



U.S. Department of Justice

National Security Division
U.S. FOREIGN INTELLIGENCE SURVEILLANCE COURT

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2017 JAN 23 AM 11:53

Washington, D.C. 20530

LEEANN FLYNN HALL
CLERK OF COURT

January 23, 2017

The Honorable Rosemary M. Collyer
United States Foreign Intelligence Surveillance Court
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Re: (U) Notice regarding FBI queries of Section 702-acquired information designed to return evidence of a crime unrelated to foreign intelligence

Dear Judge Collyer:

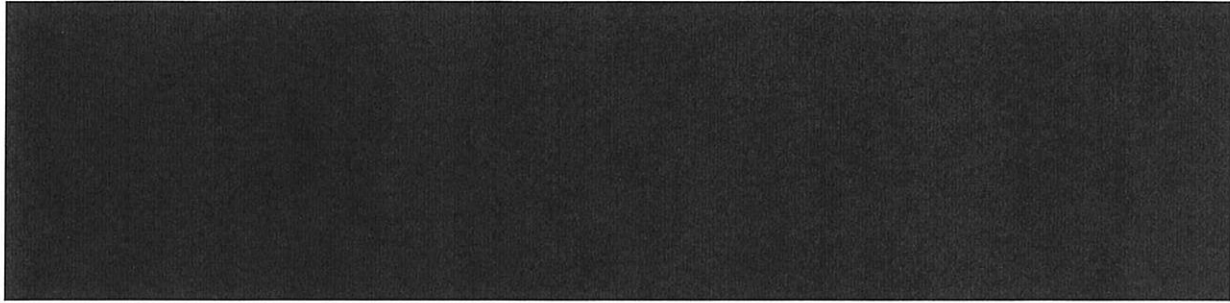
~~(S//NF)~~ In accordance with the Court's November 6, 2015 Memorandum Opinion and Order in *In Re DNI/AG 702(g)* [REDACTED] (2015 702 Opinion and Order), this letter reports an instance in which a Federal Bureau of Investigation (FBI) analyst received and reviewed Section 702-acquired information concerning a United States person in response to queries that were designed to return evidence of a crime unrelated to foreign intelligence.

(U) In the 2015 702 Opinion and Order, the Court found, *inter alia*, that the query provisions of FBI's Section 702 Standard Minimization Procedures (FBI Section 702 SMPs) struck a reasonable balance between the privacy interests of United States persons and persons in the United States and the Government's national security interests. 2015 702 Opinion and Order, at 36. The Court determined that FBI's use of the provisions to conduct queries designed to return evidence of crimes unrelated to foreign intelligence did not preclude the Court from finding that, taken together, the FBI's targeting and minimization procedures submitted with the 2015 Section 702 Certifications were consistent with the requirements of FISA and the Fourth Amendment. *Id.* at 44-45. The Court also noted that, "according to the government, FBI queries designed to elicit evidence of crimes unrelated to foreign intelligence rarely, if ever, produce responsive results from the Section 702-acquired data." *Id.* at 44. To "reassure itself that this risk assessment is valid," the Court required the government to submit in writing a report concerning each instance after December 4, 2015, in which FBI personnel receive and review Section 702-acquired information that FBI identifies as concerning a United States person in response to a query that is not designed to find and extract foreign intelligence information. *Id.* at 44 and 78.

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~~(S//NF/FISA)~~ [REDACTED] facility, an analyst from the FBI's [REDACTED] discovered an e-mail message indicating that one of the individuals – a United States person [REDACTED] had been physically abusing [REDACTED] children, who are United States persons. The e-mail message contained specific details about the abusive acts. [REDACTED]

[REDACTED] In gathering information for the [REDACTED] letter, the Department of Justice's National Security Division (NSD) questioned whether any queries were conducted against raw Section 702-acquired information in order to return additional information regarding the abusive activity. FBI advised that [REDACTED] an analyst from the [REDACTED] conducted multiple queries against raw Section 702-acquired information [REDACTED]

[REDACTED] Specifically, the analyst used as query terms the name of the United States person suspected to be the abuser, the names of the United States person children, "abuse," "hitting," and a compound query term designed to return any communications that included the word "abuse" and the name of one of the United States person children.

~~(S//NF)~~ These queries, performed by the FBI in response to information regarding suspected child abuse, were designed to return evidence of a crime unrelated to foreign intelligence, as permitted by Section III.D of the FBI Section 702 SMPs. FBI advised that the queries returned no results except for the e-mail message described above, from which FBI drew the query terms. As indicated in [REDACTED] as a result of the emergency dissemination, on [REDACTED] visited the home where the abuse had taken place and spoke with the suspect. FBI further advised that none of the Section 702-acquired information included in the emergency dissemination has been used in a criminal or civil proceeding. FBI has not used the results of these queries for any further analytic, investigative, or evidentiary purpose, other than the emergency disclosure described above.²

¹ ~~(S//NF)~~ The [REDACTED] notice mistakenly indicated that the e-mail message referenced above was discovered by a case agent. On [REDACTED] FBI advised that the e-mail message was discovered by an analyst.

² ~~(S//NF)~~ As described to the Court in a letter filed [REDACTED] FBI had implemented a process to attempt to identify those queries that are run in FBI systems containing raw Section 702-acquired information after

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~~(S//NF)~~ The FBI has reviewed this letter and confirmed its accuracy.

Respectfully submitted,

b(6) and b(7)(C)

Kevin J. O'Connor
Chief, Oversight Section
Office of Intelligence, NSD
U.S. Department of Justice

██████████ that are designed solely to extract evidence of a crime. As part of this process, FBI sent out guidance to its personnel that if they receive and review the results of queries of raw Section 702-acquired information that is identified as concerning a known or presumed United States person in response to a query that is not designed to find and extract foreign intelligence information, they must notify their Chief Division Counsel and the National Security Law Branch of the query and results to determine if it needs to be reported to NSD and the Court. This process was not followed in this instance. NSD reminded the ██████████ personnel of this guidance.

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