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UNITED STATES

U.S. FOREIGN
INTELLIGENCE
SURVEILLANCE COURT

FOREIGN INTELLIGENCE SURVEILLANCE

AM 9:46

WASHINGTON, D.C.

CLERK OF COURT



Docket Number:

PR/TT

GOVERNMENT'S RESPONSE TO THE
COURT'S ORDER DATED [REDACTED] (U)

THE UNITED STATES OF AMERICA, through the undersigned Department of Justice attorneys, respectfully submits the following response to the Court's Order of [REDACTED] directing the Government either to affirm that it is exercising its authority only in accordance with the Primary Order issued in this docket number or fully report to the Court on any deviation therefrom. (TS)

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Classification by: The President of the United States

Reason: 1.4(c)

~~Declassify Only Upon the Determination of the President~~

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

Based upon the information provided by the National Security Agency in the attached Declaration of Lt. General Keith B. Alexander, U.S. Army, Director of the National Security Agency (NSA), attached hereto at Tab 1 ("Alexander Declaration"), the Government assesses that, except as noted below, it is exercising its authority to query the data it obtains pursuant to the Court's Order in this docket in accordance with the standard set forth therein.¹ ~~(TS)~~

The Government has concluded that one particular method for the approval of an e-mail address as a querying seed, as described below, is not consistent with the terms of the Court's Order. In light of this conclusion, the Government has terminated its use of this method. In addition, the Government is adopting additional oversight procedures—similar to the procedures described in the memorandum filed this day in docket number BR 08-13—to ensure compliance with the Court's Order. ~~(TS//SI//NF)~~

A. Deviation from the Court's Order ~~(S)~~

In the Alexander Declaration, NSA describes a procedure by which a U.S.-based e-mail account in direct contact with an alert list seed account and about which NSA had no further information could be deemed temporarily approved for querying as a seed. See Alexander Decl. at 9-12 (method described in subsection (c)(ii)). The

¹ Some compliance matters have been previously reported to the Court in connection with prior dockets and are not addressed here. In the event a compliance matter is subsequently uncovered during the reviews and audits described at pages 16-17 of the Alexander Declaration, the Government will immediately notify the Court. ~~(S)~~

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procedure was triggered when the automated query process returned a hit between a RAS-approved² seed and a U.S.-based e-mail address in direct contact with that RAS-approved seed. See id. at 9. Because NSA had no further information about the U.S.-based e-mail account other than the direct contact with the RAS-approved seed, the U.S.-based e-mail account was deemed to be temporarily RAS-approved based on its direct contact with the RAS-approved seed. See id. at 9-10. An analyst was alerted to the hit and was authorized to query using the U.S.-based e-mail address itself as a seed. See id. at 9-10. An analyst had the authority to enter a two-hop query on such an e-mail address without the individual review of the e-mail address by one of the designated approving authorities or NSA's Office of General Counsel (OGC). See id. at 10-11. The temporary RAS-approval process was not automated; rather, an analyst would make the requisite determinations and enter a query manually using the temporarily RAS-approved address as a seed. See id. at 11. NSA has suspended this practice. See id. at 12. ~~(TS//SI//NF)~~

This procedure previously was described in the Government's reports to the Court. In response to a Court-ordered reporting requirement,³ the Government

² In this response the Government will refer to an e-mail address that satisfies the reasonable, articulable suspicion standard as "RAS-approved." (S)

³ The requirement provided, "These reports shall explain in detail what is meant by queries made 'for an address linked to a seed address at either the first or second level of the contact chaining process,' [REDACTED]"

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submitted three reports to the Court under docket number PR/TT [REDACTED] (dated [REDACTED]
[REDACTED] and [REDACTED] in which NSA provided the following description of the
above-described procedure:

~~(TS//SI//NF)~~ As discussed above [REDACTED]
[REDACTED]

~~(TS//SI//NF)~~ [REDACTED]
[REDACTED]

These
seed addresses have been deemed approved for contact chaining purposes
by the Chief, Counter Terrorism Advanced Analysis Division based upon
guidance from the NSA Office of General Counsel due to their direct
contact with a known [REDACTED] thereby giving rise to
a reasonable articulable suspicion that the proposed seed address is
associated with [REDACTED]

Thus, in accordance with the Court's authorization, the analyst may cause the contact chaining tool to identify "accounts that have been in contact with the seed account, as well as all accounts that have been in contact with an account within the first tier of accounts that had direct contact with the seed account." In other words, the analyst takes a seed address and causes the contact chaining tool to link it to direct contacts (first tier) and then contacts of the first tier or what NSA analysts call a second hop or second level of contact (i.e. accounts that have been in contact with an account within the first tier of accounts). Analysts are authorized to take

[REDACTED] (attachment B, p. 11) [PR/TT Docket Number [REDACTED] Application, [REDACTED] and
how such queries fall within the authorization of this order." Order, docket number PR/TT [REDACTED]
[REDACTED] at 11. ~~(TS//SI//NF)~~

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these steps though in practice they rarely will exercise the full authority. No further contact chaining may be conducted absent at least Counter Terrorism Advanced Analysis Shift Coordinator, and in appropriate cases, NSA OGC approval based on the factual and practical considerations of everyday life on which reasonable and prudent persons act, there are facts giving rise to a reasonable articulable suspicion that a particular known email address is associated with [REDACTED]

NSA Report to the FISC ([REDACTED]) (citations omitted); see also Alexander Decl. at 15 (emphasis in Alexander Decl.). NSA continued this practice until recently, having provided the description of the procedure to the Court and believing it was in compliance with the Court's Orders. See id. at 12. As such, there was not any deliberate effort to engage in unauthorized activity. (~~TS//SI//NF~~)

In response to the Court's [REDACTED] Order, the Government reassessed the "deemed approved" method and in particular the querying of the PR/TT metadata using a U.S.-based e-mail address as a seed without obtaining individualized review by a designated approving official or NSA's OGC. The Court's most recent Order required that "[q]ueries shall only be conducted with the approval of one of the following NSA officials: the Signals Intelligence Directorate Deputy Program Manager for Counterterrorism Special Projects Analysis and Production; the Chief or Deputy Chief, Homeland Security Analysis Center; or one of the twenty specially-authorized Homeland Mission Coordinators in the Analysis and Production Directorate of the Signals Intelligence Directorate." Primary Order, docket number PR/TT [REDACTED] at 9.

The Order further directed that NSA's OGC shall "ensure appropriate consideration of any First Amendment issues, review and approve proposed queries of metadata in online storage based on seed accounts used by U.S. persons. . . ." *Id.* at 10-11. The "deemed approved" method described above enabled an analyst to enter a two-hop query using a U.S.-based e-mail address as a seed, without an individual review of that e-mail address by one of the designated approving authorities or NSA's OGC. For this reason, the Government has concluded that the process deviates from the terms of the Court's Order in PR/TT [REDACTED] and the process has been terminated.⁴ ~~(TS//SI//NF)~~

B. Additional Oversight Mechanisms the Government Will Implement ~~(S)~~

Although not required by the Court's Order, after careful consideration, the Government intends to employ the following additional oversight procedures:

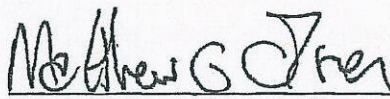
- NSA's OGC will consult with the National Security Division (NSD) on all significant legal opinions that are related to the interpretation, scope and/or implementation of the authorization granted by the Court in its Primary Order in docket number PR/TT [REDACTED], prior Orders issued by this Court, or any future order renewing such authorization. When operationally practicable, such consultation will occur in advance; otherwise, NSD will be notified as soon as practicable;
- NSA's OGC will promptly provide NSD with copies of all formal briefing and/or training materials (including all revisions thereto) currently in use or prepared and used in the future to brief/train NSA personnel concerning the authorization granted by orders issued by this Court in this matter;

⁴ A detailed description of the "deemed approved" method and the NSA's analysis and reporting regarding that method are included in the Alexander Decl. at 9-15. ~~(TS//SI//NF)~~

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- At least once before any future orders renewing the authorization granted in docket number PR/TI [REDACTED] expire, a meeting for the purpose of assessing compliance with this Court's orders will be held with representatives from NSD, NSA's OGC, and appropriate individuals from NSA's Signals Intelligence Directorate. The results of this meeting will be reduced to writing and submitted to the Court as part of any application to renew or reinstate this authority;
- At least once during the authorization period of future orders, NSD will meet with NSA's Office of Inspector General (OIG) to discuss their respective oversight responsibilities and assess NSA's compliance with the Court's orders in this matter;
- Prior to implementation, all proposed automated query processes will be reviewed and approved by NSA's OGC and NSD; and
- At least once every ninety days, NSA's OGC and NSD will review a sample of the justifications for querying the data, including e-mail accounts and addresses placed on the alert list. ~~(TS//SI//NF)~~

Respectfully submitted,



Matthew G. Olsen
Acting Assistant Attorney General



Office of Intelligence

National Security Division
United States Department of Justice

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