



U.S. Department of Justice

National Security Division

U.S. FOREIGN INTELLIGENCE SURVEILLANCE COURT

2014 MAY 29 PM 4:44

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Washington, D.C. 20530

LEARN FLYNN HALL
CLERK OF COURT

May 29, 2014

The Honorable Thomas F. Hogan
United States Foreign Intelligence Surveillance Court
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Re: (U//~~FOUO~~) Supplemental Notice of NSA's Assessment of Purge Practices and Discovery of Incomplete Purges

Dear Judge Hogan:

(U//~~FOUO~~) As part of its overall compliance program, the National Security Agency (NSA) conducts periodic reviews to verify the efficacy of its compliance activities, to include the process the Agency uses to effect purges undertaken for compliance purposes. On March 18, 2014, the Government filed a notice with the Court describing two NSA purge verification studies conducted in 2011 and 2012. The studies determined that some information that NSA personnel had identified for purge and placed on NSA's Master Purge List (MPL) had not been completely purged when the studies were conducted. As described below, the information was subsequently purged.

(S//~~REL TO USA, FVEY~~) In the March 2014 notice, the Government explained that the purge verification studies conducted in 2011 and 2012 were done by taking a sample of [redacted] unique identifiers that had been added to the MPL between certain time periods to identify whether the underlying objects had in fact been purged from [redacted] storage systems. Subsequent to the filing of the March 2014 notice, the Court requested that the Government provide an explanation as to why the studies were conducted in 2011 and 2012, but the notification to the Court regarding the incomplete purges was delayed until March, 2014. This supplemental notice responds to the Court's question, as well as provides additional information regarding the 2011 and 2012 purge verification studies and informs the Court of the results of the additional purge verification studies NSA's Signals Intelligence Directorate Office of Oversight and Compliance has conducted.

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Classified by: Tashina Gauhar, Deputy Assistant
Attorney General, NSD, DOJ

Reason: 1.4(e)

Declassify on: May 29, 2039



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~~(S//REL TO USA, FVEY)~~ By way of background, NSA created the MPL and its internal purge process to provide reasonable assurance that NSA purges information consistent with its authorities and representations to the Court, as well as to ensure that personnel do not rely on information that was supposed to have been purged when preparing SIGINT reports or applications to the Court. *See, e.g.*, NSA Memorandum to the Assistant Attorney General, National Security Division (NSD), Department of Justice, as filed with the Court on March 16, 2010.¹

(U//FOUO) Following NSA's February 2011 continued confidence letter to the Court, the Director of Compliance initiated a [redacted] activity designed to further study the effectiveness of existing internal controls for purge. From a sample size of [redacted] unique identifiers, NSA identified [redacted] objects that had not been purged but which were listed on the MPL. [redacted] NSA advises that the [redacted] was designed and conducted using statistical sampling in accordance with industry standards for internal auditing. The [redacted] did not represent an exhaustive review of the purge process, or of NSA's purge improvement activities, but rather was a study to provide reasonable assurance that NSA is purging data in compliance with governing laws and policies.

(U//FOUO) The [redacted] study [redacted]

[redacted] the report also noted that additional checks provide a reasonable assurance that incompletely purged objects are prohibited from further use. NSA has advised that each of the [redacted] identified objects were purged as of September 2013.

¹ ~~(S//REL TO USA, FVEY)~~ [redacted]

² ~~(S//REL TO USA, FVEY)~~ [redacted]

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~~(S//REL TO USA, FVEY)~~ In addition to the [REDACTED] conducted by NSA's Director of Compliance, NSA's O&C section conducts compliance studies to verify the continued efficacy of, and, where appropriate, improve NSA's compliance processes, to include the purge process. NSA conducted purge verification studies in 2012, 2013, and 2014.³ The 2012 through 2014 purge verification studies concluded that there have been improvements in the purge process.⁴

[REDACTED]

[REDACTED] NSA did not identify any incomplete purges during this 2013 study and again concluded that the purge process was working and had improved.

~~(S//REL TO USA, FVEY)~~ In addition, on April 1, 2014, NSA completed a purge verification study of the [REDACTED] previously described to the Court.

[REDACTED]

~~(S//REL TO USA, FVEY)~~ In March 2013, NSA's Office of the Inspector General issued a report that, among other things, identified several instances where NSA's [REDACTED] purge processes could potentially result in incomplete purges [REDACTED] and recommended [REDACTED] NSA's purge processes. In response to that report, in March 2013, NSD requested further information from NSA regarding whether NSA had identified any instances of purge completions that have been reported to the Court where the underlying information was later identified to not have been fully purged from [REDACTED]. Following subsequent inquiries from NSD and ODNI, NSA responded to NSD's question in January 2014, and reported to NSD and ODNI the purge verification study information that was described in the March 18, 2014, notice to the Court.⁵ In response to this Court's question asking why NSA had not previously informed

³ ~~(S//REL TO USA, FVEY)~~ All of the purge studies from 2012, 2013, and 2014 included [REDACTED]

⁴ ~~(S//REL TO USA, FVEY)~~ NSA provided the 2011-2014 reports to NSD on May 16, 2014. Therefore, NSD and the Office of the Director of National Intelligence (ODNI) are continuing to review the results of the reports with NSA and will provide additional updates to the Court as appropriate.

⁵ ~~(U//FOUO)~~ On January 31, 2014, NSD and ODNI sent a draft notice to NSA regarding the 2011 and 2012 purge verification studies. NSA sent comments to NSD and ODNI regarding that draft notice on March 13, 2014. NSA

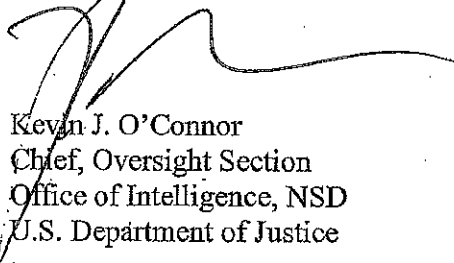
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NSD of these incomplete purges, NSA advises that, since it had not identified any instance where items listed on the MPL had been used in a manner contrary to NSA's prior representations, NSA personnel did not think there was a compliance issue that needed to be reported to the Court. Rather, it appeared the safeguards built into the purge process had worked as intended since the studies did not identify any improper use of material that was subject to a purge requirement. NSA has committed to providing NSD and ODNI with details about any instances in which NSA discovers incomplete purges so that NSD can promptly notify the Court.

~~(S//REL TO USA, FVEY)~~ NSA will continue to keep NSD, ODNI, and the Court informed of its efforts to verify and improve the purge process and will more promptly advise NSD and ODNI of such efforts. In addition, NSD and ODNI will continue to review the results of the 2011 through 2014 purge verification studies with NSA. NSA has reviewed this letter and confirmed its accuracy.

Respectfully submitted,



Kevin J. O'Connor
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advised that between January 21, 2014 and March 13, 2014, NSA was confirming the facts of the 2011 and 2012 purge results.

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