the number of future compliance incidents, the joint oversight team will continue to focus on measures to improve (a) inter- and intra-agency communication, (b) training, and (c) systems used in the handling of Section 702-acquired information, including those systems needed to ensure that appropriate query practices and purge practices are followed and that disseminated reports are recalled when required. Additionally, as part of its ongoing oversight responsibilities, the joint oversight team and the agencies' internal oversight regimes will continue to monitor the efficacy of measures implemented to address the causes of compliance incidents during the next reporting period.

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(U) APPENDIX

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(U) APPENDIX

(U) IMPLEMENTATION OF SECTION 702 AUTHORITIES – OVERVIEW

(U) I. Overview – NSA

(U) The National Security Agency (NSA) seeks to acquire foreign intelligence information concerning specific targets under each Section 702 certification from or with the assistance of electronic communication service providers, as defined in Section 701(b)(4) of the Foreign Intelligence Surveillance Act of 1978, as amended (FISA).¹ As required by Section 702, those targets must be non-United States persons² reasonably believed to be located outside the United States.

~~(S//NF)~~ During this reporting period, NSA conducted foreign intelligence analysis to identify targets of foreign intelligence interest that fell within one of the following certifications: Certifications 2020-A and 2021-A, concerning [REDACTED] Certifications 2020-B and 2021-B, concerning [REDACTED] or Certifications 2020-C and 2021-C, concerning [REDACTED]

(U) As affirmed in affidavits filed with the Foreign Intelligence Surveillance Court (FISC), NSA believes that the non-United States persons reasonably believed to be outside the United States

¹ (U) Specifically, Section 701(b)(4) provides:

The term ‘electronic communication service provider’ means – (A) a telecommunications carrier, as that term is defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153); (B) a provider of electronic communication service, as that term is defined in section 2510 of title 18, United States Code; (C) a provider of a remote computing service, as that term is defined in section 2711 of title 18, United States Code; (D) any other communication service provider who has access to wire or electronic communications either as such communications are transmitted or as such communications are stored; or (E) an officer, employee, or agent of an entity described in subparagraph (A), (B), (C), or (D).

² (U) Section 101(i) of FISA defines “United States person” as follows:

a citizen of the United States, an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act [8 U.S.C. § 1101(a)(20)]), an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in subsection (a)(1), (2), or (3).

³ [REDACTED]

⁴ [REDACTED]

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who are targeted under these certifications will either possess foreign intelligence information about the persons, groups, or entities covered by the certifications or are likely to receive or communicate foreign intelligence information concerning these persons, groups, or entities. This requirement is reinforced by the Attorney General's Acquisition Guidelines, which provide that an individual may not be targeted unless a significant purpose of the targeting is to acquire foreign intelligence information that the person possesses, is reasonably expected to receive, and/or is likely to communicate.

(U) Under NSA's FISC-approved targeting procedures, NSA targets a particular non-United States person reasonably believed to be located outside the United States who is expected to possess, receive, and/or is likely to communicate foreign intelligence information by tasking facilities used by that person. A facility is a specific communications identifier tasked to acquire foreign intelligence information that is to, from, or about a target. A facility could be a telephone number or an identifier related to a form of electronic communication, such as an e-mail address.⁵ In order to acquire foreign intelligence information from or with the assistance of an electronic communications service provider, NSA first uses the identification of a facility to acquire the relevant communications. Then, after applying its targeting procedures (further discussed below) and other internal reviews and approvals, NSA "tasks" that facility in the relevant tasking system. The facilities are in turn provided to electronic communication service providers who have been served with the required directives under the certifications.

(U) After information is collected from those tasked facilities, it is subject to FISC-approved minimization procedures. NSA's minimization procedures set forth specific measures NSA must take when it acquires, retains, and/or disseminates non-publicly available information about United States persons. All collection of Section 702 information is routed to NSA. However, NSA's minimization procedures also permit the provision of unminimized communications to the Central Intelligence Agency (CIA), Federal Bureau of Investigation (FBI), and National Counterterrorism Center (NCTC) relating to targets identified by these agencies that have been the subject of NSA acquisition under the certifications. The unminimized communications sent to CIA, FBI, and NCTC, in accordance with NSA's targeting and minimization procedures, must in turn be processed by CIA, FBI, and NCTC in accordance with their respective FISC-approved Section 702 minimization procedures.⁶

(U) NSA's targeting procedures address, among other subjects, the manner in which NSA will determine that a person targeted under Section 702 is a non-United States person reasonably believed to be located outside the United States, the post-targeting analysis conducted on the facilities, and the documentation required.

⁵ ~~(TS//SI//NF)~~ NSA has also acquired foreign intelligence information through the tasking of [REDACTED]. The FISC and congressional committees have been previously advised of such [REDACTED]. The NSA targeting and minimization procedures apply equally to [REDACTED] and references to NSA's processes with respect to "facilities" below are equally applicable to such targeting.

⁶ [REDACTED]

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(U) A. Pre-Tasking Location

(U) 1. Telephone Numbers

~~(S//SI//NF)~~ For telephone numbers, NSA analysts [REDACTED]

[REDACTED]

(U) 2. Electronic Communications Identifiers

~~(S//SI//NF)~~ For electronic communications identifiers, NSA analysts [REDACTED]

[REDACTED]

(U) B. Pre-Tasking Determination of United States Person Status

~~(S//NF)~~ With respect to the United States person status [REDACTED]

[REDACTED]

7 [REDACTED]

8 (U) Analysts also check this system as part of the “post-targeting” analysis described below.

9 [REDACTED]

[REDACTED]

[REDACTED] In the absence of specific information regarding whether a target is a United States person, the procedures provide that, for a person reasonably believed to be located outside the United States or whose location is not known, NSA may presume the person to be a non-United States person, unless such person can be positively identified as a United States person, or the nature of the person's communications gives rise to a reasonable belief that such a person is a United States person.

(U) C. Post-Tasking Checks

[REDACTED]

~~(S//NF)~~ [REDACTED] NSA also requires that tasking analysts review information collected from the facilities they have tasked. With respect to NSA's review of acquired communications, a notification e-mail is sent to the tasking team upon initial collection for the facility. NSA analysts are expected to review this collection within five business days to confirm that the user of the facility is the intended target, that the target remains appropriate to the certification cited, and that the target remains outside the United States. Analysts are then responsible for reviewing traffic on an on-going basis to ensure that the facility remains appropriate under the authority. [REDACTED]

[REDACTED] Should traffic not be viewed at least once every 30 business days, a notice is sent to the tasking team and their management, who then have the responsibility to follow up.

(U) D. Documentation

(U) ~~(S//NF)~~ The procedures provide that analysts will document in the tasking database a citation to the information leading them to reasonably believe that a targeted person is located outside the United States. The citation is a reference that includes the source of the information, such as a report number or communications intercept identifier, maintained by NSA, enabling oversight personnel to locate and review the information that led the analyst to his/her reasonable

10 [REDACTED]

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belief. Analysts must also identify the foreign power or foreign territory about which they expect the proposed targeting will obtain foreign intelligence information.

~~(S//NF)~~ NSA [REDACTED], an existing database tool, for use by its analysts for Section 702 tasking and documentation purposes. [REDACTED] to assist analysts as they conduct their work. This tool has been modified over time to accommodate the requirements of Section 702, to include, for example, certain fields and features for targeting, documentation, and oversight purposes. Accordingly, the tool allows analysts to document the required citation to NSA records on which NSA relied to form the reasonable belief that the target was located outside the United States. [REDACTED]

[REDACTED] The tool has fields for the certification under which the target falls, and for the foreign power as to which the analyst expects to collect foreign intelligence information. Analysts fill out various fields [REDACTED] for each facility, as appropriate, including the citation to the information on which the analyst relied in making the foreignness determination.

(U) NSA's targeting procedures also require analysts to identify the foreign power or foreign territory about which they expect the proposed targeting will obtain foreign intelligence information and provide a written explanation of the basis for their assessment, at the time of targeting, that the target is expected to possess, receive, and/or is likely to communicate foreign intelligence information concerning that foreign power or foreign territory.

(U) NSA also includes the targeting rationale (TAR) in the tasking record, which requires the targeting analyst to briefly state why targeting for a particular facility was requested. The TAR memorializes why the analyst is requesting targeting and provides a linkage between the user of the facility and the foreign intelligence purpose covered by the certification under which it is being tasked. The joint oversight team, consisting of experts from the Department of Justice's National Security Division (NSD) and the Office of the Director of National Intelligence (ODNI) (hereinafter, the "joint oversight team"), assesses that the TAR has improved the oversight team's ability to understand NSA's foreign intelligence purpose in tasking facilities.

~~(S//NF)~~ [REDACTED] Entries are reviewed before a tasking can be finalized. Records from this tool are maintained and compiled for oversight purposes. For each facility, a record can be compiled and printed showing certain relevant fields, such as: the facility, the certification, the citation to the record or records relied upon by the analyst, [REDACTED] the analyst's foreignness explanation, the targeting rationale, any other comments from NSA, etc. These records, referred to as "tasking sheets," are reviewed by NSD, and also provided to ODNI, as part of the oversight process.

~~(S//NF)~~ The source records cited on these tasking sheets are contained in a variety of NSA data repositories. These records are maintained by NSA and, when requested by the joint oversight team, are produced to verify determinations recorded on the tasking sheets. Other source records

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may consist of “lead information” from other agencies, such as disseminated intelligence reports or lead information [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) F. Internal Procedures

(U) NSA has instituted internal training programs, access control procedures, standard operating procedures, compliance incident reporting measures, and similar processes to implement the requirements of the targeting procedures. Only authorized personnel who have received certain types of training and authorizations are provided access to the Section 702 program data. These authorized personnel must complete a comprehensive training program as approved by NSA OGC and the NSA Compliance Group; review the targeting, minimization, and querying procedures as well as other documents filed with the certifications; and pass a competency test. The databases personnel use are subject to audit and review by the NSA Compliance Group. For guidance, authorized personnel must consult standard operating procedures, supervisors, NSA Compliance Group personnel, and NSA OGC attorneys.

(U) The NSA targeting and minimization procedures also require NSA to conduct oversight activities and make any necessary reports, including those relating to incidents of non-compliance, to the NSA Office of the Inspector General (NSA OIG) and NSA OGC. NSA’s Office of Compliance for Cyber and Operations reviews all Section 702 taskings and conducts spots checks of disseminations based in whole or in part on Section 702-acquired information. The Directorate of Operations Information and Intelligence Analysis organization also maintains and updates an NSA internal website regarding the implementation of, and compliance with, the Section 702 authorities.

(U) NSA has established standard operating procedures for incident tracking and reporting to NSD and ODNI. Compliance officers work with NSA analysts as well as CIA and FBI points of contact, as necessary, to compile incident reports that are forwarded to both NSA OGC and OIG. NSA OGC forwards the incidents to NSD and ODNI.

(U) On a more programmatic level, under the guidance and direction of the NSA Compliance Group, NSA has implemented and maintains a Comprehensive Mission Compliance Program (CMCP) designed to effect verifiable conformance with the laws and policies that afford privacy protections during NSA missions. The NSA Compliance Group complements and

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reinforces the intelligence oversight program of the NSA OIG and oversight responsibilities of NSA OGC.

(U) A key component of the CMCP is an effort to manage, organize, and maintain the authorities, policies, and compliance requirements that govern NSA mission activities. This effort, known as “Rules Management,” focuses on two key components: (1) the processes necessary to better govern, maintain, and understand the authorities granted to NSA; and (2) technological solutions to support (and simplify) Rules Management activities. The Authorities Integration Group coordinates NSA’s use of the Verification of Accuracy process originally developed for other FISA programs to provide an increased level of confidence that factual representations to the FISC or other external decision makers are accurate and based on an ongoing, shared understanding among operational, technical, legal, policy, and compliance officials within NSA. NSA has also developed a Verification of Interpretation review to help ensure that NSA and its external overseers have a shared understanding of key terms in Court orders, minimization procedures, and other documents that govern NSA’s FISA activities. The NSA Compliance Group conducts the Mission Compliance Risk Assessment that assesses the risk of non-compliance with the rules designed to protect privacy and to safeguard information. Risks are assessed annually by authority and/or function for SIGINT and Cybersecurity missions. The results are used to inform management decisions, priorities, and resource allocations regarding the CMCP.

(U) II. Overview – CIA

(U) A. CIA’s Role in Targeting

~~(S//NF)~~ Although CIA does not target or acquire communications pursuant to Section 702, CIA has put in place a process, in consultation with NSA, FBI, NSD, and ODNI, to identify foreign intelligence targets to NSA. Based on its foreign intelligence analysis, CIA may “nominate” a facility to NSA for potential acquisition under one of the Section 702(h) certifications. The nomination provides NSA with the basis for CIA’s assessment that a nominated facility falls within the foreign intelligence purpose of the specified certification, as well as information [REDACTED]. NSA will apply its targeting procedures, as described above, to CIA’s nominations and, if appropriate, task the [REDACTED].

~~(S//NF)~~ In addition to nominations, CIA may also request unminimized data from Section 702 facilities already tasked by NSA, a process referred to as “dual-routing.”¹¹ CIA applies its Section 702 minimization procedures to both the Section 702 nominated and dual-routed data.

¹¹ ~~(TS//SI//NF)~~ Dual-routing is the process whereby CIA, FBI, or NCTC may request that NSA route already tasked Section 702-acquired information (for specified facilities) to CIA, FBI, or NCTC respectively. Pursuant to its Section 702 authorities, NSA collects information [REDACTED] in two ways: [REDACTED] (commonly referred to as “downstream” collection); and (2) by [REDACTED] (commonly referred to as NSA’s “upstream” collection). NSA does not provide upstream collection to CIA, FBI, or NCTC.

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[REDACTED]
[REDACTED]
[REDACTED] Since October 2021, CIA's nominations process has required approval by a targeting officer's first line manager and the FISA Program Office. Throughout the process, both component legal officers and CIA's FISA attorneys are available for consultation regarding whether the nomination is in compliance with Section 702 of FISA and NSA's targeting procedures. NSA will then conduct a review of CIA's nomination information under the NSA's targeting procedures, [REDACTED]

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

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

~~(S//NF)~~ The FISA Program Office was established in December 2010 [REDACTED] and is charged with providing strategic direction for the management and oversight of CIA's FISA collection programs, including the retention and dissemination of foreign intelligence information acquired pursuant to Section 702. This group is responsible for overall strategic direction and policy, programmatic external focus, and interaction with counterparts of NSD, ODNI, NSA, and FBI. In addition, the office leads the day-to-day FISA compliance efforts [REDACTED]. The primary responsibilities of the FISA Program Office are to provide strategic direction for data handling and management of FISA data, as well as to ensure that all Section 702 collection is properly tasked and that CIA is complying with all compliance and purge requirements.

(U) B. Oversight and Compliance

(U) CIA's FISA compliance program is managed by its FISA Program Office in coordination with CIA OGC. CIA provides small group training to personnel who nominate facilities to NSA and/or minimize Section 702-acquired communications. Access to unminimized Section 702-acquired communications is limited to trained personnel. CIA attorneys embedded with operational elements that have access to unminimized Section 702-acquired information also respond to inquiries regarding nomination, minimization, and querying. Identified incidents of noncompliance with the CIA minimization and querying procedures are generally reported to NSD and ODNI by CIA OGC.

¹² ~~(S//NF)~~ In April and May 2022, CIA [REDACTED]
[REDACTED]

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~~TOP SECRET//SI//NOFORN~~**(U) III. Overview – NCTC****(U) A. NCTC's Handling of Section 702 data**

(U) NCTC does not target or acquire communications pursuant to Section 702. In addition, NCTC does not currently have a process in place to identify or nominate foreign intelligence targets to NSA. However, like CIA and FBI, NCTC may request to be dual-routed on unminimized data (pertaining to counterterrorism) from Section 702 facilities already tasked by NSA. NCTC applies its Section 702 minimization and querying procedures to Section 702 dual-routed data.

~~(S//NF)~~ NCTC, in consultation with NSD, developed an electronic and data storage system, known as ██████, to retain and process unminimized FBI-collected FISA-acquired information in accordance with NCTC's Standard Minimization Procedures for Information Acquired by the Federal Bureau of Investigation Pursuant to Title I, Title III, or Section 704 or 705(b) of the Foreign Intelligence Surveillance Act. In consultation with NSD, ODNI, NSA, and FBI, NCTC modified ██████ to (i) provide additional compliance capabilities in support of dual-routing Section 702-acquired counterterrorism data and (ii) monitor compliance with NCTC's minimization and querying procedures for Section 702-acquired counterterrorism data. In addition to documenting compliance with the Section 702 minimization and querying procedures requirements, ██████ also documents the requests for dual-routing of Section 702-acquired information. This documentation includes the foreign intelligence justification (pertaining to counterterrorism) for dual-routing the facility and supervisory concurrence with an analyst's request.

~~(S//NF)~~ Dual-routed unminimized communications from Section 702 tasked facilities are stored within ██████ where only properly trained and authorized analysts are able to query them. As a supplement to the requirements of NCTC's minimization procedures and querying procedures, NCTC's internal business process requires that NCTC analysts provide a written justification for each query, as well as a written justification for each minimization action to mark a product as meeting the retention standard in order to document how the query or minimization was compliant with the standards in NCTC's minimization procedures or querying procedures, as applicable. By internal policy, all dual-route requests and minimization actions must be reviewed and approved within ██████ by the analyst's supervisor.

(U) NCTC personnel may disseminate Section 702-acquired information of or concerning an unconsenting United States person if that information meets the standard for dissemination pursuant to Section D of NCTC's minimization procedures.

~~(S//NF)~~ All activity within ██████ is logged and audited. NCTC's Compliance and Transparency Group (hereinafter, "NCTC Compliance") within the Office of Enterprise Services conducts periodic reviews of Section 702 query logs and minimization logs, as well as NCTC Section 702 disseminations in order to verify compliance with NCTC's minimization procedures and identify the need for system modifications, enhancements, or improvements to training materials or analyst work aids.

(U) B. Oversight and Compliance

(U) NCTC's FISA compliance program is managed by NCTC Compliance in coordination with NCTC Legal. NCTC provides training to all NCTC personnel who may access unminimized

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FISA-acquired information. Access to unminimized Section 702-acquired communications is limited to trained personnel. NCTC compliance personnel and attorneys also respond to inquiries regarding minimization and querying questions. Identified incidents of noncompliance with the NCTC minimization and querying procedures are reported to NSD and ODNI generally by NCTC Compliance or NCTC Legal personnel.

(U) NCTC Compliance was established in the fall of 2014 and is charged with providing strategic direction for the management and oversight of NCTC's access to and use of all datasets pursuant to executive order, statute, interagency agreement, applicable Intelligence Community (IC) policy, and internal policy. This includes management and oversight of NCTC's FISA programs, including the retention and dissemination of foreign intelligence information acquired pursuant to Section 702. This group is responsible for overall strategic direction and policy, programmatic external focus, and interaction with counterparts of NSD, ODNI, NSA, FBI, and CIA. In addition, the office leads the day-to-day FISA compliance efforts within NCTC. NCTC Compliance is responsible for providing strategic direction and internal oversight for data handling and management of Section 702 data, as well as administering and implementing NCTC Section 702 training, ensuring that all NCTC Section 702 collection is properly dual-routed, minimized, and disseminated, and that NCTC is complying with all minimization and querying procedures requirements.

(U) IV. Overview – FBI

(U) A. FBI's Role in Targeting – Nomination for Acquiring In-Transit Communications

~~(S//NF)~~ Like CIA, FBI has developed a formal nomination process to identify foreign intelligence targets to NSA for the acquisition of in-transit communications. [REDACTED]

[REDACTED], including information underlying the basis for the foreignness determination and the foreign intelligence interest. FBI nominations are reviewed by FBI operational and legal personnel prior to export to NSA for tasking. Like CIA, FBI may be dual-routed the unminimized data from Section 702 facilities already tasked by NSA. FBI applies its Section 702 minimization procedures to both the Section 702 nominated and dual-routed data.

[REDACTED]

[REDACTED]

[REDACTED] FBI targeting procedures require that NSA first apply its own targeting procedures to determine that the user of the Designated Account is a person reasonably believed to be outside the United States and is not a United States person. NSA is also responsible for determining that a significant purpose of the acquisition it requests is to obtain foreign intelligence information. After NSA designates accounts as being appropriate for [REDACTED] acquisition, FBI must then apply its own, additional procedures, which require FBI to review NSA's conclusion of foreignness [REDACTED]

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[REDACTED]

~~(S//NF)~~ More specifically, after FBI obtains the tasking sheet from NSA, it reviews the information provided by NSA regarding the location of the person and the non-United States person status of the person. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

~~(S//NF)~~ Unless FBI locates information indicating that the user is a United States person or is located inside the United States, [REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

~~(S//NF)~~ If FBI identifies information indicating that NSA's determination that the target is a non-United States person reasonably believed to be outside the United States may be incorrect, FBI provides this information to NSA and does not approve [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) C. Documentation

~~(S//NF)~~ The targeting procedures require that FBI retain the information [REDACTED] in accordance with its records retention policies [REDACTED]. FBI uses a multi-page checklist for each Designated Account to record the results of its targeting process, as laid out in its standard operating procedures, commencing with [REDACTED], extending through [REDACTED] and culminating in approval or disapproval of the acquisition. In addition, FBI standard operating procedures call for [REDACTED] depending on the circumstances, which are maintained by FBI with the applicable checklist. FBI also retains with each checklist any relevant communications [REDACTED] regarding its review of the NSA's information. Additional checklists have been created to capture information on requests withdrawn [REDACTED], or not approved by FBI.

(U) D. Implementation, Oversight, and Compliance

~~(S//NF)~~ FBI's implementation and compliance activities are overseen by FBI OGC, particularly the National Security and Cyber Law Branch (NSCLB), as well as FBI's Technology and Data Innovation Section (TDI), [REDACTED] FBI's Inspection Division, and FBI's Office of Internal Auditing (OIA). [REDACTED]

[REDACTED]

[REDACTED] TDI has the lead responsibility in FBI for [REDACTED]. TDI personnel are trained on the FBI targeting procedures and FBI's detailed set of standard operating procedures that govern its processing of requests for the acquisition [REDACTED]. TDI also has the lead responsibility for facilitating FBI's nominations to NSA [REDACTED]. TDI, NSCLB, NSD, and ODNI have all worked on training FBI personnel to ensure that FBI nominations and post-tasking review comply with the NSA targeting procedures. With respect to minimization, FBI has created a mandatory online training that all FBI agents and analysts must complete prior to gaining access to unminimized Section 702-acquired information in FBI's [REDACTED]. In addition, NSD generally conducts training on the Section 702 minimization and/or querying procedures when conducting reviews of FBI field offices. The specific topics of those trainings vary based on the trends identified by NSD.

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(U) ~~(S//NF)~~ FBI's targeting procedures require periodic reviews by NSD and ODNI at least once every 60 days. FBI must also report incidents of non-compliance with FBI targeting procedures to NSD and ODNI within five business days of learning of the incident. TDI and NSCLB are the lead FBI elements in ensuring that NSD and ODNI received all appropriate information with regard to these two requirements.

(U) **V. Overview – Minimization and Querying**

(U) After a facility has been tasked for collection, non-publicly available information collected as a result of these taskings that concerns United States persons must be minimized; if the Government queries that collection, it must follow specific query rules. The FISC-approved minimization procedures require such minimization in the acquisition, retention, and dissemination of foreign intelligence information. The FISC-approved querying procedures set rules for using United States person and non-United States person identifiers to query unminimized Section 702-acquired information. Prior to the enactment of the FISA Amendments Reauthorization Act of 2017, the minimization procedures contained querying rules. The 2018 certifications were the first certifications to contain separate querying procedures.

(U) As a general matter, minimization procedures under Section 702 are similar in most respects to minimization under other FISA orders. For example, the Section 702 minimization procedures, like those under certain other FISA court orders, allow for sharing of certain unminimized Section 702 information among NSA, FBI, CIA, and NCTC. Similarly, the procedures for each agency require special handling of intercepted communications that are between attorneys and clients, as well as foreign intelligence information concerning United States persons that is disseminated to foreign governments.

(U) Section 702 minimization procedures do, however, impose additional obligations or restrictions as compared with the minimization procedures associated with authorities granted under Titles I and III of FISA. For example, the Section 702 minimization procedures require, with limited exceptions, the purge of any communications acquired through the targeting of a person who at the time of targeting was reasonably believed to be a non-United States person located outside the United States, but is in fact located inside the United States at the time the communication is acquired, or was in fact a United States person at the time of targeting.

(U) NSA, CIA, NCTC, and FBI have created systems to track the purging of information from their systems. CIA, NCTC, and FBI receive incident notifications from NSA to document when NSA has identified Section 702 information that NSA is required to purge according to its procedures, so that CIA, NCTC, and FBI can meet their respective obligations.

(U) With passage of the FISA Amendments Reauthorization Act of 2017, Congress amended Section 702 to require that querying procedures be adopted by the Attorney General, in consultation with the DNI. Section 702(f)(1) requires that the querying procedures be consistent with the Fourth Amendment and that they include a technical procedure whereby a record is kept of each United States person term used for a query. Congress added other requirements in Section 702(f), which pertain to accessing certain results of queries conducted by FBI. Specifically, under Section 702(f)(2)(A), an order from the FISC is required before the FBI can review the contents of a query using a United States person query term when the query was not designed to find and extract

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foreign intelligence information and was performed in connection with a predicated criminal investigation that does not relate to national security.

(U) Queries may be conducted in two types of unminimized Section 702-acquired information: (i) Section 702-acquired *content* and (ii) Section 702-acquired *metadata*. Query terms may be date-bound, and may include alphanumeric strings, such as telephone numbers, e-mail addresses, or terms, such as a name, that can be used individually or in combination with one another. Pursuant to FISC-approved procedures, an agency can only query Section 702 information if the query is reasonably likely to retrieve foreign intelligence information or, in the case of the FBI, evidence of a crime. This standard applies to all Section 702 queries, regardless of whether the term concerns a United States person or non-United States person.

(U) The agencies have similar querying procedures, albeit with important distinctions. For example, FBI's querying procedures require that, prior to accessing unminimized Section 702-content retrieved using a United States person query term, FBI must provide a written statement of the specific factual basis to believe that the use of such a term to query Section 702-acquired content is reasonably likely to retrieve foreign intelligence information or evidence of a crime. NSA's Section 702 querying procedures require that any United States person query term used to identify and select unminimized Section 702-acquired content must first be approved by NSA OGC, and that such an approval include a statement of facts establishing that the use of any such identifier as a selection term is reasonably likely to retrieve foreign intelligence information. In addition, with respect to queries of Section 702-acquired metadata using a United States person identifier, NSA's querying procedures require that NSA analysts document the basis for each metadata query prior to conducting the query.

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