



Office of the Director of National Intelligence

ANNUAL STATISTICAL TRANSPARENCY REPORT

REGARDING THE INTELLIGENCE COMMUNITY'S
USE OF NATIONAL SECURITY SURVEILLANCE AUTHORITIES

————— Calendar Year 2022 —————

Office of Civil Liberties, Privacy, and Transparency

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Executive Summary

The *Annual Statistical Transparency Report Regarding the Intelligence Community's Use of National Security Surveillance Authorities* provides information concerning how the Intelligence Community (IC) uses the *Foreign Intelligence Surveillance Act* (FISA) and certain other national security authorities to accomplish its mission. The use of these authorities remains a critical component of the IC's efforts to enhance national security while appropriate transparency—such as the publication of this report—protects democratic values and enhances accountability to the public. The report also describes rules designed to protect civil liberties and privacy and ensure compliance with the Constitution and laws of the United States in the use of these authorities, and it provides context to other publicly released materials describing the oversight framework under which these authorities are exercised.

This is the **tenth** such transparency report. The government is releasing this report consistent with Section 603(b) of the *Foreign Intelligence Surveillance Act of 1978*, as amended (codified in 50 U.S.C. § 1873(b)), and the Intelligence Community's [Principles of Intelligence Transparency](#).

The statistics provided in these reports fluctuate over time and are affected by a myriad of factors, which are detailed in the report. Often, such factors cannot be publicly disclosed without revealing sensitive information, but where such factors can be disclosed, this report does so. As explained in reports for the past few years, such fluctuations may be attributed to such things as changes in collection and operational priorities, world events, technical capabilities, target behavior, and technological changes.

This year's report again shows declines in [FISA Titles I and III](#) (electronic surveillance and physical searches based on probable cause) and [FISA Title VII Sections 703 and 704](#) (targeting of United States persons (U.S. person or USP) located abroad based on probable cause), and Title IV (pen register and trap and trace) court [orders](#) and [targets](#); the number of orders and targets associated with [FISA Title V](#) (business records) has declined or remained static over the past several years.

This year's report shows an increase in the number of [FISA Section 702 targets](#), which is consistent with the trend identified in past reports. Reporting U.S. person query data for the National Security Agency (NSA) and Central Intelligence Agency (CIA) was more complicated this year. As the result of a change in IT systems partway through the year, CIA noncontents and contents query data are counted differently from prior years; it is not possible to show with precision the exact impact of this change in an unclassified format. Previously unrecognized counting errors impacting NSA U.S. person query statistics were also identified. These errors implicate NSA U.S. person query statistics previously reported in the calendar year (CY)2017 through CY2021 reports. U.S. person query statistics have been [updated](#) in this year's report to reflect these changes. U.S. person query data for CIA, NSA, and the National Counterterrorism Center (NCTC) is provided at [Figure 6a](#) and [Figure 8](#).

Last year, this report included for the first time statistics regarding the Federal Bureau of Investigation's (FBI) use of U.S. person queries of FISA Section 702-acquired information. Reflecting feedback received on the usability of statistics as presented in the CY2021 report, the FBI made improvements to its counting methodology for this year's report to more closely align with other IC elements by removing duplicative queries. To facilitate meaningful comparison across

years, this report includes [FBI statistics](#) for the 12-month periods December 2019–November 2020, December 2020–November 2021, and December 2021–November 2022 compiled using both the previous and the new counting methodologies. In future years, these statistics will only be presented using the new counting methodology.

Under both the previous methodology and new methodology, there was a significant decline in total FBI U.S. person queries in the period December 2021–November 2022. This reduction occurred following a number of [changes](#) FBI made to its [systems, processes, and training](#) relating to U.S. person queries. The number of queries conducted for evidence of a crime-only purposes that returned Section 702-acquired content reviewed by an FBI user [increased](#) slightly this year, while the number of instances in which FBI failed to obtain a required court order prior to reviewing the results of certain evidence of a crime-only queries [declined](#).

The number of [requests](#) the IC received to identify U.S. persons whose identities were initially masked in disseminated intelligence reports declined in CY2022. Consistent with CY2021, many of these requests were approved; the number denied declined in CY2022 while the number withdrawn increased. The number of times the government provided notice of its intent to use certain FISA information in criminal proceedings [declined](#), as did the number of [National Security Letters](#) issued.

Introduction

Consistent with the *Foreign Intelligence Surveillance Act of 1978*, as amended (FISA) (50 U.S.C. §§ 1801, et seq.), specifically, Section 603(b) (codified at 50 U.S.C. § 1873(b)), and the Intelligence Community's (IC) *Principles of Intelligence Transparency*, the government is releasing its **tenth** *Annual Statistical Transparency Report Regarding the Intelligence Community's Use of National Security Surveillance Authorities* (hereinafter the *Annual Statistical Transparency Report*) presenting statistics on how often the government uses certain national security authorities, including FISA. These statistics add further context to the rigorous and multi-layered oversight framework, including oversight conducted by independent judicial and legislative entities, which is designed to safeguard the civil liberties and privacy of the persons whose information is acquired pursuant to these national security authorities. Both U.S. persons and non-U.S. persons are afforded privacy protections based on the authorities discussed herein.

This report goes beyond FISA's statutory reporting requirements and provides the public with detailed explanations of how the IC uses its national security authorities and metrics that add context to current public discussions. This document should be read in conjunction with previously released national security-related materials, particularly those hyperlinked throughout, as well as the statistical report provided by the Director of the Administrative Office of the U.S. Courts (AOUSC), see 50 U.S.C. § 1873(a) (available on the [AOUSC website](#)). Interested readers are also encouraged to explore one page "explainers" discussing the IC's use of FISA which may be found on intel.gov at the [FISA Resource Library](#).

Additional public information on national security authorities is available at the Office of the Director of National Intelligence's (ODNI) website, [dni.gov](#); the IC's transparency portal, [intel.gov](#); [ODNI's Guide to Posted Documents](#) (which offers a topical index of significant public releases); and the Department of Justice's (DOJ) FISA website, <https://www.justice.gov/nsd/fisa>.

A. Background

In June 2014, the Director of National Intelligence (DNI) began releasing statistics relating to the use of critical national security authorities, including FISA, in the *Annual Statistical Transparency Report*. The 2014 report and subsequent annual reports are available [here](#).

In June 2015, Congress enacted the *Uniting and Strengthening America by Fulfilling Rights and Ensuring Effective Discipline Over Monitoring Act of 2015* (USA FREEDOM Act), amending FISA to formally require the government to publicly report many of the statistics already reported in the *Annual Statistical Transparency Report*. The USA FREEDOM Act also expanded the scope of the information included in the reports by requiring the DNI to report information concerning U.S. person search terms and queries of certain FISA-acquired information. See 50 U.S.C. § 1873(b). The *FISA Amendments Reauthorization Act of 2017* further expanded the statistics required to be included. See *id.*

B. Areas Covered in this Report

The *Annual Statistical Transparency Report* provides statistics concerning the government's use of FISA, the dissemination of U.S. person information by IC elements, and the use of National Security Letters.

The majority of the report covers the government's use of FISA. FISA authorizes electronic surveillance and other forms of collection to obtain foreign intelligence information. Over the years, it has been amended, most recently by the *FISA Amendments Reauthorization Act of 2017*.

FISA itself is divided into Titles, each containing sections, which specify the means, requirements, and limitations on the collection of foreign intelligence information:

- Title I concerns electronic surveillance,
- Title III applies to physical searches,
- Title IV regulates the use of pen registers and trap and trace devices,
- Title V regards the collection and use of certain business records, and
- Title VII applies to various forms of collection concerning persons located outside the United States.

This report is organized into seven major sections, five of which concern FISA authorities and provide related statistics:

- FISA Probable Cause Authorities (FISA Title I, Title III, and Title VII: Sections 703 and 704)
- FISA Section 702
- FISA Criminal Use and Notice Provisions (FISA Sections 106 & 305)
- FISA Title IV – Use of Pen Register and Trap and Trace (PR/TT) Devices
- FISA Title V – Business Records

The other two sections of the report provide statistics on:

- IC Dissemination of U.S. Person Information pursuant to Intelligence Community Policy Guidance (ICPG) 107.1, covering disseminations of U.S. person information, including disseminations from FISA and non-FISA sources, as part of requests to unmask the identities of U.S. persons whose identities were originally masked in a disseminated intelligence report
- National Security Letters (NSLs) authorized by a number of non-FISA statutory provisions

C. Statistical Fluctuations Over Time

The statistics provided in this report fluctuate from year to year for a wide variety of reasons, including changes in collection and operational priorities of the U.S. Government, world events, technical capabilities, target behavior, changes in the products and services provided by electronic communication service providers, and technological advances in the telecommunications sector.

D. Key Terms and Concepts

Certain terms used throughout this report are described below. Other terms are described in the sections in which they are most directly relevant. These terms have specifically defined meanings in the context of the IC's use of its collection authorities and will be used consistently throughout this report.

- **U.S. PERSON.** As defined by Title I of FISA, a U.S. person is “a citizen of the United States, an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the *Immigration and Nationality Act*), an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in [50 U.S.C. §§ 1801(a)(1), (2), or (3)].” 50 U.S.C. § 1801(i).

Section 603(e)(4) of FISA, however, uses a narrower definition. Since the broader Title I definition governs how U.S. person queries are conducted pursuant to the relevant querying procedures, it is used throughout this report.

- **TARGET.** Within the IC, the term “target” has multiple meanings. With respect to the statistics provided in this report, the term “target” is used as a noun and defined as the individual person, group, entity composed of multiple individuals, or foreign power that uses a selector, such as a telephone number or email address, regarding which the government is seeking collection.

The IC also uses the term “target” as a verb. For example, Section 702 authorizes the targeting of (i) non-U.S. persons (ii) reasonably believed to be located outside the United States (iii) to acquire foreign intelligence information. To ensure that all three requirements are appropriately met for each target, Section 702 requires targeting procedures to be applied to each individual targeting decision.

Despite the different meanings, collecting foreign intelligence about a target for foreign intelligence purposes must be informed by intelligence needs specified by the [National Intelligence Priorities Framework \(NIPF\)](#). The NIPF is the mechanism used to manage and communicate high-level national intelligence priorities; it facilitates the IC’s ability to allocate finite resources to address the most pressing intelligence questions and mission requirements. Guidance from the President and the Assistant to the President for National Security Affairs (commonly referred to as the National Security Advisor), with formal input from cabinet-level heads of departments and agencies, determines the overall priorities of the top-level NIPF issues.

Prior to targeting, the IC must determine that a particular target meets a particular intelligence need under the NIPF. Once the IC determines that a particular target meets a particular intelligence need, the IC may collect intelligence regarding that target only if authorized by applicable legal authorities (e.g., FISA or Executive Order 12333) and not prohibited by other legal authorities (e.g., PPD-28; Executive Order 14086).

- **FOREIGN INTELLIGENCE INFORMATION.** Under FISA, “foreign intelligence information” is information that relates to (and, if concerning a U.S. person, is necessary to) the ability of the United States to protect against actual or potential attack or other grave hostile acts of a foreign power or agent of a foreign power; sabotage, international terrorism, or the intentional proliferation of weapons of mass destruction by a foreign power or agent of a foreign power; clandestine intelligence activities by an intelligence service or intelligence network of a foreign power or by an agent of a foreign power; or information that relates to (and if concerning a U.S. person, is necessary to) the national defense or the security of the United States or the conduct of the foreign affairs of the United States. 50 U.S.C. § 1801(e).

- **ESTIMATED NUMBER.** Throughout this report, when numbers are *estimated*, the estimate comports with the statutory requirements to provide a good faith estimate of a particular number.
- **UNMINIMIZED INFORMATION.** Unminimized information is lawfully collected information for which a determination has not been made as to whether it contains foreign intelligence information or whether it may be otherwise retained pursuant to the agency's minimization procedures.
- **DISSEMINATION.** Dissemination refers to certain sharing of foreign intelligence information or evidence of a crime.
- **FOREIGN INTELLIGENCE SURVEILLANCE COURT (FISC).** The FISC was established in 1978 when Congress enacted FISA. The FISC is composed of eleven federal district court judges who are designated by the Chief Justice of the United States. The FISC reviews applications submitted by the U.S. Government for approval of electronic surveillance, physical search, and other investigative actions for foreign intelligence purposes. The FISC also conducts oversight by assessing the government's use of FISA authorities. The FISC uses a variety of tools to conduct such assessments, including mandating that the government report information on every identified compliance incident, implementing specialized reporting requirements to monitor certain aspects of FISA activities, and convening hearings. Based upon its assessments, the FISC can terminate, modify, or limit the government's authority to use FISA and may also require the government to devise and report on remedial measures related to identified instances of noncompliance.
- **ORDERS.** There are different types of orders that the FISC may issue in connection with FISA cases, including orders granting or modifying the government's applications to collect foreign intelligence pursuant to FISA; orders directing electronic communication service providers to provide any technical assistance necessary to implement the authorized foreign intelligence collection; and supplemental orders or briefing orders requiring the government to take a particular action or provide the FISC with specific information. As in past years, this report only counts orders granting the government's applications.

At a Glance: Foreign Intelligence Surveillance Court (FISC)

- Established in 1978.
- Comprised of 11 federal district court judges.
- Authorizes and oversees the government's use of the FISA authorities — electronic surveillance, physical search, and other investigative actions for foreign intelligence purposes.

The FISC may *amend* an order one or more times after it has been granted. For example, an order may be amended to add a newly discovered account used by the target. This report does not count such amendments separately.

The FISC may *renew* some orders multiple times during the calendar year. Each authority permitted under FISA has specific time limits for the FISA collection to continue (e.g., a Section 704 order against a U.S. person target outside of the United States may last no longer than 90 days, but FISA permits the order to be renewed, *see* 50 U.S.C. § 1881c(c)(4)). Each renewal requires a separate application submitted by the government to the FISC and a finding by the FISC that the application meets the requirements of FISA. Unlike amendments, this report does count each such renewal as a separate order granting the requested FISA authority.

- **MASKED U.S. PERSON INFORMATION.** An IC element's rules and procedures (such as agency minimization procedures) generally provide for the substitution of a U.S. person identity with a generic phrase or term so the reader cannot ascertain the U.S. person's identity, unless the dissemination of the U.S. person's identity would be consistent with the applicable legal authorities (*e.g.*, because the identity is necessary to understand the foreign intelligence information). "Masking" the identity of the U.S. person (*i.e.*, omitting identifying information from the intelligence report) allows the IC element to disseminate the intelligence in accordance with its procedures, while protecting the U.S. person's privacy and civil liberties.
- **UNMASKING U.S. PERSON INFORMATION.** After an IC element disseminates an intelligence report with a U.S. person's identifying information masked, recipients of the report may request that the masked information in the report be revealed or "unmasked." The requested identifying information is released only if the requesting recipient has established a "need to know" the identity of the U.S. person and if the dissemination of the U.S. person's identity would be consistent with the applicable legal authorities.

At a Glance: Masking

- Substitution of a U.S. person's identity with a generic phrase.
- Protects the U.S. person's civil liberties and privacy while allowing IC elements to disseminate appropriate intelligence.
- Example: Disseminated intelligence reporting of Section 702-acquired information states that "Bad Guy" communicated with "an identified U.S. person," "a named U.S. person," or "a U.S. person"—instead of the person's actual name.

FISA Probable Cause Authorities

A. FISA Titles I and III

With limited exceptions (*e.g.*, in the event of an emergency), FISA Title I and FISA Title III require that the government obtain a probable cause court order in order to conduct electronic surveillance or physical search of any individual. Title I of FISA permits electronic surveillance and Title III permits physical search in the United States of foreign powers or agents of a foreign power when the government has a significant purpose to obtain foreign intelligence information. *See* 50 U.S.C. §§ 1804 and 1823.

Title I and Title III are commonly referred to as “Traditional FISA.” Both require that, following submission of a government application, the FISC make a probable cause finding, based upon a factual statement in the government’s application that (i) the target is a foreign power or an agent of a foreign power, as defined by FISA, and (ii) the facility being targeted for electronic surveillance is used by or about to be used by, or the premises or property to be searched is or is about to be owned, used, possessed by, or is in transit to or from a foreign power or an agent of a foreign power. In addition to meeting the probable cause standard, the government’s application must meet the other requirements of FISA. *See* 50 U.S.C. §§ 1804(a) and 1823(a). These authorities require individual orders based on probable cause; bulk collection is not permitted. FISC orders and opinions authorizing the government’s use of these authorities may be found on [intel.gov](https://www.intel.gov) (*e.g.*, in postings in [September 2017](#) and [September 2020](#)). Additional orders were approved in April 2022 and April 2023 but have not yet been publicly released.

B. FISA Title VII, Sections 703 and 704

Sections 703 and 704 of FISA Title VII similarly require an individualized court order based on a finding of probable cause for the government to conduct FISA collection targeting U.S. persons. Section 703 applies when the government seeks to target a U.S. person who is reasonably believed to be located outside the United States in order to acquire foreign intelligence information if the acquisition constitutes electronic surveillance or the acquisition of stored electronic communications or stored electronic data inside the United States, in a manner that otherwise requires an order under FISA. Section 704 applies when the government seeks to conduct collection overseas targeting a U.S. person reasonably believed to be located outside the United States under circumstances in which the U.S. person has a reasonable expectation of privacy and a warrant would be required if the acquisition were conducted in the United States for law enforcement purposes. Both Sections 703 and 704 require that the FISC make a probable cause finding, based upon a factual statement in the government’s application, that the target is (i) a U.S. person reasonably believed to be located outside the United States and (ii) a foreign power, agent of a foreign power, or officer or employee of a foreign

FISA Title I, Title III, and Title VII Sections 703 and 704

- Require individual court orders based on probable cause.
- Apply to FISA collection targeting persons within the United States (Titles I and III) or collection targeting U.S. persons outside the United States (Title VII, Sections 703 and 704).
- Do not permit bulk collection.

power. Additionally, the government’s application must meet the other requirements of FISA. See 50 U.S.C. §§ 1881b(b) and 1881c(b).

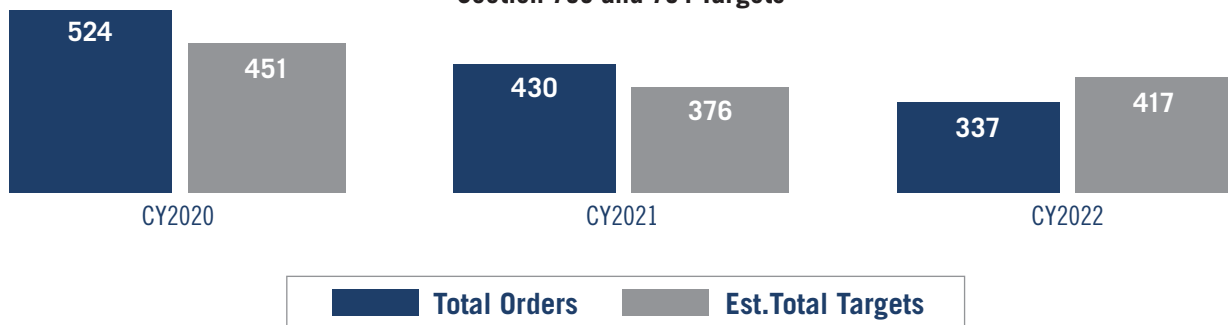
C. Statistics

The tables and graphics below provide the number of court orders issued and the estimated number of targets (as defined above) that were targeted for collection during the current and recent periods. This data provides the public an indication of the scale of the government’s use of these authorities for national security purposes. For CY2022, the statistics show an increase in the number of targets, but a decrease in the number of orders compared to CY2021 reporting. Both numbers are below CY2020 levels.

HOW TARGETS ARE COUNTED. If the IC received authorization to conduct electronic surveillance or physical search against the same target in four separate applications, the IC counts this as one target, not four. Alternatively, if the IC received authorization to conduct electronic surveillance or physical search against four targets in the same application, the IC counts this as four targets.

HOW ORDERS ARE COUNTED. The number of court orders is not dependent on the number of targets authorized in a single order, nor is it reduced if the court order concerns a target for whom a prior order has been obtained by the government. As such, four orders authorizing collection on a single target are counted as four orders. Alternatively, one order authorizing collection on four targets is counted as a single order.

Figure 1: FISA “Probable Cause” Court Orders and Title I and III and Section 703 and 704 Targets



See 50 U.S.C. §§ 1873(b)(1) and 1873(b)(1)(A).

U.S. PERSON STATUS. While Section 703 and Section 704 apply only to U.S. person targets, Titles I and III of FISA govern electronic surveillance and physical searches (as defined by FISA) within the United States of both U.S. persons and non-U.S. persons.

The following figure breaks down the number and percentage of targets by U.S. person status.

Figure 2: FISA “Probable Cause” Targets Broken Down by U.S. Person Status

Titles I and III and Sections 703 and 704—Targets	CY2020	CY2021	CY2022
Estimated number of targets who are <i>non</i> -U.S. persons <i>See</i> 50 U.S.C. § 1873(b)(1)(B).	349	309	368
Estimated number of targets who are U.S. persons <i>See</i> 50 U.S.C. § 1873(b)(1)(C).	102	67	49
Percentage of targets who are estimated to be U.S. persons	22.6%	17.8%	11.7%

FISA Section 702

A. Section 702

Title VII of FISA includes Section 702, which permits the Attorney General and the DNI to jointly authorize the targeting of (i) non-U.S. persons (ii) who are reasonably believed to be located outside the United States (iii) to acquire foreign intelligence information. *See* 50 U.S.C. § 1881a. *All three requirements must be met.* Additionally, Section 702 requires that the Attorney General, in consultation with the DNI, adopt targeting procedures, minimization procedures, and querying procedures that they attest satisfy the statutory requirements of Section 702 and are consistent with the Fourth Amendment. Absent exigent circumstances (*see* 50 U.S.C. § 1881a(c)(2)), before the government may use Section 702, the government must apply for approval from the FISC (detailed below) by submitting an application package. This package contains a certification detailing the type of information to be collected along with targeting, minimization, and querying procedures. Individual targeting decisions are required; bulk collection is not permitted. Additional information on how the government uses Section 702 is posted on [intel.gov's IC on the Record](#), including FISC orders and opinions approving the government's use of this authority.

SECTION 702 TARGETS AND "TASKING." Under Section 702, the government "targets" a particular non-U.S. person, including non-U.S. person groups or entities, reasonably believed to be located outside the United States to acquire foreign intelligence information by "tasking" selectors (for example, telephone numbers and email addresses) used by the target. Before tasking a selector for collection under Section 702, the government must make individual targeting decisions for each individual selector and apply its FISC-approved targeting procedures to ensure that each selector is used by a non-U.S. person who is reasonably believed to be located outside the United States and who is expected to possess, receive, and/or is likely to communicate foreign intelligence information.

The National Security Agency (NSA) and Federal Bureau of Investigation (FBI) task selectors pursuant to their respective Section 702 targeting procedures, which are discussed below. All agencies that receive unminimized Section 702 data—NSA, FBI, CIA, and NCTC—handle the Section 702-acquired data in accordance with minimization and querying procedures, which are explained below.

THE FISC'S ROLE. In order to collect information pursuant to Section 702, the government must, on an annual basis, submit one or more certifications to the FISC. These certifications, which are executed jointly by the Attorney General and the DNI, describe the foreign intelligence information that the government may collect, must be supported by affidavits from the heads of the intelligence agency or agencies that will receive the collection, and must include targeting procedures, minimization procedures, and querying procedures governing the collection. The FISC reviews this certification

FISA Title VII, Section 702

- Requires individual targeting determinations that the target (1) is a non-U.S. person (2) who is reasonably believed to be located outside the United States and (3) who has or is expected to communicate or receive foreign intelligence information.
- Does not permit bulk collection.

application package and determines whether certifications and the accompanying documents meet all the requirements of Section 702 and the Fourth Amendment. The FISC's review of the procedures accompanying the certification application package is not limited to the text of the procedures as submitted but also includes ongoing examination of how the procedures are implemented through examination of notices of compliance incidents, the results of oversight reviews, assessments of compliance trends, and examination of other reports and information concerning implementation. Based on these reports, the FISC conducts its own compliance analysis, and can require the government to further explain compliance incidents and describe how incidents have been remedied. This type of reporting occurs throughout the year to ensure the FISC remains aware of how the government is implementing Section 702.

If the FISC determines that the government's certification application package meets the statutory requirements of Section 702 and is consistent with the Fourth Amendment, the FISC approves the certifications and the targeting procedures, minimization procedures, and querying procedures. If the FISC is not satisfied with the government's certification application, the government's compliance record, or the government's implementation of Section 702, the FISC can terminate, modify, or limit the government's authority to use Section 702.

More information about oversight is provided in the Attorney General and DNI's joint *Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of the Foreign Intelligence Surveillance Act* (commonly referred to as the Joint Assessment of Section 702 Compliance or the Joint Assessment), most recently released in [December 2022](#) on intel.gov, as well as a [Summary of Oversight](#) and a [September 2020 White Paper](#) discussing Section 702.

CERTIFICATIONS. Under Section 702, the Attorney General and DNI jointly execute certifications under which the IC intends to acquire specified foreign intelligence information. The certifications, which form a part of the certification application package submitted to the FISC for its approval, are effective for up to one year and identify categories of foreign intelligence information to be collected via the targeting of non-U.S. persons reasonably believed to be located outside the United States. These categories must meet the statutory definition of foreign intelligence information. Certifications have included information concerning international terrorism and other topics, such as the acquisition of information concerning weapons of mass destruction.

TARGETING PROCEDURES. The targeting procedures detail the steps that the government must take before and after tasking a selector to ensure that the government is lawfully targeting the user or users of the tasked selector. Specifically, the government must assess that the user is a non-U.S. person who is reasonably believed to be located outside the United States. Additionally, the government must reasonably assess that tasking the selector is likely to acquire foreign intelligence information that falls within an approved Section 702 certification. Further, the targeting procedures require the government to provide written, fact-based explanations of its assessments that support individual determinations that each tasked selector meets the requirements of the targeting procedures.

Each set of targeting procedures is adopted by the Attorney General, in consultation with the DNI, and then submitted to the FISC as part of the certification application package. The FISC assesses the legal sufficiency of each agency's targeting procedures as well as how the IC has complied with past procedures. Only agencies that have FISC-approved targeting procedures may task selectors pursuant to Section 702; only two agencies, NSA and FBI, have targeting procedures.

Each NSA targeting decision is reviewed by the DOJ oversight team as part of its routine review of the tasking records. All incidents of noncompliance with the targeting procedures are reported to the FISC regardless of a target's U.S. person status. Such reporting to the FISC includes improper targeting of a non-U.S. person located outside the United States—such as when the government does not have a sufficient basis to assess whether the non-U.S. person target is reasonably likely to possess, receive, or communicate foreign intelligence information.

More information about oversight reviews is provided in the Attorney General and DNI's Joint Assessment of Section 702 Compliance last released on intel.gov's IC on the Record in December 2022. [NSA's 2020 targeting procedures](#) and [FBI's 2020 targeting procedures](#) were publicly released on intel.gov's IC on the Record in April 2021. NSA and FBI targeting procedures were approved in April 2022 and April 2023 but have not yet been publicly released.

MINIMIZATION PROCEDURES. The minimization procedures detail requirements the government must meet to use, retain, and disseminate Section 702 data, including specific restrictions regarding non-publicly available U.S. person information acquired from Section 702 collection on non-U.S. person targets, consistent with the needs of each agency to obtain, produce, and disseminate foreign intelligence information. Each agency's Section 702 minimization procedures are adopted by the Attorney General, in consultation with the DNI. The FISC reviews the sufficiency of each agency's minimization procedures as part of the certification application package. Such reviews include assessing the IC's compliance with past procedures. The [2020 minimization procedures](#) were released on intel.gov in April 2021. Minimization procedures were approved in April 2022 and April 2023 but have not yet been publicly released.

QUERYING PROCEDURES. The *FISA Amendments Reauthorization Act of 2017* amended Section 702 to require that querying procedures be adopted by the Attorney General, in consultation with the DNI. Section 702(f)(1) requires that the querying procedures be consistent with the Fourth Amendment and that they include a technical procedure whereby a record is kept of each U.S. person term used for a query. Similar to the Section 702 targeting and minimization procedures, the querying procedures are required to be reviewed by the FISC as part of the certification application package for consistency with the statute and the Fourth Amendment.

Query terms may be date-bound and may include alphanumeric strings (e.g., telephone numbers or email addresses) or terms (e.g., the name of a person or company) that can be used individually or in combination with one another. Pursuant to FISC-approved procedures, an agency can only query Section 702 information if the query is reasonably likely to retrieve foreign intelligence information or, in the case of the FBI, evidence of a crime. This standard applies to all Section 702 queries, regardless of whether the term concerns a U.S. person or non-U.S. person. The [2020 querying procedures](#) were released in April 2021. Querying procedures were approved in April 2022 and April 2023 but have not yet been publicly released.

COMPLIANCE. The IC's application of the targeting, minimization, and querying procedures is subject to robust internal agency oversight and to rigorous external oversight by DOJ, ODNI, Congress, and the FISC. Every identified incident of noncompliance, regardless of the U.S. person status of individuals or entities potentially affected by the incident, is reported to the FISC (through notices or in reports) and to Congress in semiannual reports. Depending on the nature of the incident, the FISC may order remedial actions or agencies may initiate them independent of FISC action, which could

include deleting improperly collected information, recalling improperly disseminated information, and retraining IC employees. DOJ and ODNI also jointly submit semiannual reports to Congress that assess the IC's overall compliance efforts. Past Joint Assessments of Section 702 Compliance have been publicly released on intel.gov.

ENHANCED PRIVACY SAFEGUARDS. In addition to statutory requirements and FISC-approved FISA procedures, agencies are also required to apply additional measures to protect the privacy of all persons. The protections established by [Presidential Policy Directive 28 \(PPD-28\)](#), [Signals Intelligence Activities](#), and subsequently [Executive Order 14086, Enhancing Safeguards for United States Signals Intelligence Activities](#), reinforce longstanding intelligence practices that protect privacy and civil liberties, while requiring agencies to implement additional procedures to ensure that U.S. signals intelligence activities include appropriate safeguards for the personal information of all individuals, regardless of nationality or residency.

Specifically, non-U.S. persons benefit from many of the protective rules prescribed by the various procedures. Under Section 702, collection is targeted (*i.e.*, not bulk) and must be limited to targets who are expected to possess, receive, and/or are likely to communicate foreign intelligence information that is specified in one of the FISC-approved certifications. See [Status of Implementation of PPD-28: Response to the PCLOB's Report, October 2018](#), at 9. In addition, as a practical matter, non-U.S. persons also benefit from the access and retention restrictions required by the different agencies' minimization procedures. See [Privacy and Civil Liberties Oversight Board Report on the Surveillance Program Operated Pursuant to Section 702 of FISA \(July 2, 2014\)](#), at 100. As with the targeting procedures, all identified compliance incidents are reported to the FISC, regardless of U.S. person status. Moreover, PPD-28 regulates the IC's collection, handling, retention and dissemination of personal information of non-U.S. persons collected by signals intelligence activities, including Section 702. [Executive Order 14086](#), signed October 7, 2022, rescinded and replaced many, but not all, of the provisions of PPD-28. The protections for non-U.S. persons remain in effect. In addition to the privacy protections enumerated in the Executive Order, it established a binding and independent signals intelligence [redress mechanism](#) through which individuals in qualifying countries may seek review and obtain appropriate remediation of complaints that satisfy the Executive Order's requirements.

B. Statistics—Orders and Targets

COUNTING SECTION 702 ORDERS. As explained above, the FISC may issue a single order to approve more than one Section 702 certification to acquire foreign intelligence information. Note that, in its own transparency report, which is required pursuant to 50 U.S.C. § 1873(a), the Director of the AOUSC counts each of the Section 702 certifications associated with the FISC's order. Because the number of the government's Section 702 certifications remains a classified fact, at the government's request, the AOUSC redacts the number of certifications from its transparency report prior to publicly releasing it.

As noted in Figure 3, the FISC did not issue any Section 702 orders approving, modifying, or denying a Section 702 certification in 2021. Pursuant to its authority under 50 U.S.C. § 1881a(k)(2), the FISC chose to extend its review of the 2021 certification application package, an authority that may be exercised "as necessary for good cause in a manner consistent with national security."

On April 21, 2022, the FISC issued a Section 702 order approving the 2021 certification application package. This order has not yet been publicly released. Pending FISC review of the certification application package, the 2020 certification order remained in effect throughout the extension period. Similar extensions have occurred in the past, including in 2018 and 2016, which have been detailed in previous *Annual Statistical Transparency Reports*.

Figure 3: Section 702 Orders

Section 702 of FISA	CY2020	CY2021	CY2022
Total number of orders issued <i>See 50 U.S.C. § 1873(b)(2).</i>	1	0	1

ESTIMATING SECTION 702 TARGETS. The number of Section 702 targets reflects an estimate of the number of non-U.S. persons who are the users of tasked selectors. Unless and until the IC has information that links multiple selectors to a single foreign intelligence target, each individual selector is counted as a separate target for purposes of this report. On the other hand, where the IC is aware that multiple selectors are used by the same target, the IC counts the user of those selectors as a single target. This counting methodology reduces the risk that the IC might inadvertently understate the number of discrete persons targeted pursuant to Section 702.

Figure 4: Section 702 Targets (recall that only non-U.S. Persons are targeted)

Section 702 of FISA	CY2020	CY2021	CY2022
Estimated number of targets of such orders <i>See 50 U.S.C. § 1873(b)(2)(A).</i>	202,723	232,432	246,073

C. Statistics—U.S. Person Queries

The USA FREEDOM Act requires the government to report the number of query terms concerning a known U.S. person used to retrieve the unminimized contents (referred to as “query terms of content”) and the number of queries concerning a known U.S. person of unminimized noncontents information obtained from Section 702-acquired communications. *See 50 U.S.C. §§ 1873(b)(2)(B) and (b)(2)(C).* FISA exempts FBI queries of contents and noncontents from this statutory reporting requirement. *See 50 U.S.C. § 1873(d)(2)(A).* Notwithstanding this exemption, consistent with the *Principles of Intelligence Transparency*, the DNI has declassified these FBI statistics and related information regarding the FBI’s use of queries. Beginning in CY2021, the government began providing statistics in this report concerning the number of U.S. person queries conducted by FBI against unminimized Section 702-acquired information. Due to unique variations in FBI’s data, including that FBI did not originally count the number of unique query terms, but instead counted the total number of queries (meaning FBI potentially counted multiple queries of the same term) and for other reasons discussed more fully below, these statistics are reported separately from those of NSA, CIA, and NCTC.

Further, although the USA FREEDOM Act only requires the reporting of “known” U.S. person query terms, all agencies’ querying procedures contain presumptions that are to be applied when the U.S. person status of a particular query term is not known. Thus, where the term “U.S. person” appears below, it should be understood to include both known U.S. persons and presumed U.S. persons. As noted above, this report uses the broader definition of “U.S. person” in Title I of FISA, which includes not just citizens, but also lawful permanent residents and certain corporations and unincorporated entities, rather than the narrower definition found in Section 603(e)(4).

When reviewing the U.S. person statistics in this report, it is also important to recognize that there is not a direct, one-for-one correlation between the number of query terms and the number of U.S. persons who are associated with those queries. For example, a single U.S. person might be associated with 10 unique query terms, such as a name, social security number, passport number, phone number, multiple email addresses, and so on. This reality is reflected in the statistics, below.

QUERY. A query is a basic analytic step foundational to efficiently and effectively reviewing data lawfully collected and already in the government's possession. Queries using national security authorities are conducted by authorized personnel to more efficiently identify foreign intelligence information and, in FBI's case, evidence of a crime. Queries do this by, for example, helping to find connections between individuals and entities; identifying threats to the homeland or national security interests abroad; and identifying potential victims of national security threat activity (e.g., possible victims of cyber attacks on U.S. infrastructure by foreign actors). Queries that return no results may be just as useful as those that do return results because they may sometimes indicate that a person or matter which was believed to be of concern is, in fact, not. Such results may allow intelligence and investigative resources to be redirected along different lines. They may also enhance civil liberties and privacy protections by helping an analyst understand that—for example—MaryDoe Jones who, because of a similar name, other biographic information, and travel patterns *appeared* to be MaryDoe Jones the Terrorist is in fact an entirely different MaryDoe, eliminating the need for further investigative activities into the non-terrorist MaryDoe and mitigating privacy impacts.

All queries of unminimized FISA Section 702 information must be reasonably likely to retrieve foreign intelligence information or, in the case of FBI only, evidence of a crime. This means, in practice, that the person conducting the query must have a specific factual basis to believe the query is reasonably likely to retrieve foreign intelligence information or evidence of a crime from unminimized FISA collection and that the query itself must be reasonably designed or tailored to do this without unnecessarily retrieving other information from unminimized FISA collection.

U.S. PERSON QUERIES CONDUCTED BY CIA, NSA, AND NCTC

COUNTING QUERIES OF CONTENTS, NONCONTENTS, AND COMBINED CONTENTS/NONCONTENTS. Statistics for U.S. person queries of unminimized Section 702-acquired data are provided separately for contents and noncontents information (e.g., metadata). The counting methodologies are different for the different data types. Regarding contents queries, the U.S. person statistics provide the number of U.S. person *query terms used* (e.g., unique identifiers) to query Section 702 contents. See Figure 5. For noncontents, the statistics provide the number of U.S. person *queries conducted* of Section 702 noncontents. See Figure 7. Some agencies combine contents and noncontents in their repositories and queries are conducted against both types of data simultaneously. Like queries of contents-only, regarding combined contents/noncontents queries, the U.S. person statistics provide the number of U.S. person *query terms used* (e.g., unique identifiers) to query Section 702. See Figure 5.

COUNTING SECTION 702 QUERIES OF CONTENTS. NSA counts the number of U.S. person identifiers it has approved to query the contents of unminimized Section 702-acquired information. For example, if NSA approved U.S. person identifier “johndoe@XYZprovider” to query the contents of unminimized Section 702-acquired information, NSA would count it as one query term regardless of how many times NSA used “johndoe@XYZprovider” to query its unminimized Section 702-acquired information. Not every query term *approved*, however, is ultimately used. CIA and NCTC (as well as FBI, as described below) count the number of unique U.S. person identifiers their

personnel have used to query within the agencies' respective repositories of unminimized Section 702-acquired information. Because of the variance in how these agencies count these query terms (*i.e.*, unique identifiers), the government deems it likely that the number of query terms reported is slightly higher than the actual number of query terms used.

Figure 5: How Agencies Count U.S. Person Query Terms Approved/Used to Query Section 702 Contents-only and Section 702 Combined Contents/Noncontents

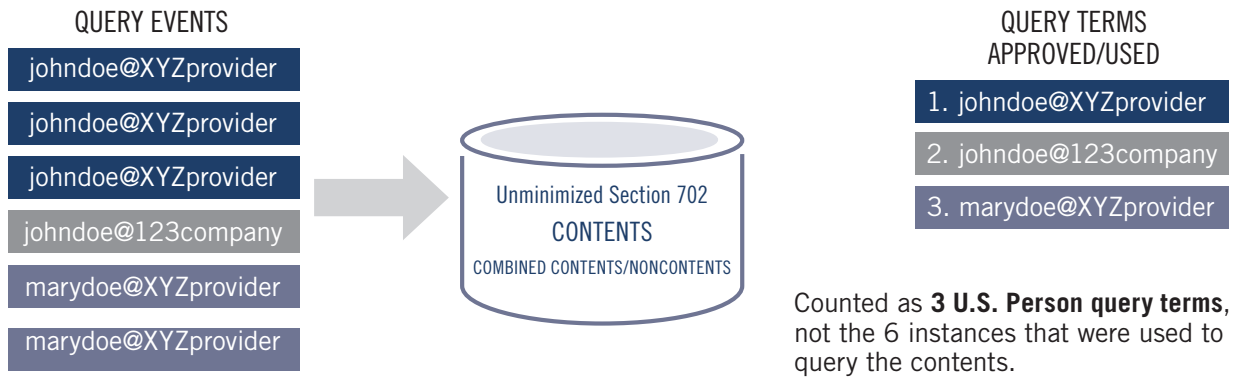


Figure 6a: U.S. Person Query Terms Approved/Used to Query Section 702 Contents-only and Section 702 Combined Contents/Noncontents (CIA, NSA, and NCTC)

Section 702 of FISA	CY2020	CY2021	CY2022
Estimated number of search terms concerning a known U.S. person used to retrieve the unminimized contents of communications obtained under Section 702 (excluding search terms used to prevent the return of U.S. person information) <i>See 50 U.S.C. § 1873(b)(2)(B).</i>	7,282	8,406	4,684

NCTC queries both contents and noncontents together and has included all of its U.S. person query data in Figure 6a. CIA previously (*e.g.*, CY2020 and CY2021) queried contents and noncontents separately. As the result of a systems change in CY2022, like NCTC, CIA now queries contents and noncontents together. All CIA U.S. person content query data for the entirety of CY2022 and all U.S. person noncontents query data for that portion of CY2022 following the systems change are included in the CY2022 statistic in Figure 6a.

NSA Section 702 U.S. person query terms are required to be approved by NSA attorneys prior to being queried in unminimized Section 702-acquired content. DOJ reviews all such approvals; ODNI reviews a sample. In 2022, it was discovered that the number of approved U.S. person query terms reported in the *Annual Statistical Transparency Report* for NSA for CY2017 through CY2021 included counting errors. NSA engaged in a thorough search to identify any previously unreported U.S. person query terms. It determined that errors affecting statistics in previous *Annual Statistical Transparency Reports* included approved U.S. person query terms that had been under-counted as a consequence of their classification and training for new personnel and also approved U.S. person query terms that had been over-counted as a result of NSA's counting methodology. The newly discovered query term approvals were reviewed by DOJ and determined to meet the NSA query standard.

NSA has provided updates to its approved U.S. person query term numbers as previously reported in Figure 6 (now 6a, above) for CY2017 (overcount of 830); CY2018 (undercount of 4,185); CY2019 (overcount of 77); CY2020 (undercount of 64); and CY2021 (overcount of 384). New Figure 6b illustrates the impact of NSA's updated count on the number of U.S. person queries of contents reported for those years:

Figure 6b: U.S. Person Query Terms Approved/Used to Query Section 702 Contents-only, Past Years Updated

Estimated number of search terms concerning a known U.S. person approved/used to retrieve the unminimized contents of communications obtained under Section 702 (excluding search terms used to prevent the return of U.S. person information)	CY2017	CY2018	CY2019	CY2020	CY2021
As previously reported in this report for the calendar years indicated (CY2018 and CY2019 previously updated in the CY2020 report)	7,512	9,707	9,299	7,218	8,790
As updated by NSA in CY2022	6,682	13,892	9,222	7,282	8,406

COUNTING SECTION 702 QUERIES OF NONCONTENTS. This estimate represents the number of times a U.S. person identifier was used to query the noncontents (e.g., metadata) of unminimized Section 702-acquired information. For example, if the U.S. person identifier telephone number “111-111-2222” was used 15 times to query the noncontents of unminimized Section 702-acquired information, the number of queries counted would be 15.

Figure 7: How NSA and CIA count U.S. Person Queries of Section 702 Noncontents-only



Figure 8: U.S. Person Queries of Noncontents-only of Section 702 (NSA, CIA)

Section 702 of FISA	CY2020	CY2021	CY2022
Estimated number of queries concerning a known U.S. person of unminimized noncontents information obtained under Section 702 (excluding queries containing information used to prevent the return of U.S. person information) <i>See 50 U.S.C. § 1873(b)(2)(C).</i>	9,051	3,958	3,656

CIA queries of noncontents for the entire year are included in the statistics in Figure 8 for CY2020 and CY2021. CIA noncontents-only queries for a portion of CY2022 are included in Figure 8 (see Figure 6 explanation).

U.S. PERSON QUERIES CONDUCTED BY THE FBI

In its November 18, 2020, Memorandum Opinion and Order (and in its April 21, 2022, Memorandum Opinion and Order), the FISC required the government to report on a quarterly basis the number of U.S. person queries run by the FBI against Section 702-acquired information. Although not required by statute to report them in the *Annual Statistical Transparency Report*, consistent with the *Intelligence Community Principles of Transparency*, the number of queries using U.S. person identifiers run by FBI against unminimized Section 702 collection was nonetheless declassified and reported in the CY2021 report.

Like some other agencies, FBI queries were—and still are—simultaneously run against contents and noncontents (e.g., metadata). However, there are several factors that differentiate FBI's query-related statistics from the query statistics produced by NSA, CIA, and NCTC.

- **BROADER QUERY STANDARD DUE TO DUAL LAW ENFORCEMENT AND INTELLIGENCE MISSIONS.** Where NSA, CIA, and NCTC are authorized to query Section 702-acquired collection for foreign intelligence information, FBI is authorized to conduct both queries that are reasonably likely to return foreign intelligence information and queries that are reasonably likely to return evidence of a crime. This broader query authority is the result of FBI's dual law enforcement and intelligence mission. See [October 2018 FBI Minimization Procedures](#); see also Memorandum Opinion issued on April 7, 2009, at 14-17 and [FISC Memorandum Opinion and Order issued on November 6, 2015](#), at 42.
- **DIFFERENT FREQUENCY DUE TO DOMESTIC-FOCUSED MISSION.** FBI's domestic-focused mission, as compared with the other agencies' foreign-focused missions, increases the frequency with which FBI uses U.S. person query terms. For example, FBI queries may be initiated through tips and leads from other IC elements or foreign partners relating to domestic matters such as threats to the homeland, meaning they are more likely to involve U.S. persons.
- **DIFFERENT SCOPE OF DATA AGAINST WHICH QUERIES ARE RUN.** FBI queries of Section 702 data do not run against the entirety of the IC's Section 702 collection. Rather, they only run against the subset of collection available to the FBI—approximately 3.2% of Section 702 targets, as of February 2023. This subset of data pertains to open, fully predicated national security investigations.
- **DIFFERENT TIMING OF REPORTING DUE TO FISC ORDER.** Pursuant to orders by the FISC, statistical information regarding FBI queries is tracked and reported quarterly from December 1 to November 30 and, therefore, does not align with the calendar year reporting done for other agencies concerning their query numbers.
- **BATCH JOBS.** In order to be able to process data more efficiently, the FBI sometimes conducts queries in the form of a "batch job"—multiple queries run at the same time based on a common justification. The FBI counts batch jobs based on the number of queries resulting from the batch job. Moreover, if even one query term in a batch job is associated with a U.S. person, FBI systems count every query resulting from the batch job as a U.S. person query. This is done, in part, to ensure that certain rules applicable to U.S. person queries of Section 702 data—such as the

requirement to document a written justification when seeking to review any content information returned by a query—are applied to all potential U.S. person queries resulting from a batch job.

CY2021 REPORT V. CY2022 REPORT COUNTING METHODOLOGIES. At the time the *Annual Statistical Transparency Report* for CY2021 was published, FBI systems were not designed to identify the number of unique U.S. person query terms, only the total number of queries. As a consequence, the statistics reported in the *Annual Statistical Transparency Report* for CY2021 included duplicate queries. For this CY2022 report, FBI updated its counting methodology to more closely align with other IC elements and eliminate duplicate queries. With this “de-duplicated” counting methodology, FBI now counts the number of unique U.S. person terms its personnel have used to query within the agency’s repositories of unminimized Section 702-acquired information (see Figure 9). To enable meaningful comparison across years, the FBI recalculated its statistics for the periods December 2019–November 2020 and December 2020–November 2021 using this updated methodology as well (see Figure 9).

Multiple factors contributed to fluctuations in the FBI statistics as reported for these three periods:

- In the first half of 2021, a number of large batch jobs were run related to one particular investigation involving attempts by foreign cyber actors to compromise U.S. critical infrastructure. These queries, which included approximately 1.9 million queries related to potential victims—including U.S. persons—accounted for the vast majority of the increase in U.S. person queries conducted by FBI over the prior year.
- Beginning in the second half of 2021, FBI made several compliance-related changes relating to queries of Section 702-acquired information, including:
 - ▶ In June and August of 2021, the FBI made modifications to its systems that store unminimized Section 702-acquired information, including (1) adding a new attorney approval process for batch jobs resulting in 100 or more queries and (2) modifying relevant systems that allow FBI to query across multiple datasets to decrease the likelihood that FBI users would query Section 702-acquired information without realizing those datasets were included in the query. FBI users must now affirmatively “opt in” if they are seeking to query against Section 702-acquired data, rather than having their queries run against this data by default. Following these changes, the average monthly number of FBI U.S. person queries run against unminimized Section 702-acquired collection substantially decreased.
 - ▶ In November 2021, FBI and DOJ, in consultation with ODNI, issued new comprehensive query guidance to all FBI national security personnel. In addition, FBI launched new mandatory query training in December 2021 based on that newly issued guidance. FBI personnel must complete this training on an annual basis in order to maintain access to relevant FBI systems.
 - ▶ In March 2022, the FBI implemented new enhanced approval requirements for certain “sensitive” queries, such as those involving domestic public officials or members of the news media.

The table below shows the FBI’s year-over-year data using both the original and “de-duplicated” counting methodologies:

Figure 9: Number of U.S. Person Queries of Section 702 Combined Contents/Noncontents (FBI)

Estimated number of U.S. Person queries of unminimized Section 702-acquired contents and noncontents	Duplicative Counting Method used in CY2021 Report	De-duplicated Counting Method new for CY2022 Report (Unique Terms)
December 2019–November 2020	1,324,057	852,894
December 2020–November 2021	3,394,053	2,964,643
December 2021–November 2022	204,090	119,383
% Reduction 2022 v. 2021	93.99%	95.97%
% Reduction 2022 v. 2020	84.59%	86.00%

FBI DE-DUPLICATED COUNTING METHODOLOGY

FBI’s de-duplicated query figures report the number of unique U.S. person query terms FBI personnel have used to query unminimized FISA Section 702-acquired information during the relevant time periods. FBI used the following methodology to arrive at these figures, which is comparable to CIA’s and NCTC’s counting methodology, described elsewhere in this report, for queries conducted by those agencies in databases which combine contents and noncontents.

- First, FBI pulls a report from each of its databases containing unminimized FISA Section 702-acquired information. Each report shows every U.S. person query that has been conducted against unminimized FISA Section 702-acquired information in the database during the relevant time period.
- Second, much like CIA and NCTC when counting queries of combined contents and noncontents, FBI de-duplicates the data in each report, removing instances in which the same query term was run multiple times, whether by the same user or by different users.
- Third, FBI combines the de-duplicated query reports for each database and then de-duplicates the data in that combined set once more, so as to remove instances in which an identical query term was run in multiple databases.

While the FBI’s updated methodology more closely matches that used by other IC elements, and is a better reflection of the number of U.S. person query terms used by the FBI during the year, it still is almost certainly an overcount with respect to queries that are part of batch jobs. As described elsewhere in this report, the FBI has taken certain steps with respect to how its databases handle queries that are part of batch jobs to be able to more efficiently process data and to ensure that U.S. person protections apply to all potential U.S. person query terms in a batch. More specifically, if even one query term in a batch job is identified by a user as a U.S. person query term and labeled as such, FBI systems apply the U.S. person label to every query term in that batch. The FBI’s de-duplication methodology does not correct for this type of over-counting.

With that caveat, the result of FBI's updated methodology is a count of the number of unique U.S. person query terms used to query against unminimized Section 702-acquired information (contents or noncontents) during the relevant time period. Thus, if the FBI used the U.S. person identifier "johndoe@XYZprovider" to query unminimized Section 702-acquired information (contents or noncontents), FBI would count it as one query term, regardless of how many times the FBI used that U.S. person identifier to query its unminimized Section 702-acquired information, regardless of which FBI user conducted the query, and regardless of the database in which the query was conducted. This is consistent with the methods used by CIA, NSA, and NCTC to count U.S. person query terms for queries of Section 702-acquired contents and combined contents/noncontents depicted in Figure 5, above.

D. Section 702 and FBI Investigations

FBI U.S. PERSON QUERIES NOT DESIGNED TO RETURN FOREIGN INTELLIGENCE INFORMATION.

As noted above, FBI is the only intelligence agency with Section 702 querying procedures that allow for queries that are reasonably likely to retrieve evidence of a crime, in addition to queries that are reasonably likely to return foreign intelligence information. Recognizing that unrelated crimes can be discovered in the course of conducting FISA activities, Congress required that FISA minimization procedures contain provisions addressing how to treat evidence of unrelated crimes acquired in the course of a foreign intelligence activity. 50 U.S.C. § 1801(h)(3). There are also instances where the FISA-derived information sought is both relevant to foreign intelligence information and a criminal act (e.g., information relating to international terrorism).

In recent years, both Congress and the FISC have focused particular attention on instances in which FBI's purpose at the time of the query is solely to retrieve evidence of a crime and that are not designed to retrieve foreign intelligence information. There are two specific requirements related to these queries: (1) a statutory requirement for FBI to obtain a court order to review the results of certain evidence of a crime-only queries related to a predicated criminal investigation and (2) a FISC quarterly reporting requirement to provide the number of U.S. person evidence of a crime-only queries conducted, whether or not they are associated with a predicated criminal investigation. Both are explained below with corresponding statistics.

STATUTORY REQUIREMENT FOR THE FBI TO OBTAIN A FISC ORDER. In the *FISA Amendments Reauthorization Act of 2017*, which was enacted in January 2018, Congress required FBI to obtain an order from the FISC, also known as a Section 702(f)(2) order, before **accessing** the **contents** of Section 702-acquired communications when:

- i. the communications were retrieved using a U.S. person query term;
- ii. the query was not designed to find and extract foreign intelligence information; and
- iii. the query was performed in connection with a predicated criminal investigation that does not relate to national security.

In order to obtain a Section 702(f)(2) order, a federal officer must prepare a written application that includes the officer's justification for the belief that the query results would provide evidence of a crime, and the application must be approved by the Attorney General. The FISC issues an order approving access to the contents of the relevant communications "if the Court finds probable

cause to believe that such contents would provide” evidence of a crime, contraband, fruits of a crime, items illegally possessed by a third party, or property designed for use, intended for use, or used in committing a crime. 50 U.S.C. § 1881a(f)(2)(D). In situations where a Section 702(f)(2) order is required but not obtained, FISA Section 706(a)(2)(A)(i) imposes limitations on the use of information in a subsequent criminal proceeding.

Figure 10 reports the number of these Section 702(f)(2) orders, obtained between December 1 and November 30 of the applicable years. This non-CY period is used in order to align with current reporting periods required by the FISC for quarterly reporting.

Figure 10 also provides the number of instances in which compliance reviews identified that FBI accessed the contents of communications under circumstances requiring a Section 702(f)(2) order but did not obtain such a required order. Such incidents of noncompliance are reported to the FISC as they are discovered. In the *Annual Statistical Transparency Report*, however, they are reported in the year in which the queries were conducted (which may differ from when the incidents were identified and reported to the FISC). Compliance with the Section 702(f)(2) requirement continues to be a focus of DOJ’s and FBI’s training programs.

As described in Figure 10, there were five instances in the period December 2020–November 2021 in which the FBI did not obtain a FISC order pursuant to Section 702(f)(2) prior to accessing the results of a U.S. person query not designed to extract foreign intelligence information and performed in connection with an FBI predicated criminal investigation that did not relate to national security. This number is updated from the four reported in the *Annual Statistical Transparency Report* for CY2021 because DOJ identified and reported an additional Section 702(f)(2) compliance incident that occurred in 2021 after the CY2021 *Annual Statistical Transparency Report* was published. As also reported in Figure 10, there was one such instance during the December 2021–November 2022 period. In each of these six instances, the users who conducted the underlying queries did not understand that they were conducting the queries in connection with predicated criminal investigations. The cases involved situations where field offices were pursuing leads originating from another field office’s predicated criminal investigation. The Section 702-acquired information retrieved as a result of the queries was not used for any further investigation or prosecution of the individuals who were the subjects of the predicated criminal investigations. In each of these instances, the users were reminded of the query requirements, including the Section 702(f)(2) order requirement. This issue has also been addressed in training and guidance to FBI personnel.

Figure 10: FBI Review of Section 702 Query Results Requiring FISC Orders

Section 702 of FISA	December 2020– November 2021	December 2021– November 2022
FISC ORDERS OBTAINED PURSUANT TO SECTION 702(f)(2) TO REVIEW THE RESULTS OF A U.S. PERSON QUERY that was not designed to find and extract foreign intelligence information and was performed in connection with a predicated criminal investigation that does not relate to national security <i>See 50 U.S.C. § 1873(b)(2).</i>	0	0
IDENTIFIED INSTANCES IN WHICH A FISC ORDER WAS REQUIRED PURSUANT TO SECTION 702(f)(2) BUT NOT OBTAINED PRIOR TO ACCESSING THE RESULTS OF A U.S. PERSON QUERY that was not designed to find and extract foreign intelligence information and was performed in connection with a predicated criminal investigation that does not relate to national security	5	1

FBI FISC REPORTING REQUIREMENT. Since 2015, prior to Congress's passage of the Section 702(f)(2) court order requirement, the FISC has required separate FBI reporting relating to evidence of a crime-only queries. These reporting requirements have changed over time, but have generally been broader than the Section 702(f)(2) requirement to obtain a court order.

Since November 2020, the FISC has required that the government report to it on a quarterly basis the number of U.S. person queries run by the FBI against Section 702-acquired information in which the post-query documented justification to access the results of said queries indicated an evidence of a crime-only purpose. [Memorandum Opinion and Order, dated November 18, 2020, at 63](#). This includes, but is broader than the Section 702(f)(2) requirement noted above, as the queries that must be reported to the FISC also include queries that are not run in connection with a predicated criminal investigation (for example, evidence of a crime-only queries conducted when FBI is assessing, but has not yet opened, a predicated criminal investigation).

The statistics in Figure 11 include all U.S. person queries conducted for an evidence of a crime-only purpose between December 1 and November 30 of the applicable years, and for which FBI personnel sought to access results retrieved by the query, whether or not a Section 702(f)(2) order was required. The statistics in Figure 11 include the six instances identified in Figure 10 of evidence-of-a-crime-only U.S. person queries in which responsive results were retrieved and reviewed by FBI personnel without the required Section 702(f)(2) order.

Figure 11: Accessing the Results of FBI U.S. Person Evidence of a Crime-Only Section 702 Queries

Section 702 of FISA	December 2020– November 2021	December 2021– November 2022
Number of U.S. person queries in which post-query documented justifications to access query results indicated an evidence of a crime-only purpose for the query	13	16

On a quarterly basis, FBI reports to DOJ all U.S. person queries in Section 702-acquired information that were noted in FBI systems as having been run for an evidence of a crime-only purpose. DOJ reviews these queries and may subsequently determine that some such queries either were not U.S. person queries (*i.e.*, did not use a U.S. person query term) or were conducted for a foreign intelligence purpose or dual evidence of a crime/foreign intelligence purpose. Adjustments based on DOJ's review are reflected in the numbers included in Figures 10 and 11.

Of the 16 queries in Figure 11 for the December 2021–November 2022 period that were conducted solely to retrieve evidence of a crime, 14 of the queries were conducted in an effort to identify information that needed to be produced or preserved in connection with a criminal prosecution, for example, in instances in which the government had an obligation to search for and disclose material evidence favorable to a criminal defendant. *Brady v. Maryland*, 373 U.S. 83 (1963).

The purpose for collecting information pursuant to Section 702 is to obtain *foreign intelligence information*. The unminimized Section 702 data available to the FBI is, by design, narrowly tailored to its mission: it pertains only to *full and open national security investigations*. These things are assessed to make it less likely in most circumstances that evidence of a crime *not* related to *national security* will be found in the information against which FBI queries. This is why the comparatively

low numbers in Figures 10 and 11 (which speak to non-national security crimes), when compared to those in Figure 9, are an expected result.

Pursuant to the *FISA Amendments Reauthorization Act of 2017*, FISA requires that the FBI report the number of instances in which the FBI opened a criminal investigation of a U.S. person who is not considered a threat to national security based wholly or in part on Section 702-acquired information. See 50 U.S.C. § 1873(b)(2)(D). This statistic provides transparency with regard to how often Section 702 collection is used for non-national security investigations conducted by the FBI. Figure 12 provides the required statistic.

Figure 12: Number of FBI Non-National Security Investigations Opened on U.S. Persons Based on Section 702 Acquisition

Section 702 of FISA	CY2020	CY2021	CY2022
Number of instances in which the FBI opened a non-national security investigation, under the Criminal Investigative Division or any successor division, an investigation of a U.S. person (who is not considered a threat to national security) based wholly or in part on an acquisition authorized under Section 702 <i>See 50 U.S.C. § 1873(b)(2)(D).</i>	0	0	0

E. NSA Dissemination of U.S. Person Information under FISA Section 702

BACKGROUND ON NSA DISSEMINATING U.S. PERSON INFORMATION UNDER SECTION 702. Consistent with prior transparency reports, and in continued compliance with a recommendation made in the *Privacy and Civil Liberties Oversight Board’s (PCLOB) 2014 Section 702 Report*, this report provides additional information regarding the dissemination of Section 702 intelligence reports that contain U.S. person information.

Section 702 only permits the targeting of non-U.S. persons reasonably believed to be located outside the United States to acquire foreign intelligence information. Such targets, however, may communicate information to, from, or about U.S. persons. *NSA’s minimization procedures* (most recently released in April 2021) permit NSA to disseminate U.S. person information under strictly limited circumstances, for example, if the information is necessary to understand the foreign intelligence. By policy, however, NSA generally masks the information that could identify the U.S. person. NSA’s minimization procedures define U.S. person identifying information as “(1) the name, unique title, or address of a United States person; or (2) other personal identifiers of a United States person [...]”. See NSA’s Minimization Procedures Section 3(f). Minimization procedures were approved in April 2022 and April 2023 but have not yet been publicly released.

The minimization procedures permit NSA to disseminate U.S. person identities only if doing so meets one of the specified reasons listed in NSA’s minimization procedures, including that the U.S. person consented to the dissemination, the U.S. person information was already publicly available, the U.S. person information was necessary to understand foreign intelligence information, or the communication contained evidence of a crime and is being disseminated to law enforcement authorities.

Even if one these conditions applies, as a matter of policy, NSA may still mask the U.S. person identity. For example, instead of reporting the names of U.S. persons or other identifiers, a report would substitute “an identified U.S. person,” “a named U.S. person,” or “a U.S. person.” Other

examples of masked U.S. person identities would be “a named U.S. company” or “a U.S. person email address.”

In the instances where NSA’s report contains masked U.S. person information, recipients of the report may submit a request to NSA for the U.S. person identifying information. The requested identity information is released (*i.e.*, unmasked) only if the dissemination of the U.S. person’s identity would be consistent with NSA’s minimization procedures (*e.g.*, the identity is necessary to understand foreign intelligence information or assess its importance) *and* if the requesting recipient has a “need to know” the identity of the U.S. person. Only a designated NSA official may approve an unmasking request.

In certain other instances, however, NSA makes a determination that it is necessary to include in the original report the U.S. person’s identity (*i.e.*, openly naming the U.S. person). When NSA includes U.S. person information in the original report, NSA is required to apply the same minimization and “need to know” standards discussed above.

As part of their regular oversight reviews, DOJ and ODNI review disseminations that contain information of or concerning U.S. persons that NSA obtained pursuant to Section 702 to ensure that the disseminations were consistent with the minimization procedures.

Additional information describing how the IC protects U.S. person information obtained pursuant to FISA is provided in reports by the civil liberties and privacy officers for ODNI (including NCTC), NSA, FBI, and CIA. The reports collectively document the rigorous and multi-layered framework that safeguards the privacy of U.S. person information in FISA disseminations. *See [ODNI Report on Protecting U.S. Person Identities in Disseminations under FISA](#) and [annexes containing agency specific reports](#).*

STATISTICS REGARDING NSA’S DISSEMINATION OF U.S. PERSON INFORMATION ACQUIRED FROM SECTION 702. NSA applies its minimization procedures in preparing its classified intelligence reports, and then disseminates the reports to authorized recipients with a need to know the information in order to perform their official duties. A limited number of NSA’s intelligence reports from Section 702 collection contain references to U.S. person identities (masked or openly named).

NSA’s dissemination practices for U.S. person information incidentally acquired from Section 702 collection in classified intelligence reports results in two categories of reports:

- Reports that openly name (*i.e.*, originally reveal) the U.S. person identity in the report, and
- Reports that initially mask (*i.e.*, do not reveal) the U.S. person identity in the report.

In instances where the U.S. person identity was initially masked, NSA may later reveal and unmask the U.S. person identity upon a specific request, but only to the requestor.

The numbers in Figure 13 below include identities of U.S. persons who include not just citizens, but also lawful permanent residents and certain corporations and unincorporated entities. *See* Key Terms and Concepts section, above, and 50 U.S.C. § 1801(i) for definition of a U.S. person.

The first row of Figure 13 provides “an accounting of the number of disseminated intelligence reports containing a reference to a United States-person identity.” *See* 50 U.S.C. § 1881a(m)(3)(A)(i). NSA’s counting methodology includes any disseminated intelligence report that contains a reference to

one or more U.S. person identities, whether masked or openly named, even if the report includes information from sources other than Section 702 collection. NSA does not maintain records that allow it to readily determine, in the case of an intelligence report that includes information from several sources, from which source a reference to a U.S. person identity was derived. Accordingly, the references to U.S. person identities may have resulted from Section 702-authorized collection or from other authorized signals intelligence activity conducted by NSA. This counting methodology was used in the previous report and is used in NSA’s FISA Section 702(m)(3) report.

The second row of Figure 13 provides the *number of reports* containing U.S. person identities where the U.S. person identity was masked in the report. The third row provides the *number of reports* containing U.S. person identities where the U.S. person identity was openly included in the report. Rows 2 and 3 will not total row 1 because one report may contain both masked and openly included identities.

Figure 13: Section 702 Reports Containing U.S. Person Information Unmasked by NSA

Section 702 Reports Containing U.S. Person Information Disseminated by NSA	CY2020	CY2021	CY2022
Total number of NSA disseminated §702 reports containing U.S. person identities <i>regardless of whether the identity was openly included or masked</i>	3,627	4,300	3,968
Total number of NSA disseminated §702 reports containing U.S. person identities <i>where the U.S. Person identity was masked</i>	2,648	3,291	3,014
Total number of NSA disseminated §702 reports containing U.S. person identities <i>where the U.S. Person identity was openly included</i>	1,351	1,426	1,249

Figure 14 provides statistics relating to the number of U.S. person identities that were originally masked in those reports counted in Figure 13 but which NSA later provided to authorized requestors (*i.e.*, unmasked). This statistic is the number required to be reported to Congress pursuant to 50 U.S.C. § 1881a(m)(3)(A)(ii), which requires “an accounting of the number of United States-person identities subsequently disseminated by [NSA] in response to requests for identities that were not referred to by name or title in the original reporting.”

Note that a single intelligence report could contain multiple U.S. person identities, masked or openly named. For example, a single report could include a large number of U.S. person identities that a foreign intelligence target is seeking to victimize; each of those identities would be counted in Figure 14.

Figure 14: Section 702 U.S. Person Identities Disseminated by NSA

Section 702 - U.S. Person Information Unmasked by NSA	CY2020	CY2021	CY2022
Number of U.S. person identities that NSA unmasked in response to a specific request from another agency	9,354	13,036	11,511

IC Dissemination of U.S. Person Information

A. ICPG 107.1

Intelligence Community Policy Guidance (ICPG) 107.1, Requests for Identities of U.S. Persons in Disseminated Intelligence Reports, requires all IC elements to have procedures to respond to requests for the identities of U.S. persons whose identities were originally masked in a disseminated intelligence report. ICPG 107.1 applies to information regardless of the legal authority under which the information was collected including, but not limited to, FISA Section 702. ICPG 107.1 § E.1 requires that each element's procedures contain certain documentation and approval requirements.

Furthermore, ICPG 107.1 § E.1.f requires additional documentation and approvals if a request is made “during a period beginning on the date of a general election for President and ending on the date on which such President is inaugurated” to unmask members of the President-elect's or Vice President-elect's transition teams. The end of CY2020 and the beginning of CY2021 covered such a period and, thus, elements were required to follow these additional requirements.

ICPG 107.1 does not change the standard for when a U.S. person's identity may be unmasked. Each IC element must follow the applicable legal authorities when determining if the element is permitted to unmask the identity of a U.S. person. [Each IC element must also have its own procedures](#) to implement ICPG 107.1, which are available for review in the IC on the Record database at intel.gov.

B. Statistics

ICPG 107.1 also requires the DNI to report, on an annual basis, certain statistics to track requests made pursuant to ICPG 107.1. As of January 1, 2019, all IC elements began tracking the applicable requests, including whether those requests were approved or denied, pursuant to the requirements of ICPG 107.1 § E.2. Accordingly, Figure 15 provides these numbers for CY2020, CY2021, and CY2022.

ICPG 107.1

- Addresses requests for U.S. person information that was masked in disseminated intelligence reporting and to report the number of those requests.
- Establishes certain documentation and approval requirements for applicable unmasking requests.
- Applies to all 18 IC elements.
- Applies regardless of the legal authority under which the information was collected.
- Does not change the standard for when a U.S. person identity may be unmasked.

Figure 15: Requests for U.S. Person Identities and Decisions Regarding those Requests per ICPG 107.1

ICPG 107.1 § E.2 Reporting by the Intelligence Community			
Total requests received and disposition	CY2020	CY2021	CY2022
Total Number of Requests Received by all IC elements this calendar year	6,933	10,773	10,728
Of the requests received, the IC Approved	6,193	9,847	10,050
Of the requests received, the IC Denied in Full	279	381	202
Of the requests received, the IC processed as Withdrawn in Full	216	217	328
Of the requests received, the IC has Pending Decisions	245	328	148

The numbers reported in the 2022 report for CY2021 included two typographical errors. The number previously listed for the total requests received was 10,744; it should have been 10,773, while the number provided for approved requests was 9,874; it should have been 9,847. The corrected numbers appear in the chart above.

To explain how the IC counted applicable requests, definitions are provided below.

- **REQUESTS RECEIVED** are requests to identify U.S. persons whose identities were initially masked in disseminated intelligence reports. A single request may include one or more identities or involve one or more disseminated intelligence reports, but is still counted as one request. Duplicate requests, where the same requesting entity makes a request identical to a prior request, are not counted. If a subsequent request changes in any manner—with respect to the identities requested, the disseminated intelligence reports, or the intended recipients of the identities—the second request would be counted as a new request received.
- **APPROVED** are requests approved in part or in their entirety. Requests that were approved in part, regardless of whether they were also denied in part or withdrawn in part, are included in this number. Approvals that occurred in January following the reported calendar year for requests that were initially received in the preceding year are included in this number. For example, if an approval was made in January 2023 for a request that was received in December 2022, that approval was counted in the CY2022 number.
- **DENIED IN FULL** are requests denied in their entirety. This includes denials that occurred in January following the reported calendar year for requests that were initially received in preceding year (as with approvals).
- **WITHDRAWN IN FULL** are requests that are withdrawn or cancelled by the requesting entity in their entirety. This includes withdrawals that occurred in January following the reported calendar year for requests that were initially received in preceding year (as with approvals).
- **PENDING DECISIONS** are requests where there is no final decision made because (a) the receiving IC element has not reviewed or decided on the request or (b) the receiving IC element asked the requesting entity for additional information to process the request and is waiting for such information.

FISA Criminal Use and Notice Provisions

A. FISA Sections 106 and 305

FISA Section 106 requires *advance* authorization from the Attorney General *before* any information acquired through Title I electronic surveillance may be used in a criminal proceeding. This authorization from the Attorney General is defined to include authorization by the Acting Attorney General, Deputy Attorney General, or, upon designation by the Attorney General, the Assistant Attorney General for National Security.

Section 106 also requires that if a government entity intends to introduce information obtained or derived from electronic surveillance into evidence in any trial, hearing, or other proceeding, against an “aggrieved person,” as defined by FISA, it must notify the aggrieved person and the court. The aggrieved person is then entitled to seek suppression of the information. FISA Section 706 requires that any information acquired pursuant to Section 702 be treated as electronic surveillance under Section 106 for purposes of the use, notice, and suppression requirements.

FISA Section 305 provides comparable requirements for the use of information acquired through Title III physical search in a legal proceeding.

B. Statistics

The *FISA Amendments Reauthorization Act of 2017* codified a requirement that certain statistics concerning criminal proceedings with notice provided pursuant to Sections 106 and 305, including with respect to the use of Section 702-acquired information, must be provided to the public.

FISA Sections 106 and 305 Criminal Use and Notice Provisions

- Apply to information acquired from Title I electronic surveillance and Section 702 (Section 106) and to information acquired from Title III physical search (Section 305).
- Require Attorney General advance authorization before such information may be used in a criminal proceeding.
- Provide for notice to “aggrieved person” if such information is used or intended to be used against that person and an opportunity for that person to suppress the information.

Figure 16: Number of Criminal Proceedings in which the Government Provided Notice of Its Intent to Use Certain FISA Information

FISA Sections 106 and 305	CY2020	CY2021	CY2022
Number of criminal proceedings in which the United States or a State or political subdivision thereof provided notice pursuant to Section 106 (including with respect to Section 702-acquired information) or Section 305 of the government's intent to enter into evidence or otherwise use or disclose any information obtained or derived from electronic surveillance, physical search, or Section 702 acquisition <i>See 50 U.S.C. § 1873(b)(4).</i>	9	5	3

None of the notices provided in CY2020, CY2021, or CY2022 involved information obtained or derived from Section 702.

FISA Title IV – Use of Pen Register and Trap and Trace (PR/TT) Devices

A. FISA Pen Register/Trap and Trace Authority

Title IV of FISA authorizes the use of pen register and trap and trace (PR/TT) devices for foreign intelligence purposes. Title IV authorizes the government to use a PR/TT device to capture dialing, routing, addressing or signaling information. By law, PR/TT devices may not collect the contents of communications. For example, a PR/TT device could be used to acquire the phone numbers, dates, and lengths of calls that were sent to or received by a specified phone number, but not the content of the calls. The government may submit an application to the FISC for an order approving the use of a PR/TT device for (i) “any investigation to obtain foreign intelligence information not concerning a United States person or” (ii) “to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the First Amendment to the Constitution.” 50 U.S.C. § 1842(a). If the FISC finds that the government’s application meets the requirements of FISA, the FISC must issue an order for the installation and use of a PR/TT device. FISC orders and opinions authorizing the government’s use of PR/TT devices may be found on [intel.gov](https://www.intel.gov)’s IC on the Record (for example in a [September 27, 2017](#) posting).

FISA Title IV

- Commonly referred to as the “PR/TT” provision.
- Does not authorize bulk collection.
- Requires individual FISC order to use PR/TT device to capture dialing, routing, addressing, or signaling information.
- For U.S. persons, can only be used to support an investigation to protect against terrorism or clandestine intelligence activities that is not based solely on the basis of activities protected by the First Amendment to the Constitution.

B. Statistics

COUNTING ORDERS. Similar to how orders were counted for Titles I and III and Sections 703 and 704, this report only counts the orders granting authority to conduct intelligence collection—the order for the installation and use of a PR/TT device. Thus, renewal orders are counted as separate orders; modification orders and amendments are not counted.

ESTIMATING THE NUMBER OF TARGETS. The government’s methodology for counting PR/TT targets is the same as the methodology described above for counting targets of electronic surveillance and physical search. If the IC received authorization for the installation and use of a PR/TT device against the same target in four separate applications, the IC would count one target, not four. Alternatively, if the IC received authorization for the installation and use of a PR/TT device against four targets in the same application, the IC would count four targets.

ESTIMATING THE NUMBER OF UNIQUE IDENTIFIERS. This statistic counts (1) the targeted identifiers (e.g., telephone numbers and email addresses) and (2) the non-targeted identifiers that were in contact with the targeted identifiers.

Pursuant to 50 U.S.C. § 1873(d)(2)(B), the estimated number of unique identifiers used to communicate information (see row 3 in Figure 17a) applies only to orders resulting in the acquisition of information that includes email addresses or telephone numbers. This number is generated from the FBI's systems that hold unminimized PR/TT collection for every docket that resulted in the acquisition of PR/TT data.

Figure 17a: PR/TT Orders, Targets, and Unique Identifiers Collected

Title IV of FISA	CY2020	CY2021	CY2022
Total number of orders <i>See 50 U.S.C. § 1873(b)(3).</i>	15	10	4
Estimated number of targets of such orders <i>See 50 U.S.C. § 1873(b)(3)(A).</i>	8	6	3
Estimated number of unique identifiers used to communicate information collected pursuant to such orders <i>See 50 U.S.C. § (b)(3)(B).</i>	53,824	53,989	41,848

The U.S. person status of targets is reflected in the following figure:

Figure 17b: FISA PR/TT Targets – U.S. Persons and Non-U.S. Persons

PR/TT Targets	CY2020	CY2021	CY2022
Estimated number of targets who are non-U.S. persons <i>See 50 U.S.C. § 1873(b)(3)(A)(i).</i>	5	1	0
Estimated number of targets who are U.S. persons <i>See 50 U.S.C. § 1873(b)(3)(A)(ii).</i>	3	5	3
Estimated percentage of targets who are U.S. persons	37.5%	83.3%	100%

FISA Title V – Business Records

A. Business Records FISA

Title V of FISA, commonly referred to as the “Business Records” provision, authorizes the government to submit an application for an order requiring the production of certain records. Title V was added to FISA in 1998 and subsequently expanded in 2001 by the USA PATRIOT Act. The legal regime for Title V is particularly complicated at this time because on March 15, 2020, the USA PATRIOT Act version of Title V expired for some investigations but not others, such that there are now in effect two applicable legal regimes for the acquisition of records.

With respect to the acquisition of records in an investigation initiated prior to March 15, 2020, or that is investigating offenses that began or occurred before March 15, 2020, the USA PATRIOT Act version of Title V remains available under an exception to the sunset provision. *See* Pub. L. 109-177, tit. I, § 102(b)(2), 120 Stat. at 195. That means the government may continue to apply to the FISC for an order to obtain “any tangible thing” that is relevant to (i) “an investigation to obtain foreign intelligence information not concerning a United States person or” (ii) “to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the First Amendment to the Constitution.” Such business record requests for tangible things may include books, records (*e.g.*, electronic communications transactional records), papers, documents, and other items. Bulk acquisition of records is prohibited, and a business record order must identify a “specific selection term” to narrow the scope of the collection.

For investigations of offenses that began or occurred on or after March 15, 2020, the USA PATRIOT Act version of Title V is no longer available, meaning that the pre-USA PATRIOT Act version applies. For such investigations, instead of being able to apply for an order to obtain “any tangible thing,” the government may only seek to obtain records from (1) common carriers (*e.g.*, an airline or a bus company, not a telecommunications company), (2) public accommodation facilities (*e.g.*, hotels), (3) physical storage facilities, and (4) vehicle rental facilities. Instead of relevance to the investigation, the government must also provide specific and articulable facts giving reason to believe that the person to whom the records pertain is either a foreign power or an agent of a foreign power.

In addition, a separate authority to acquire a certain type of record, call detail records (CDR), under a different mechanism also expired in March 2020. As previously discussed in the *CY2019 Annual Statistical Transparency Report*, in August 2019, NSA suspended use of the CDR authority and deleted previously acquired call detail records. Thus, the suspension of NSA’s acquisition of CDRs in 2019 in conjunction with the expiration of the underlying authority in March 2020 results in there being no statistics to report for CY2022 pertaining to CDRs.

B. Statistics – Title V Business Records Statistics Orders, Targets and Identifiers

ESTIMATING THE NUMBER OF UNIQUE IDENTIFIERS. This is an estimate of the number of (1) targeted identifiers used to communicate information (*e.g.*, telephone numbers and email addresses) and (2) non-targeted identifiers that were in contact with the targeted identifiers. The number of identifiers used by targets to communicate can vary significantly from year to year, which in turn will impact the

number of non-targeted identifiers in contact with the targeted identifiers. The government also may obtain under Title V other types of tangible things from entities other than communication service providers. For example, the FBI could obtain, under this authority and if pertaining to an investigation of an offense committed prior to March 15, 2020, a hard copy of a purchase receipt or surveillance video from a retail store. The purchase receipt or surveillance video could contain a unique identifier such as a telephone number, which would not be counted. Nevertheless, such tangible things would not include many, if any, unique identifiers used to communicate information and, therefore, the figures reported below constitute a good faith estimate of the number of unique identifiers acquired by the FBI under these authorities.

EXPLAINING HOW THE GOVERNMENT COUNTS BUSINESS RECORDS STATISTICS. As an example of the government's methodology, assume that in a given calendar year, the government submitted a business records request targeting "John Doe" with email addresses john.doe@serviceproviderX, john.doe@serviceproviderY, and john.doe@serviceproviderZ. The FISC found that the application met the requirements of Title V and issued orders granting the application and directing service providers X, Y, and Z to produce business records. Provider X returned 10 non-targeted email addresses that were in contact with the target; provider Y returned 10 non-targeted email addresses that were in contact with the target; and provider Z returned 10 non-targeted email addresses that were in contact with the target. Based on this scenario, the government would report the following statistics: A) one order by the FISC for the production of tangible things, B) one target of said orders, and C) assuming there is no overlap among the 10 non-targeted email addresses returned by the three providers, 33 unique identifiers, representing three targeted email addresses plus 30 non-targeted email addresses.

The statistics in the figure below reflect both the number of business records orders (and associated unique identifiers collected) obtained under Section 501(b)(2)(B) pursuant to the sunset exception for investigations initiated prior to March 15, 2020, or that are investigating offenses that began or occurred before March 15, 2020. While the number of business records orders authorized pursuant to Section 502 for investigations of offenses that began or occurred on or after March 15, 2020 would also be included in this table, none have been identified.

Figure 18: Title V Business Records Orders, Targets, and Unique Identifiers Collected

Business Records – Section 501(b)(2)(B) and Section 502	CY2020	CY2021	CY2022
Total number of business records orders issued pursuant to applications under Section 501(b)(2)(B) or Section 502 <i>See 50 U.S.C. § 1873(b)(5).</i>	28	11	11
Estimated number of targets of such orders <i>See 50 U.S.C. § 1873(b)(5)(A).</i>	25	13	11
Estimated number of unique identifiers used to communicate information collected pursuant to such orders <i>See 50 U.S.C. § 1873(b)(5)(B).</i>	7,654	23,157	55,431

National Security Letters (NSLs)

A. National Security Letters

In addition to statistics relating to FISA authorities, the government also reports information on FBI's use of National Security Letters (NSLs). The FBI is statutorily authorized to issue NSLs, which are administrative subpoenas, to compel the production of certain records (as specified below) only if the information being sought is relevant to a pending national security investigation. The FBI issues NSLs for four commonly used types of records:

- Telephone subscriber information, toll records, and other electronic communication transactional records, *see* 18 U.S.C. § 2709;
- Consumer-identifying information possessed by consumer reporting agencies (names, addresses, places of employment, institutions at which a consumer has maintained an account), *see* 15 U.S.C. § 1681u;
- Full credit reports, *see* 15 U.S.C. § 1681v (only for counterterrorism, not for counterintelligence investigations); and
- Financial records, *see* 12 U.S.C. § 3414.

National Security Letters

- Not authorized by FISA but by other statutes.
- Do not authorize bulk collection.
- Permitted only if the information sought is relevant to international counterterrorism or counterintelligence investigation.

B. Statistics – National Security Letters and Requests for Information

COUNTING NSLS. This report provides (1) the total number of NSLs *issued* for all persons, and (2) the total number of requests for information (ROI) contained within those NSLs. When a single NSL contains multiple ROIs, each is considered a “request” and each request must be relevant to the same pending investigation. For example, if the government issued one NSL seeking subscriber information from one provider and that NSL identified three email addresses for the provider to return records, this would count as one NSL issued and three ROIs.

NSL REQUESTS VERSUS NSL TARGETS. The government reports the annual number of requests, rather than NSL targets, and notes that the actual number of individuals or organizations that are the subject of an NSL is different than the number of NSL requests. The FBI often issues NSLs under different legal authorities, *e.g.*, 12 U.S.C. § 3414(a)(5), 15 U.S.C. § 1681u(a)(b), 15 U.S.C. § 1681v, and 18 U.S.C. § 2709, for the same individual or organization. The FBI may also serve multiple NSLs for an individual for multiple facilities (*e.g.*, multiple email accounts, landline telephone numbers, and cellular phone numbers). The number of requests, consequently, is significantly larger than the number of individuals or organizations that are the subjects of the NSLs.

THE DEPARTMENT OF JUSTICE'S REPORT ON NSLs. Each year, the Department of Justice releases its [Annual Foreign Intelligence Surveillance Act Report](#) to Congress. That report, which is available online, provides the *number of requests* made for certain information concerning different U.S. persons pursuant to NSL authorities during CY2022.

Figure 19: NSLs Issued and Requests for Information

Total NSLs Issued and Total ROIs within those NSLs

