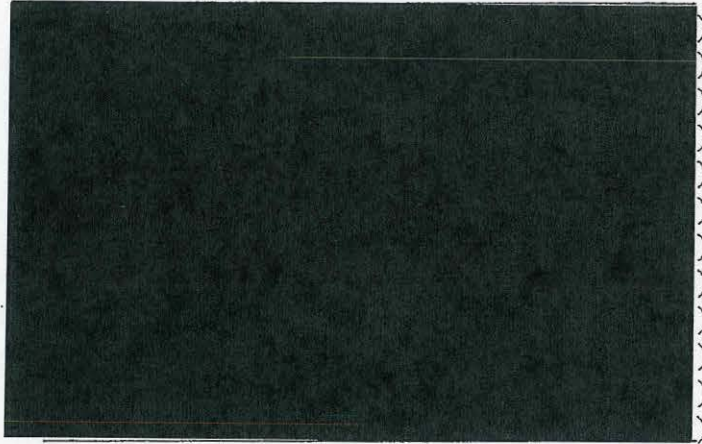


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UNITED STATES
FOREIGN INTELLIGENCE SURVEILLANCE COURT
WASHINGTON, D.C.

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



DOCKET NO. PR/TT [REDACTED]

SUPPLEMENTAL ORDER

After reviewing the government's written submissions and holding a hearing on this matter, the Court has concluded that it is appropriate to grant the renewal of authority requested by the government. The Court has also determined, however, that it is necessary and appropriate to direct the government to provide additional information and to take other steps in addition to those addressed by the Court's separate order authorizing the renewal.

The 90 Day Report submitted by the government with its application in this matter describes three processes used by the National Security Agency ("NSA") for conducting automated queries of the metadata collected under the authority of previous orders in this matter dating back to 2004 ("PR/TT metadata"). See NSA 90 Day Report to the Foreign Intelligence Surveillance Court (PR/TT [REDACTED]), at 7-10 (attached as Exhibit B to Application in Docket

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Number PR/TT [REDACTED]). Much of the information contained in the description of those processes – most notably, information regarding the provision of automated query results to NSA analysts other than the limited number of analysts authorized to access PR/TT metadata – has not previously been disclosed to the Court. The Court also recently learned for the first time that manual query results have likewise been provided to NSA analysts other than the limited number of analysts authorized to access PR/TT metadata. In addition, the government recently reported that one of the three automated querying processes continued for weeks beyond the date on which the government previously assured the Court all automated querying had stopped. See Notice of Misstatement or Omission of Material Fact filed on [REDACTED] in Docket Number PR/TT [REDACTED].

Shortly before the hearing, the government provided written notice of a separate and ongoing compliance issue involving NSA's unauthorized use of PR/TT metadata. See Preliminary Notice of Compliance Incident filed on [REDACTED], in Docket Number PR/TT [REDACTED] (“[REDACTED] Noncompliance Notice”). Based upon the information disclosed by the government in the written notice and during the hearing, the Court understands that the NSA has, for several years, been using PR/TT metadata in connection with compiling a “master list [REDACTED] [REDACTED] that is used to purge unwanted information from various NSA data repositories. See [REDACTED] Noncompliance Notice at 2-3. The Department of Justice believes that such use of the PR/TT metadata, at least in some respects, exceeds the authority granted by the Court in its prior orders. Id. at 3. The government has represented that NSA is no longer using PR/TT metadata to add information to the master list in a manner that violates the Court's orders, but that NSA continues to use the master list – including PR/TT-derived information added to the list in violation of past Court's orders – for the purpose of purging unwanted information from various

data repositories. Id.

Lastly, during the hearing [REDACTED] the government notified the Court of an inaccuracy regarding the number of PR/TT-related reports specified in paragraph 14 of the declaration attached to the application as Exhibit A. See Declaration of [REDACTED] Chief, Special Foreign Intelligence Surveillance Act Oversight and Processing, Oversight and Compliance, Signals Intelligence Directorate, The National Security Agency ('[REDACTED] Declaration'), at 24. The [REDACTED] Declaration states in pertinent part that "[s]ince the Court's initial authorization in July 2004 . . . , NSA has produced [REDACTED] reports based on access to, and analysis of, metadata acquired pursuant to authorizations in the above-captioned matter." Id. On [REDACTED] the government filed a supplemental declaration explaining that the number of PR/TT-related reports produced by NSA is in fact larger, because the [REDACTED] reports specified in the [REDACTED] Declaration do not include additional reports prepared by NSA analysts other than those authorized to access the PR/TT metadata or reports provided to foreign governments. See Supplemental Declaration of [REDACTED] Chief, Special Foreign Intelligence Surveillance Act Oversight and Processing, Oversight and Compliance, Signals Intelligence Directorate, The National Security Agency ("Supplemental Declaration"), at 2-3. NSA states in the Supplemental Declaration that it is unable at this time to provide the Court with the total number of reports produced or to furnish an "updated description of its dissemination practices." Id. at 3.

In light of the foregoing, it is hereby ORDERED that:

1. NSA shall not resume automated querying of the PR/TT metadata without the prior approval of the Court;
2. The government shall, within 20 days of the date of this order, submit a declaration correcting the inaccuracy regarding the number of reports specified at paragraph 14 of the [REDACTED]

████ Declaration and providing the complete and "updated description of NSA's dissemination practices" promised in the Supplemental Declaration.

3. The government shall, within 20 days from the date of this order, either cease using the "master list" █████ described in the █████ Noncompliance Notice, which includes PR/TT-derived information added to the list in violation of this Court's orders, or show cause, in writing, why NSA's continuing use of such master list is necessary and appropriate. The government shall also explain in writing, within 20 days of the date of this order, why any ongoing use of PR/TT metadata in connection with deleting information associated with █████ is consistent with this Court's orders and otherwise appropriate.

4. Based upon the representations made by the government in the hearing █████ the Court will allow NSA, for a period of 20 days following the issuance of this Order, to continue to share the unminimized results of properly predicated manual queries of the PR/TT metadata with NSA analysts other than the █████ analysts authorized to access PR/TT metadata. Such sharing shall not continue beyond the 20-day period unless the government has satisfied the Court, by written submission, that such sharing is necessary and appropriate on an ongoing basis.

5. The government shall, in connection with the completion of its end-to-end review of NSA's processes for collecting, using, and disseminating the PR/TT metadata, provide the Court with a detailed and complete description of NSA's handling of PR/TT metadata, including, but not limited to, a discussion of NSA's practices with regard to sharing query results both within

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NSA and with other agencies, and an assessment of whether and to what extent such handling has been and continues to be consistent with the Court's orders and otherwise necessary and appropriate.

SO ORDERED this 


REGGIE B. WALTON
Judge, United States Foreign
Intelligence Surveillance Court

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31 August 2009 Production