



U.S. Department of Justice

National Security Division

U.S. FOREIGN INTELLIGENCE SURVEILLANCE COURT

PM 3:31

~~TOP SECRET//COMINT//NOFORN~~

Washington, D.C. 20530

CLERK OF COURT

All redacted information exempt under b(1) and/or b(3) except where otherwise noted.

The Honorable Reggie B. Walton
United States Foreign Intelligence Surveillance Court
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Re: Preliminary Notice of a Potential Compliance Incident Involving [REDACTED]

Dear Judge Walton:

Pursuant to Rule 10(c) of the Foreign Intelligence Surveillance Court (FISC) Rules of Procedure, effective February 17, 2006, this letter provides preliminary notice of a potential compliance incident regarding the National Security Agency's (NSA) activities pursuant to docket number PR/TT [REDACTED] and previous dockets. (S)

In docket number PR/TT [REDACTED] and previous dockets, the Court authorized the "installation and use of pen registers and trap and trace devices as described in the Government's Application to collect all addressing and routing information reasonably likely to identify the sources or destinations of the electronic communications identified above [REDACTED] including the "to," "from," "cc," and "bcc" fields for those communications [REDACTED]

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Classified by: David S. Kris, Assistant Attorney General,
NSD, DOJ

Reason: 1.4(c)

~~Declassify on:~~ [REDACTED]

See, e.g., Primary Order, Docket No. PR/TT [REDACTED] at pp. 4-5.

~~(TS//SI//NF)~~

In its initial Application, NSA described these categories as follows:

Category (1): For e-mail communications, the devices will extract the addresses contained in the "to," "from," "cc," and "bcc" lines. [REDACTED]

[REDACTED]

See PR/TT [REDACTED], Opinion and Order at pp. 7-10 (July 14, 2004) (quoting Application and Declaration). ~~(TS//SI//NF)~~

On [REDACTED] NSA's Office of General Counsel (OGC) learned that [REDACTED]

[REDACTED] On [REDACTED] NSA's OGC informed the National Security Division (NSD) of this discovery. On [REDACTED] NSA OGC informed NSD that it, in consultation with the Director of NSA, instructed NSA analysts to cease querying the PR/TT metadata until this matter has been resolved. NSD was further informed that NSA stopped ingesting PR/TT metadata [REDACTED]

A team of legal, technical, and operational representatives from NSA met with the NSD on [REDACTED] to review NSA's [REDACTED] processes and analyze whether those processes are consistent with the terms of the PR/TT Opinion and Order issued by this Court on July 14, 2004 in Docket Number PR/TT [REDACTED] and subsequent Orders issued by the Court including, most recently, the Order issued in Docket Number PR/TT [REDACTED]. NSA personnel informed the NSD that NSA had [REDACTED] since the Court's first authorization in docket number PR/TT [REDACTED]. NSA further reported that it currently [REDACTED]. [REDACTED] NSD and NSA continued discussions of this matter between [REDACTED]. NSD provided a preliminary oral notification of this matter to legal counsel for the Court on [REDACTED] (~~TS//SI//NF~~).

According to NSA, if [REDACTED]

[REDACTED]

~~(TS//SI//NF)~~

NSA has advised NSD that it will not resume [REDACTED] nor query metadata currently within NSA's PR/TT database until this matter is resolved and with the Court's express approval that NSA may resume [REDACTED] its previous operational practices. Should the Government determine that immediate access to the PR/TT metadata repository is necessary in order to protect against an imminent threat to human life, the Government will first notify the Court. (~~TS//SI//NF~~)

The NSA and NSD are continuing to investigate the collection activities described above. As part of its investigation, NSD is (1) reviewing the categories of information that were extracted and collected [REDACTED] and (2) analyzing whether some or all of the collection activity described herein is consistent with this Court's Opinion and Orders. To the extent NSD determines that some or all of the collection activity is not consistent with the Court's Opinion and Orders, NSD intends to further analyze whether it is appropriate to seek [REDACTED]

[REDACTED] Upon conclusion of the Government's investigation, a thorough explanation of this matter will be provided to the Court. (U)

Sincerely,

[REDACTED]

Acting Section Chief, Oversight Section
National Security Division
U.S. Department of Justice