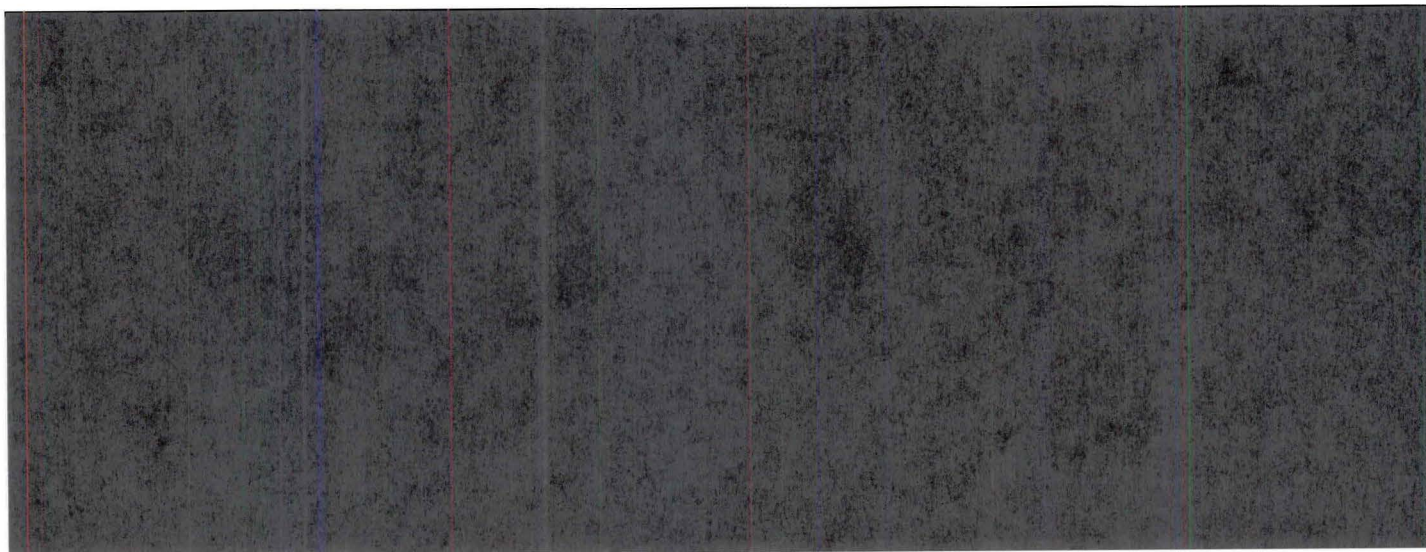


~~TOP SECRET/COMINT/OC,NF~~

UNITED STATES
FOREIGN INTELLIGENCE SURVEILLANCE COURT
WASHINGTON, D.C.



SUPPLEMENTAL OPINION AND AMENDMENT TO PRIMARY ORDER

On [REDACTED] the Court issued a Primary Order in the above-captioned docket authorizing the National Security Agency (NSA) to install and use pen register/trap and trace (PR/TT) devices to engage in the bulk collection of certain forms of metadata about Internet communications. At that time, the Court also issued a Memorandum Opinion that explained, inter alia, the reasons for approving some parts of the proposed PR/TT collection, but not others. See Docket No. PR/TT [REDACTED] Memorandum Opinion issued on [REDACTED] (“Memorandum Opinion”). The Primary Order stated that “NSA shall, pursuant to this Order, collect only metadata approved for acquisition in Part II” of the Memorandum Opinion. Primary Order at 5.

~~TOP SECRET/COMINT/OC,NF~~

~~TOP SECRET/COMINT/OC,NF~~

Subsequently, the government requested clarification of certain issues addressed in the Memorandum Opinion. See Letter submitted on [REDACTED] (“[REDACTED] Letter”). The government separately submitted additional information pertaining to one of the issues for which it sought clarification. See Letter submitted on [REDACTED] (“[REDACTED] Letter”). In response to the government’s request, and in view of the importance and complexity of the issues involved, the Court is issuing this Supplemental Opinion and Amendment to Primary Order.¹ For ease of reference, the discussion below employs the government’s enumeration of the issues identified in the [REDACTED] Letter.

Issue No. 1: [REDACTED]



¹ Familiarity with the terminology and reasoning of the Memorandum Opinion is assumed. Matters discussed in the Memorandum Opinion are addressed herein only insofar as they particularly relate to a request for clarification.

² See Memorandum Opinion at 35 n.36 (“For purposes of this Opinion, the term ‘e-mail communications’ refers to e-mail messages sent between e-mail users, [REDACTED] [REDACTED]”).

~~TOP SECRET/COMINT/OC,NF~~

~~TOP SECRET/COMINT/OC,NF~~

After describing what it perceives as a potential ambiguity in the Memorandum Opinion,³ the government requests confirmation of its understanding that NSA is [REDACTED]

[REDACTED]

Letter at 2. As explained below, however, the government's formulation is an overly broad description of the authority granted by the Court.

The Memorandum Opinion largely tracks the government's application in describing [REDACTED] [REDACTED] metadata for which approval was requested. See Memorandum Opinion at 35-41. The Memorandum Opinion limits the collection authority for several of these categories. Although many of the limitations imposed by the Court mirror the government's factual description of how the PR/TT devices would operate,⁴ the government did not, for the most part, incorporate such limitations into the scope of the requested collection authority. Under the expansive interpretation of the relevant statutory provisions put forward by the government, the

³ Specifically, the government observed that its submissions had defined [REDACTED] [REDACTED] See [REDACTED] Letter at 2 (comparing Application, Exhibit D, [REDACTED] Response at 2, 8 with Memorandum Opinion at 62).

⁴ See, e.g., Application, Exhibit D, [REDACTED] Response at 1 [REDACTED]; Application, Exhibit B, Memorandum of Law and Fact in Support of Application for PR/TT Devices for Foreign Intelligence Purposes at 23-24, 43 [REDACTED].

~~TOP SECRET/COMINT/OC,NF~~

~~TOP SECRET/COMINT/OC,NF~~

limitations may not have been warranted. But after careful consideration, the Court adopted a less expansive interpretation of the statute, see Memorandum Opinion at 30-35, 51-62, thereby requiring a more careful examination of the circumstances of collection for some types of metadata, and particularly an assessment of [REDACTED]

[REDACTED] See, e.g., id. at 37-38, 42-44, 51-62.

The principal limitations adopted by the Memorandum Opinion are:

[REDACTED]

[REDACTED]

~~TOP SECRET/COMINT/OC,NF~~

~~TOP SECRET/COMINT/OC,NF~~

[REDACTED]

In sum, as the Memorandum Opinion explains,

[REDACTED]

They,

therefore, may be collected only in the circumstances approved by the Court in the Memorandum Opinion.

Issue No. 2: [REDACTED]

The government seeks clarification regarding the scope of metadata it may collect from a communication [REDACTED]

See [REDACTED], Letter at 2-3. The Memorandum Opinion states:

[REDACTED]

[REDACTED]

~~TOP SECRET/COMINT/OC,NF~~

~~TOP SECRET/COMINT/OC,NF~~

[REDACTED]

Memorandum Opinion at 48 (citation omitted). After analyzing the relevant statutory provisions, the Court concluded that [REDACTED]

[REDACTED]

Id. at 62-71.

The government understands that, even in circumstances when [REDACTED]

[REDACTED]

Letter at 3. This understanding is

correct, subject to a proper understanding of what constitutes “authorized metadata” in the circumstances in question, as discussed above with respect to Issue No. 1.

Issue No. 3: [REDACTED]

[REDACTED]

Memorandum Opinion at 37. The Memorandum Opinion describes two general circumstances in

~~TOP SECRET/COMINT/OC,NF~~

~~TOP SECRET/COMINT/OC,NF~~

which the collection of [REDACTED]

See id. The government now seeks clarification regarding the scope of these circumstances. See [REDACTED] Letter at 3.

The first circumstance is [REDACTED]

[REDACTED] Memorandum Opinion at 37-38. In

such a case, the Court authorized collection of [REDACTED]

[REDACTED] Id. at 38. The government now seeks clarification that collection of [REDACTED]

[REDACTED] Letter at 3 (footnote omitted).

[REDACTED] Id. at 3 n.1.⁶

In the above-quoted example, [REDACTED]

⁶ This example is similar to one previously provided by the government to illustrate how [REDACTED]

See Application, Exhibit D, [REDACTED] Response at 2.

~~TOP SECRET/COMINT/OC,NF~~

~~TOP SECRET/COMINT/OC,NF~~

[REDACTED]

As the Memorandum Opinion stated, [REDACTED]

[REDACTED]

Memorandum

Opinion at 55 (emphasis in original). In this example, [REDACTED]

[REDACTED]

The second circumstance discussed in the Memorandum Opinion is [REDACTED]

[REDACTED]

[REDACTED] Memorandum Opinion at 37. The government understands that, in this circumstance, [REDACTED]

[REDACTED]

⁷ See Memorandum Opinion at 36-37 [REDACTED]

[REDACTED]

~~TOP SECRET/COMINT/OC,NF~~

~~TOP SECRET/COMINT/OC,NF~~

[REDACTED]

[REDACTED] Letter at 3. This understanding is correct. Footnote 37 of the Memorandum Opinion⁸ is intended to address the opposite case: [REDACTED]

[REDACTED]

Issue No. 4: [REDACTED]

The government correctly notes that some [REDACTED] approved for collection [REDACTED] See [REDACTED] Letter at 4; Memorandum Opinion at 65. When collecting these [REDACTED]

[REDACTED]

The government requests clarification that NSA's collection process may also infer the

[REDACTED]

[REDACTED] See [REDACTED] Letter at 4. For example, [REDACTED]

[REDACTED]

⁸ Footnote 37 states: [REDACTED]

[REDACTED] Memorandum Opinion at 38 n.37 (citation omitted).

~~TOP SECRET/COMINT/OC,NF~~

~~TOP SECRET/COMINT/OC,NT~~

See Memorandum Opinion at 42-43. The government requests confirmation that, in such a case,

[REDACTED]

[REDACTED] Letter at 1.

The Court concludes that [REDACTED]

[REDACTED] may be authorized as a form of PR/TT collection under the analysis adopted in the Memorandum Opinion.

[REDACTED]

Memorandum Opinion

at 51-65. [REDACTED]

[REDACTED]

Cf. Memorandum Opinion at 59

[REDACTED]

Issue No. 5: [REDACTED]

As described in the Memorandum Opinion, the collection process involves [REDACTED]

[REDACTED]

[REDACTED] Memorandum Opinion at 27-28. During the

~~TOP SECRET/COMINT/OC,NT~~

~~TOP SECRET/COMINT/OC,NF~~

collection process, [REDACTED]

Id. at 27.

The government has now advised that some of this [REDACTED]

See

[REDACTED] Letter at 4. [REDACTED]

Id. [REDACTED]

Memorandum

Opinion at 27 (internal quotations omitted).

Under these circumstances, the fact that [REDACTED]

[REDACTED] poses no legal difficulty. This Court has approved other forms of PR/TT collection that involve [REDACTED] See, e.g., Docket No. PR/TT [REDACTED], Supplemental Opinion issued on [REDACTED]

In this case, [REDACTED]

Memorandum Opinion at 29 (emphasis added). Accordingly, the collection process

~~TOP SECRET/COMINT/OC,NF~~

~~TOP SECRET/COMINT/OC,NF~~

described in the Memorandum Opinion and authorized in the Primary Order may, as necessary,



* * *

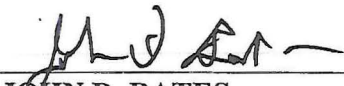
For the reasons stated above, it is permissible for NSA to collect metadata as described in Part II of the Memorandum Opinion, as supplemented herein. Accordingly, it is hereby ORDERED that the Primary Order issued on [REDACTED] in the above-captioned docket is amended as follows:

Paragraph 5(A), on page 5 of the Primary Order, is amended to read:

“(5) NSA shall implement the authority granted herein in the following manner:

A. Pursuant to this Order, NSA shall only collect metadata as approved in Part II of the [REDACTED] Memorandum Opinion, as supplemented by the Supplemental Opinion and Amendment to Primary Order issued in the above-captioned docket on [REDACTED]

Entered this [REDACTED] day of [REDACTED] in Docket No. PR/TT [REDACTED]



JOHN D. BATES
Judge, United States Foreign
Intelligence Surveillance Court

~~TOP SECRET/COMINT/OC,NF~~

I, [REDACTED] Deputy Clerk,
FISC, certify that this document
is a true and correct copy of
the original [REDACTED]