

UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

IN RE: DIRECTIVES PURSUANT TO SECTION)
105B OF THE FOREIGN INTELLIGENCE)
SURVEILLANCE ACT)

Docket No. 105B(g) 07-01

THE UNITED STATES' SUPPLEMENTAL RESPONSE
TO THE COURT'S NOVEMBER 5, 2014 ORDER

On November 5, 2014, the Court issued an order lifting the suspension of its review of redactions proposed by the Government to documents filed in the above-captioned matter. The order further directed the Government to propose, inter alia, a timetable for submitting the following materials to the Court:

- (a) a statement enumerating the Government's position on whether a previous redaction proposal, submitted September 12, 2013, should be modified given the subsequent review of the relevant materials by the Foreign Intelligence Surveillance Court of Review ("FISCR"), along with a modified redaction proposal if appropriate; and
- (b) a statement enumerating the Government's position on whether a separate redaction proposal, submitted September 27, 2013, should be modified given the subsequent review of the relevant materials by the FISCR, along with a modified redaction proposal if appropriate.

On November 18, 2014, the Government submitted a response to the Court's November 5, 2014 Order; indicating, inter alia, that it would submit responses to the questions described above (along with modified redaction proposals, if appropriate) to the Court by December 12, 2014. The Government hereby responds as follows:

On July 29, 2013, the Government, in a submission to this Court, indicated that it would undertake a classification review of the Memorandum Opinion, legal briefs, and certain other materials submitted by the parties in the above-captioned matter. An Appendix accompanying the Government's July 29, 2013 submission ("Appendix A") listed the specific documents the Government proposed to review.

A substantial number of the documents listed in Appendix A were also made part of the record in the appeal of this matter to the FISC. Those documents were subject to a parallel classification review ordered by the FISC. On October 22, 2013, this Court indicated that it had suspended its own review of the documents in Appendix A "in order to permit the results of the declassification process before the [FISC] . . . to inform its examination of declassified materials on the same subject matter." Order issued October 22, 2013. On September 11, 2014, the parties completed the classification review ordered by the FISC, and the FISC unsealed the redacted, declassified documents from the appellate record for public release.¹

The Government's position is that the documents listed in Appendix A subject to the recent classification review in the FISC should not have to be re-reviewed by the Government as part of the parallel classification review ordered by this Court. The Government has created (1) an Annotated Appendix A (attached hereto as Exhibit 1) denoting the documents in Appendix A that were reviewed and released by the Government at the direction of the FISC; and (2) a Revised Appendix A (attached hereto as Exhibit 2) listing the documents from the original Appendix A that were not reviewed by the Government as part of the classification review in the

¹ The classification review of one additional document – the transcript of the oral argument held before the FISC – was completed, and the document unsealed, on November 13, 2014.

FISCR. The Government proposes that the classification review in this Court be restricted to the documents listed in the Revised Appendix A.

(a) The Government's September 12, 2013 Redaction Proposal ("Group A")

Exhibit 1 reflects that the two documents implicated by the Government's September 12, 2013 redaction proposal were recently redacted, declassified, and released to the public in connection with the classification review in the FISCR. The Government does not believe it is necessary to conduct a second classification review of these documents as part of the review requested by this Court.

(b) The Government's September 27, 2013 Redaction Proposal ("Group B")

On September 27, 2013, the Government provided the Court with proposed redactions to most of the documents identified in "Group B" of Appendix A as briefs or other materials cited in the Court's Memorandum Opinion. As set forth in Exhibit 1, eight of the fourteen documents in Group B were recently redacted, declassified, and released to the public in connection with the classification review in the FISCR. The Government does not believe it is necessary to conduct a second classification review of these documents as part of the review requested by this Court. For those documents in Group B that were not subject to the classification review in the FISCR (and are accordingly included in the Revised Appendix A), the Government submits that the proposed redactions filed with the Court on September 27, 2013, do not need to be updated or modified; accordingly, the Court can review these documents. The Government will provide the Court with additional copies of these six documents on or before January 30, 2015, as part of its production encompassing documents in Group C of Revised Appendix A (discussed below).

(c) Relevant Briefs and Materials not Cited in the Memorandum Opinion
("Group C")

Exhibit 1 reflects that ten of the forty-three documents listed in "Group C" of Appendix A were recently redacted, declassified, and released to the public in connection with the classification review in the FISC. The Government does not believe it is necessary to conduct a second classification review of these documents as part of the review requested by this Court. For those documents in Group C that were not subject to the FISC classification review (and are accordingly included in the Revised Appendix A), the Government has proposed a deadline of January 30, 2015 to provide the Court with its proposed redactions to these documents.

December 12, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the United States' Supplemental Response to the Court's November 5, 2014 Order was served via electronic mail on this 12th day of December, 2014, addressed to:

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EXHIBIT 1

ANNOTATED APPENDIX A

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

**Docket No. 105B(g) 07-01: In re Directives Pursuant to
Section 105B of the Foreign Intelligence Surveillance Act**

REVIEWED IN FISCR?

GROUP A: MEMORANDUM OPINION AND ORDER

Memorandum Opinion (April 25, 2008)..... Yes
Order to Compel Compliance (April 25, 2008) Yes

GROUP B: BRIEFS AND MATERIALS CITED IN THE MEMORANDUM OPINION

Government Brief (November 21, 2007)..... Yes
Yahoo Brief (November 30, 2007) Yes
Government Brief (December 11, 2007) Yes
Government Brief (January 4, 2008)No
Government Declaration (January 16, 2008)..... Yes
Yahoo Declarations (January 23, 2008)..... Yes
Government Brief (February 15, 2008) Yes
Government Brief (February 20, 2008) Yes
Government Document (February 20, 2008).....No
Yahoo Brief (February 20, 2008).....No
Order (February 28, 2008) Yes
Government Brief (March 7, 2008)No
Government Brief (March 19, 2008)No
Yahoo Brief (March 19, 2008).....No

GROUP C: BRIEFS AND MATERIALS NOT CITED IN THE MEMORANDUM OPINION

Government Brief (December 11, 2007)	No
Order (December 14, 2007)	No
Government Brief (December 18, 2007)	No
Yahoo Brief (December 18, 2007).....	No
Yahoo Brief (December 21, 2007).....	No
Government Brief (December 27, 2007)	No
Order (December 28, 2007)	Yes
Other Order (December 28, 2007)	No
Order (January 4, 2008)	Yes
Yahoo Brief (January 9, 2008).....	No
Order (January 10, 2008)	No
Government Brief (January 14, 2008)	No
Order (January 17, 2008)	No
Order (January 31, 2008)	Yes
Order (February 6, 2008)	Yes
Yahoo Brief (February 7, 2008).....	No
Government Brief (February 8, 2008)	No
Order (February 12, 2008)	No
Order (February 15, 2008)	No
Yahoo Brief (February 15, 2008).....	No
Government Brief (February 26, 2008)	No
Order (February 29, 2008)	No
Government Brief (March 3, 2008)	No
Order (March 5, 2008)	No

Government Brief (March 14, 2008) Yes
 Order (March 17, 2008) Yes
 Government Brief (April 16, 2008) No
 Order (April 22, 2008) No
 Government Brief (April 30, 2008) No
 Government Brief (March 14, 2008) No
 Government Brief (May 1, 2008) No
 Order (May 2, 2008) No
 Yahoo Brief (May 6, 2008)..... No
 Government Brief (May 9, 2008) Yes
 Second Government Brief (May 9, 2008)..... Yes
 Third Government Brief and Declaration (May 9, 2008) Yes
 Fourth Government Brief (May 9, 2008)..... No
 Government Brief (May 13, 2008) No
 Yahoo Brief (May 14, 2008)..... Yes
 Second Yahoo Brief (May 14, 2008) No
 Order (May 14, 2008) No
 Second Order (May 14, 2008) No
 Order (May 15, 2008) No

EXHIBIT 2

REVISED APPENDIX A

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

**Docket No. 105B(g) 07-01: In re Directives Pursuant to
Section 105B of the Foreign Intelligence Surveillance Act**

GROUP A: MEMORANDUM OPINION AND ORDER

None

GROUP B: BRIEFS AND MATERIALS CITED IN THE MEMORANDUM OPINION

Government Brief (January 4, 2008)

Government Document (February 20, 2008)

Yahoo Brief (February 20, 2008)

Government Brief (March 7, 2008)

Government Brief (March 19, 2008)

Yahoo Brief (March 19, 2008)

GROUP C: BRIEFS AND MATERIALS NOT CITED IN THE MEMORANDUM OPINION

Government Brief (December 11, 2007)

Order (December 14, 2007)

Government Brief (December 18, 2007)

Yahoo Brief (December 18, 2007)

Yahoo Brief (December 21, 2007)

Government Brief (December 27, 2007)

Other Order (December 28, 2007)

Yahoo Brief (January 9, 2008)

Order (January 10, 2008)
Government Brief (January 14, 2008)
Order (January 17, 2008)
Yahoo Brief (February 7, 2008)
Government Brief (February 8, 2008)
Order (February 12, 2008)
Order (February 15, 2008)
Yahoo Brief (February 15, 2008)
Government Brief (February 26, 2008)
Order (February 29, 2008)
Government Brief (March 3, 2008)
Order (March 5, 2008)
Government Brief (April 16, 2008)
Order (April 22, 2008)
Government Brief (April 30, 2008)
Government Brief (March 14, 2008)
Government Brief (May 1, 2008)
Order (May 2, 2008)
Yahoo Brief (May 6, 2008)
Fourth Government Brief (May 9, 2008)
Government Brief (May 13, 2008)
Second Yahoo Brief (May 14, 2008)
Order (May 14, 2008)
Second Order (May 14, 2008)
Order (May 15, 2008)