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United States Foreign Intelligence Surveillance  
Court.

IN RE Application of the FEDERAL BUREAU OF  
INVESTIGATION FOR AN ORDER REQUIRING  
THE PRODUCTION OF TANGIBLE THINGS  
FROM [redacted].

No. BR 06-05. | Aug. 18, 2006.

**Opinion**

**ORDER**

MALCOLM J. HOWARD, United States Foreign  
Intelligence Surveillance Court Judge.

\*1 An application having been made by the Director of the Federal Bureau of Investigation (FBI) for an order pursuant to the Foreign Intelligence Surveillance Act of 1978 (the Act), Title 50, United States Code (U.S.C.), § 1861, as amended, requiring the production to the National Security Agency (NSA) of the tangible things described below, and full consideration having been given to the matters set forth therein, the Court finds that:

[redacted]

1. The Director of the FBI is authorized to make an application for an order requiring the production of any tangible things for an investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism, provided that such investigation of a United States person is not conducted solely on the basis of activities protect by the First Amendment to the Constitution of the United States. [50 U.S.C § 1861(c)(1) ]

2. The tangible things to be produced are all call-detail records or “telephony metadata” created by [redacted] Telephony metadata includes comprehensive communications routing information, including but not limited to session identifying information (e.g., originating and terminating telephone number, communications device identifier, etc;), trunk identifier, and time and duration of call. Telephony metadata does not include the substantive content of any communication,

as defined by 18 U.S.C. § 2510(8), or the name, address, or financial information of a subscriber or customer. [50 U.S.C. § 1861(c)(2)(A) ]

3. There are reasonable grounds to believe that the tangible things sought are relevant to authorized investigations (other than threat assessments) being conducted by the FBI under guidelines approved by the Attorney General under Executive Order 12,333 to protect against international terrorism, which investigations are not being conducted solely upon the basis of activities protected by the First Amendment to the Constitution of the United States. [SO U.S.C. § 1861(c)(1) ]

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

WHEREFORE, the Court finds that the application of the United States to obtain the tangible things, as described in the application, satisfies the requirements of the Act and, therefore,

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

FURTHER ORDERED, as follows:

(1) To the extent practicable, the Custodians of Records of [redacted] shall produce to NSA an electronic copy upon service of the appropriate secondary order, and continue production on an ongoing daily basis thereafter for the duration of this order, unless otherwise ordered by the Court, of the following tangible things: all call-detail records or “telephony metadata” created by such companies as described above;

\*2 (2) NSA shall compensate [redacted] for reasonable expenses incurred in providing such tangible things;

(3) With respect to any information the FBI receives as a result of this Order (information that is passed or “tipped” to it by NSA<sup>2</sup>), the FBI shall follow as minimization procedures the procedures set forth in *The Attorney General’s Guidelines for FBI National Security Investigations and Foreign Intelligence Collection* (October 31, 2003).

(4) With respect to the information that NSA receives as a

result of this Order, NSA shall adhere to the following procedures:

A. The Director of NSA shall establish mandatory procedures strictly to control access to and use of the archived data collected pursuant to this Order. Any search or analysis of the data archive shall occur only after a particular known telephone number has been associated with [redacted] More specifically, access to the archived data shall occur only when NSA has identified a known telephone number for which, based on the factual and practical considerations of everyday life on which reasonable and prudent persons act, there are facts giving rise to a reasonable, articulable suspicion that the telephone number is associated with [redacted]; provided, however, that a telephone number believed to be used by a U.S. person shall not be regarded as associated with [redacted] solely on the basis of activities that are protected by the First Amendment to the Constitution.

B. The metadata shall be stored and processed on a secure private network that NSA exclusively will operate.

C. Access to the metadata archive shall be accomplished through a software interface that will limit access to this data to authorized analysts. NSA's OGC shall monitor the designation of individuals with access to the archive. Access to the archive shall be controlled by user name and password. When the metadata archive is accessed, the user's login, IP address, date and time, and retrieval request shall be automatically logged for auditing capability. NSA's Office of General Counsel (OGC) shall monitor the functioning of this automatic logging capability. Analysts shall be briefed by NSA's OGC concerning the authorization granted by this Order and the limited circumstances in which queries to the ' archive are permitted, as well as other procedures and restrictions regarding the retrieval, storage, and dissemination of the archived data. In addition, NSA's OGC shall review and approve proposed queries of archived metadata based on seed accounts numbers reasonably believed to be used by U.S. persons.

D. Although the data collected under this Order will necessarily be broad, the use of that information for analysis shall be strictly tailored to identifying terrorist communications and shall occur solely according to the procedures described in the application, including the minimization procedures designed to protect U.S. person information. Specifically, dissemination of U.S. person information shall follow the standard NSA minimization procedures found in the Attorney General-approved guidelines (U.S. Signals Intelligence Directive 18). Before information identifying a U.S. person may be

disseminated outside of NSA, a judgment must be made that the identity of the U.S. person is necessary to understand the foreign intelligence information or to assess its importance. Prior to the dissemination of any U.S. person identifying information, the Chief of Information Sharing Services in the Signals Intelligence Directorate must determine that the information identifying the U.S. person is in fact related to counterterrorism information and that it is necessary to understand the counterterrorism information or assess its importance. A record shall be made of every such determination.

\*3 E. Internal management control shall be maintained by requiring that queries of the archived data be approved by one of seven persons: the Signals Intelligence Directorate Program Manager for Counterterrorism Special Projects, the Chief or Deputy Chief, Counterterrorism Advanced Analysis Division; or one of the four specially authorized Counterterrorism Advanced Analysis Shift Coordinators in the Analysis and Production Directorate of the Signals Intelligence Directorate. In addition, at least every ninety days, the Department of Justice shall review a sample of NSA's justifications for querying the archived data.

F. The metadata collected under this Order may be kept online (that is, accessible for queries by cleared analysts) for five years, at which time it shall be destroyed.

G. The Signals Intelligence Directorate Program Manager for Counterterrorism Special Projects; Chief and Deputy Chief, Counterterrorism Advanced Analysis Division; and Counterterrorism Advanced Analysis Shift Coordinators shall establish appropriate management controls (e.g., records of all tasking decisions, audit and review procedures) for access to the archived data and shall use the Attorney General-approved guidelines (USSID 18) to minimize the information reported concerning U.S. persons.

H. The NSA Inspector General, the NSA General Counsel, and the Signals Intelligence Directorate Oversight and Compliance Office shall periodically review this program. The Inspector General and the General Counsel shall submit a report to the Director of NSA 45 days after the initiation of the activity assessing the adequacy of the management controls for the processing and dissemination of U.S. person information. The Director of NSA shall provide the findings of that report to the Attorney General.

I. Any application to renew or reinstate the authority granted herein shall include a report describing (i) the queries that have been made since this Order was granted;

(ii) the manner in which NSA applied the procedures set forth in subparagraph A above, and (iii) any proposed changes in the way in which the call-detail records would be received from the carriers.

sample of call-detail records obtained, to ensure that NSA is receiving only data as authorized by the Court and not receiving the substantive content of communications.

J. At least twice every 90 days, NSA's OGC shall conduct random spot checks, consisting of an examination of a

Footnotes

- 1 The Court understands that the vast majority of the call-detail records provided are expected to concern communications that are (i) between the United States and abroad; or (ii) wholly within the United States, including local telephone calls.
- 2 The Court understands that NSA expects that it will provide on average approximately two telephone numbers per day to the FBI.

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