



U.S. Department of Justice

National Security Division

U.S. FOREIGN INTELLIGENCE SURVEILLANCE COURT

2009 MAY -8 PM 4: 12

CLERK OF COURT

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

Washington, D.C. 20530

May 8, 2009

The Honorable Reggie B. Walton
United States Foreign Intelligence Surveillance Court
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Re: Preliminary Notice of Possible Compliance Incident Involving In Re Application of the Federal Bureau of Investigation for an Order Requiring the Production of Tangible Things from

[REDACTED]

Docket

Number BR 09-01 and Previous Docket Numbers (TS)

Dear Judge Walton:

Pursuant to Rule 10(c) of the Foreign Intelligence Surveillance Court (FISC) Rules of Procedure, effective February 17, 2006, this letter provides preliminary notice of a possible compliance incident regarding the National Security Agency's (NSA) activities pursuant to docket number BR 09-01 and previous docket numbers. ~~(TS)~~

On March 5, 2009, in docket number BR 09-01, you approved an application for tangible things captioned In Re Application of the Federal Bureau of Investigation for an Order Requiring the Production of Tangible Things from

[REDACTED]

That

authority expires on May 29, 2009. ~~(TS//SI//NF)~~

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

Classified by: David S. Kris, Assistant Attorney General, NSD, DOJ

Reason: 1.4(c)

Declassify on: 8 May 2034

The Primary Order in docket number BR 09-01 prohibits the government “from accessing business records metadata acquired pursuant to this Court’s orders in the above-captioned docket and its predecessors (‘BR metadata’) for any purpose except as described herein.” Docket Number BR 09-01, Primary Order at 4. Access to the BR metadata is authorized “for the purposes of ensuring data integrity and developing and testing any technological measures designed to enable NSA to comply with the Court’s orders,” and for contact chaining and [REDACTED] using Court-approved telephone identifiers or, in the case of imminent threat to human life, telephone identifiers that NSA has determined meets the Court’s reasonable articulable suspicion standard. Id. at 4-7. ~~(TS//SI//NF)~~

On April 30, 2009, NSA notified the Department of Justice’s National Security Division (NSD) that as part of NSA’s end-to-end system engineering and process review it was learned that NSA data integrity analysts place certain BR metadata [REDACTED] in a repository known as [REDACTED]. According to NSA, [REDACTED] are [REDACTED] telephone identifiers that are assigned to [REDACTED]. [REDACTED] is a repository of identifiers and other information, including the [REDACTED] contained in the BR metadata, that NSA has determined should not be queried/tasked. NSA analysts use this repository before numbers are tasked. On May 1, 2009, the NSD notified NSA that it should no longer place [REDACTED] contained in the BR metadata in [REDACTED] or any other repository for the purposes described above. On May 1, 2009, the NSD notified a Court advisor of this matter by telephone. ~~(TS//SI//NF)~~

On May 4, 2009, NSA notified the NSD that other [REDACTED] telephone identifiers contained in the BR metadata, not limited to [REDACTED] are placed in repositories, possibly not limited to [REDACTED] that NSA uses to identify selectors that should not be used for querying/tasking. According to NSA, a limited number of analysts at NSA, including those who had not been authorized to access the BR metadata under Orders entered under docket number BR 09-01 and previous docket numbers, use these repositories to determine if a telephone identifier of interest should not be queried/tasked. None of these [REDACTED] telephone identifiers is available for contact chaining or [REDACTED] in [REDACTED] and are not included in the [REDACTED] database that is used for chaining and [REDACTED] of the BR metadata. NSA informed the NSD that this practice continued after the Court entered its initial Order in this matter. According to NSA, beginning on May 1, 2009, NSA took steps to identify the BR metadata and repositories used for the purposes described above and to block access to that BR metadata. NSA further stated that it would no longer place BR metadata in repositories for the purposes described above, absent authorization from the Court. ~~(TS//SI//NF)~~

On May 5, 2009, the NSD notified NSA that it should no longer place BR metadata of any kind in any repository for the purposes described above and should begin to take steps to prevent all access to any BR metadata contained in such repositories. The NSD is working with NSA to provide a thorough explanation of this matter, which will be provided to the Court in the government's report following the completion of the end-to-end system engineering and process reviews as required by the Court's Primary Order in BR 09-01 at pages 9 to 10. ~~(TS//SI//NF)~~

Sincerely,



National Security Division
U.S. Department of Justice