

FBI INFO.
CLASSIFIED BY: NSICG [REDACTED]
REASON: 1.4 (C)
DECLASSIFY ON: 12-31-2043
DATE: 03-10-2022

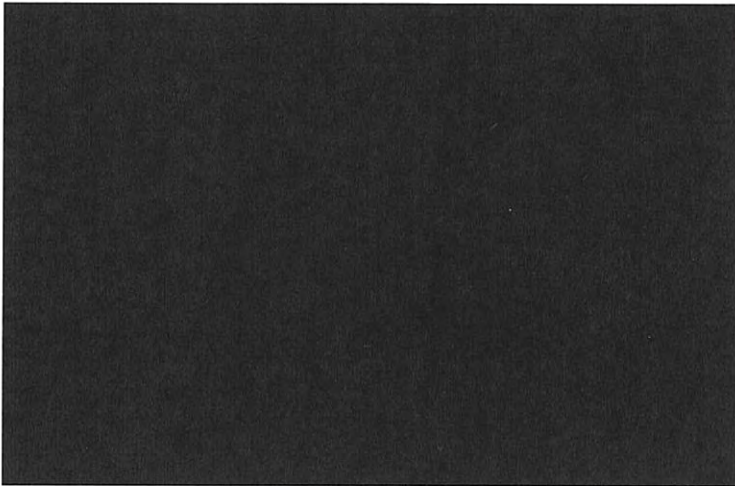
~~SECRET//NOFORN~~

UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

SEP 13 2013 PM 4:29
LEWIS CLAYTON HALL
CLERK OF COURT
b6 Per FBI
b7C



UNDER SEAL

b3 per FBI
b7E per FBI

(U) DECLARATION OF THE DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION

I, Christopher A. Wray, hereby declare the following:

(U) I am the Director of the Federal Bureau of Investigation (FBI), United States Department of Justice (DOJ), a component of an Executive Department of the United States Government (USG). I am responsible for, among other things, the national security

Classified By: [REDACTED]
Derived From: FBI NSIC CG
Declassify On: 50X1-HUM

b6 Per FBI
b7C

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

operations of the FBI, including those conducted by the FBI's Counterterrorism Division (CTD), Counterintelligence Division (CD), and Cyber Division (CyD).

(U) The matters stated herein are based upon my personal knowledge, documents and information available to me in my official capacity, and information furnished by Special Agents and other employees of the FBI.

(U) Purpose of the Declaration

(U) This declaration is submitted in support of the Government's Ex Parte Submission of Amendments to DNI/AG 702(h) Certifications and Related Procedures, Ex Parte Submission of Amendments to DNI/AG 702(g) Certifications, and Request for an Order Approving Such Amended Certifications, including the amended FBI Section 702 minimization and querying procedures submitted therewith. More specifically, I am providing this Declaration to highlight the operational consequences the FBI anticipates experiencing should the FBI be required to 1) maintain records distinguishing between United States person and non-United States person query terms, and 2) maintain a written statement of facts establishing that the use of any United States person query term to query unminimized section 702-acquired content is reasonably likely to retrieve foreign intelligence information or evidence of a crime, prior to viewing any contents returned in response to such a query.

~~SECRET//NOFORN~~


~~SECRET//NOFORN~~**(U) The FBI's Investigative Authorities and Its Reliance on Databases**

(U) As stated in the Attorney General's Guidelines for Domestic Investigations (AGG-DOM), the FBI is the primary investigative agency of the federal government and has the authority and responsibility to investigate all violations of federal law that are not exclusively assigned to another federal agency. In addition, the FBI is further vested by law and by Presidential directives with the primary role in carrying out investigations within the United States of threats to the national security, including the lead domestic role in investigating international terrorist threats in the United States, and in conducting counterintelligence activities to meet foreign entities' espionage and intelligence efforts directed against the United States.


(U) The AGG-DOM authorizes the FBI to collect information through well over a dozen investigative techniques, including accessing records from other government agencies, mail covers, undercover operations, the use of confidential human sources, and acquiring foreign intelligence information pursuant to the Foreign Intelligence Surveillance Act (FISA). These investigative techniques provide the FBI with a large amount of information that must be analyzed in an effort to identify threats to national security and potential violations of federal criminal law (collectively, threat streams). The FBI employs various databases to manage and analyze the substantial amounts of information collected during its investigations and assessments.

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

~~(S//NF)~~ The vast majority of information that the FBI acquires is stored in databases that are designed based on the characteristics of the information contained therein. Because the FBI acquires a wide variety of information, the FBI has a wide variety of databases  that are available to FBI personnel. A small number of those databases contain unminimized FISA collection, which is subject to strict access controls and retention requirements in accordance with the relevant FISA minimization procedures.

b1 Per FBI
b3

(U) After the events of September 11, 2001, and consistent with the recommendations of both the National Commission on Terrorist Attacks Upon the United States (9/11 Commission) and the William H. Webster Commission (Webster Commission), the FBI worked diligently to eliminate balkanized information that impeded the ability of FBI personnel to identify and connect threat streams. The Webster Commission opined that "planning for enterprise data aggregation and consolidating and conforming the contents of these diverse databases are vital to the FBI's ability to respond to the threat of terrorism." Final Report of the William H. Webster Commission on the Federal Bureau of Investigation, Counterterrorism Intelligence, and the Events at Fort Hood, Texas, on November 5, 2009 (Webster Commission Report), p. 32. See also *id.* at 118 n.17 ("Data aggregation and integration of lawfully obtained information are critical to the FBI's counterterrorism mission.") The Webster Commission made these findings in the context of its review of, among other things, why specific communications 

b3 Per FBI
b7E~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

[REDACTED] between Nidal Malik Hasan, who carried out the mass shooting at Fort Hood, Texas, and Anwar al Aulaqi, an FBI counterterrorism subject, were not timely identified by the relevant FBI personnel. *Id.* at 82. The Webster Commission Report, at length, discussed the "search capabilities" (pp. 28-29), "search tools" (pp. 89-90) and "search limitations" (p. 90) of FBI databases, and its recommendations were geared toward making the FBI's search capabilities and tools (e.g., queries) more effective and efficient.

b3 Per FBI
b7E

[REDACTED]

In adopting the Webster Commission's and 9/11

b1 Per FBI
b3
b7E
(S)

[REDACTED]

b1 Per FBI
(S) b3
b7E

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

Commission's recommendations, the FBI worked to aggregate and integrate data so that queries across multiple datasets are indeed more effective and efficient.²

(U) The Importance of Database Queries

(U) ~~(S//NF)~~ Database queries are a critical tool used by the FBI to identify threat streams such as terrorist attacks, [REDACTED] and cyber intrusions. FBI personnel conduct queries during predicated investigations in an effort to identify, for example, members of a terrorism conspiracy [REDACTED] and perpetrators and victims of cyber intrusions.

b3 Per FBI
b7E

[REDACTED]
[REDACTED] in fiscal year

2017 personnel ran approximately [REDACTED] queries.³ In order to timely identify threat streams, agents and analysts run queries [REDACTED]

[REDACTED]

Such queries are also relied upon to quickly determine whether a new tip or lead from the American public, state and local law enforcement, other U.S. Government entities, or a foreign partner warrants opening

[REDACTED]

b3 Per FBI
b7E

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

an investigation, is related to an existing investigation, or requires no further action. Agents and analysts also query FBI databases to identify information for dissemination in internal and external intelligence reports.

(U) ~~(S//NF)~~ Consistent with its mission, the FBI encourages its personnel to make maximal use of queries—provided they are compliant with the FBI's minimization procedures and other applicable law—in order to perform their work with the utmost efficiency and 'connect dots' in an effort to protect the national security. Given the lessons learned following 9/11 and the Fort Hood shooting, as well as the FBI's significant reliance on queries to effectively and efficiently identify threat streams in its holdings, the FBI is extremely concerned about anything that would impede, delay, or create a disincentive to querying FBI databases.

(U) The General Immateriality of U.S. Person Status in Domestic Investigations


(U) ~~(S//NF)~~ In domestic investigations, FBI personnel typically do not prioritize identifying the U.S. person status of someone associated with the investigation, because U.S. person status is generally immaterial to the investigative methods the FBI may use. Specifically, non-U.S. persons located in the United States enjoy many of the same legal protections as U.S. persons, most notably those afforded by the Fourth Amendment of the Constitution. Accordingly, there is often little urgency to invest the time and effort

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

necessary to determine the U.S. person status of individuals associated with a domestic investigation.⁴

(U) The Challenges Associated with Determining U.S. Person Status

~~(U)~~ ~~(S//NF)~~ The FBI currently has a decade of experience determining U.S. person status through the application of its section 702 Targeting Procedures. Through this experience, the FBI has learned that the process of reviewing information in FBI's holdings and assessing what that information reveals about an individual's U.S. person status is, in some instances, a complex and time-consuming endeavor. 

b3 Per FBI
b7E

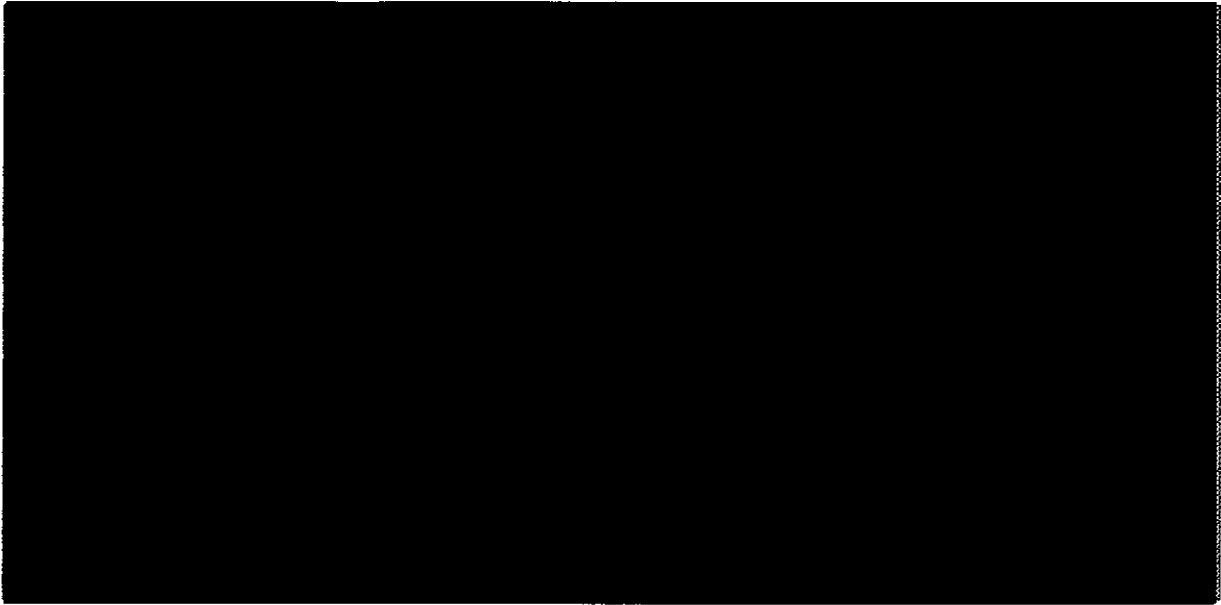


⁴ (U) The AGG-DOM also states, "[I]t is axiomatic that the FBI must conduct its investigations and other activities in a lawful and reasonable manner that respects liberty and privacy and avoids unnecessary intrusions into the lives of law-abiding people." (Emphasis added.) This requirement is not limited to "law-abiding citizens" or even "law-abiding U.S. persons."

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

b3 Per FBI
b7E



(U) Potential Impact of Requiring the FBI to Determine U.S. Person Status

(U) It is my assessment that if FBI personnel are required to take the time to attempt to differentiate between U.S. person and non-U.S. person query terms in the context of conducting queries during the investigation of threat streams, that activity would have a significant negative impact on FBI operations by: (1) diverting investigative resources toward identifying the U.S. person status of the individuals associated with query terms, (2) delaying the FBI's ability to timely investigate and thwart threat streams, and (3) disincentivizing agents and analysts from querying FISA data during investigations.

A. (U) Diversion of FBI Resources

(U)



b3 Per FBI
b7E

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

(U) ~~(S//NF)~~ A requirement to assess U.S. person status in connection with the [REDACTED] queries run by FBI personnel every year would impose a significant burden on the FBI and force the FBI to divert resources to that effort. The diversion of resources away from tracking threat streams and toward the effort of assessing U.S. person status would make the American public less safe.

b3 Per FBI
b7E

(U) ~~(S//NF)~~ Moreover, a requirement to determine U.S. person status would impact not only queries that lead to the discovery and review of FISA information, but *all* queries run against unminimized FISA collection even if no results are returned. For the FBI, there is tremendous value in being able to quickly "triage" information that it receives. That is, the FBI must be able to quickly rule out the need to pursue a particular lead through a query that returns no results, so as to allow agents to focus only on those leads that do require further action. The diversion of resources toward determining U.S. person status even for queries of unminimized FISA collection that produce no results would disrupt this critical information prioritization function and hinder the FBI's ability to do its work efficiently.

B. (U) Delays in Identifying Threat Streams

(U) The FBI is also concerned that imposing a requirement to determine U.S. person status in connection with conducting queries of personal identifiers would make the American public less safe by causing significant delays in the FBI's most critical

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

investigations. In general, the greater the threat associated with an FBI investigation, the greater the likelihood that the FBI will have information in its systems about individuals associated with that investigation that would need to be reviewed in order to determine their U.S. person status. If FBI personnel devote substantial time reviewing material in order to assess U.S. person status prior to conducting a query, their review of any threat information identified by that query would be delayed, which may in turn impact their ability to thwart threats in a timely manner.

C. (U) Disincentives to Querying FISA Collection

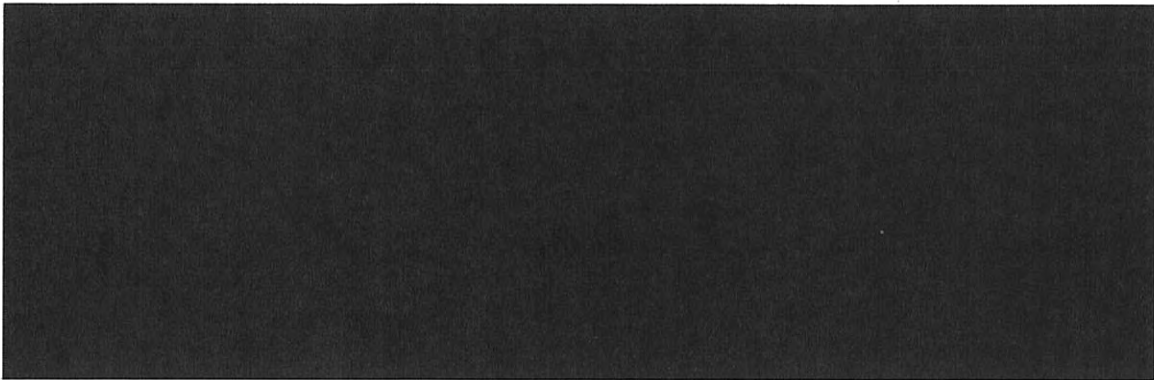
~~(U)~~ ~~(S//NF)~~ The FBI is also concerned about the *de facto* balkanization of unminimized FISA collection as a result of creating disincentives to querying that information. When faced with the possibility of investing significant time evaluating U.S. person status, FBI personnel may consider whether a query of unminimized FISA collection would be worth that investment of time (as opposed to, for example, pursuing another investigative activity that may be less effective but also less time consuming). FBI personnel may decide to first run a query [REDACTED] to evaluate the amount of material that would have to be reviewed to determine U.S. person status.

[REDACTED]

b3 Per FBI
b7E

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~




b3 Per FBI
b7E

(U) Potential Impact of Relying on Personal Knowledge of U.S. Person Status

(U) Even if FBI personnel are permitted to rely on their personal knowledge regarding U.S. person status, and are not required to review material in the FBI's "corporate" holdings to determine U.S. person status, the FBI has concerns about the impact of such a requirement.

A. (U) Inconsistent and Inherently Unreliable Information Concerning U.S.

Person Status

~~(U)~~ ~~(S//NF)~~ Reliance on personal knowledge of U.S. person status would almost certainly result in inconsistent and inherently unreliable information in FBI systems. The FBI receives new information on a daily basis from a wide variety of sources, including the American public, state and local law enforcement, and foreign partners. 

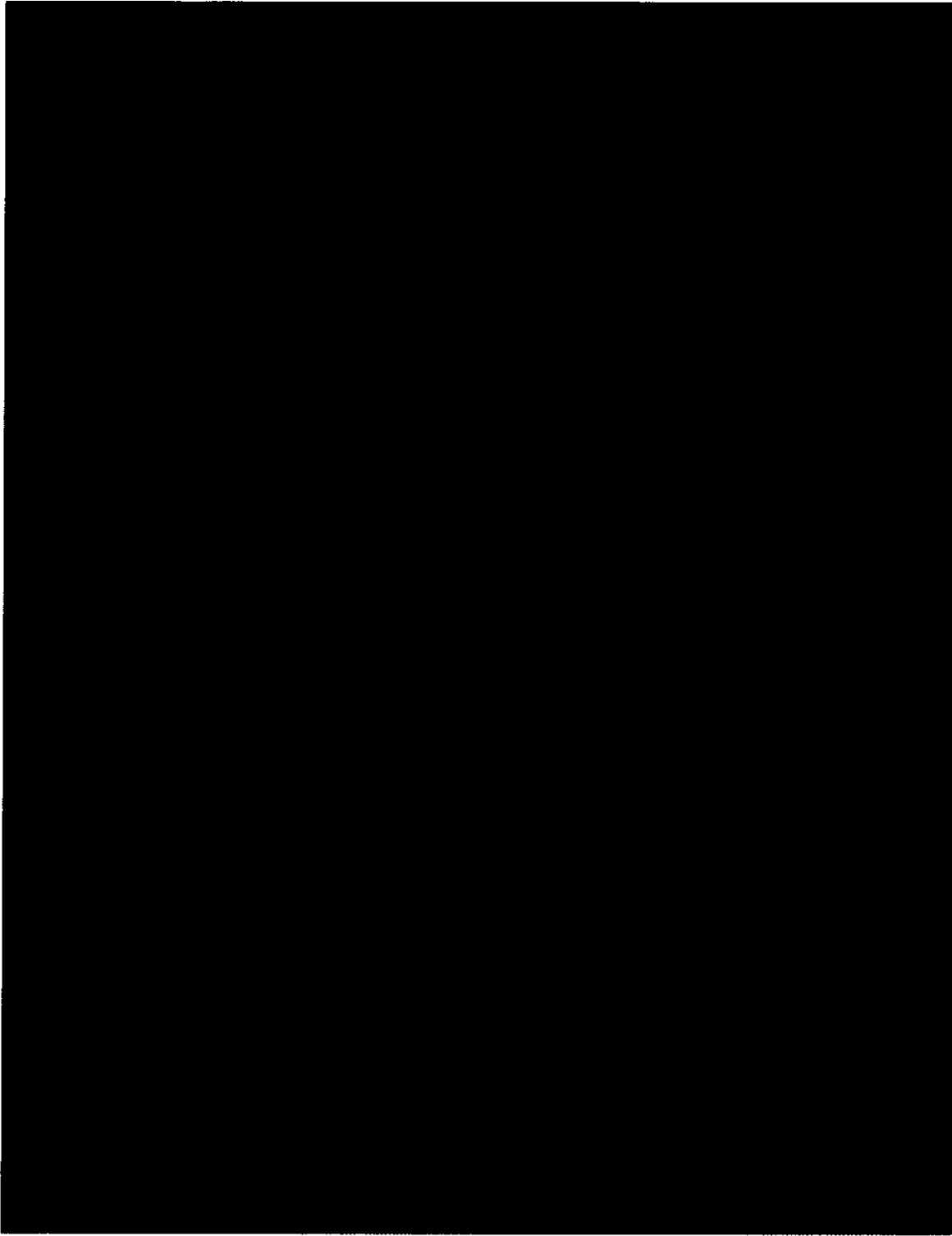


~~(U)~~ 

b3 Per FBI
b7E

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

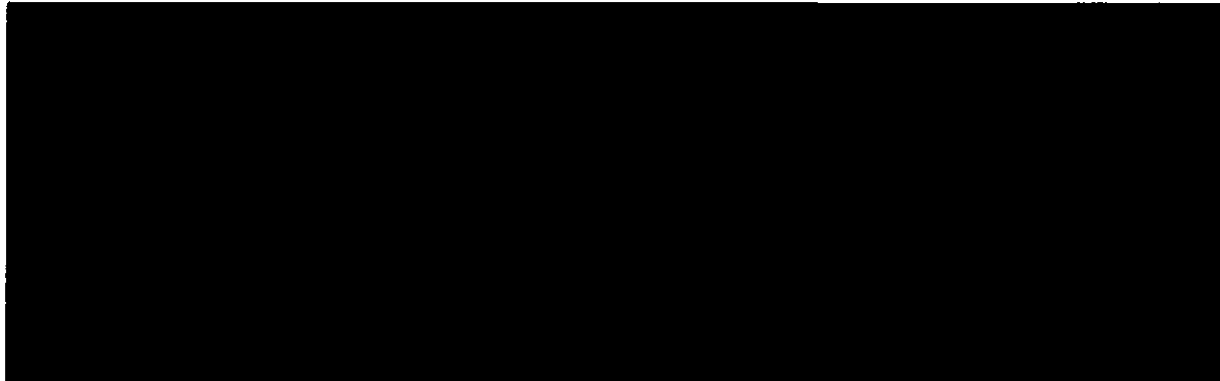


b3 Per FBI
b7E

(U)


~~SECRET//NOFORN~~

~~SECRET//NOFORN~~




b3 Per FBI
b7E

B. (U) Cultural Impact on the Importance of Accuracy

(U) Although the practice would be less taxing on FBI resources, the FBI also has concerns that permitting FBI personnel to rely solely on personal knowledge would be in tension with other obligations that require more of FBI personnel. For example, FBI agents executing FISA applications cannot rely on their own personal knowledge, but must affirm that the FBI possesses records that support every factual assertion in a given application. 

b7E Per FBI

 The FBI maintains a strong culture that places great emphasis on personnel consistently conveying true and accurate information, even if that requires them to go beyond what is in their personal knowledge or possession. Allowing FBI personnel to rely solely on their own personal knowledge conveys a message inconsistent with that culture—that there would be nothing wrong

(U) 

b3 Per FBI
b7E

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

with one agent identifying someone as a U.S. person, while a colleague identifies the same individual as a non-U.S. person.

(U) Potential Impact of Requiring a Written Justification

(U) Separately, a requirement that FBI must include a written justification prior to reviewing any section 702-acquired results that are returned using a U.S. person query term would likewise hinder the FBI's ability to perform its national security and public safety missions.

(U) In order to know whether a written justification is required, FBI personnel would first need to determine whether the query term that returned the Section 702 information was a U.S. person query term. This obligation would impose the aforementioned administrative burdens associated with reviewing FBI material and assessing U.S. person status, as well as the same problems of speculation and inconsistency if the determination were instead based solely on the personal knowledge of the agent or analyst running the query.

~~(U)~~ ~~(S//NF)~~ Even if the FBI decided to treat all individuals as U.S. persons and elected to apply a justification requirement to all queries that return section 702 collection, the impact on FBI resources would still be significant. Because [REDACTED] is not configured to allow the FBI to calculate how many prior queries returned FISA collection that was reviewed, much less when those queries concerned a U.S. person, the FBI is unable to

b3 Per FBI
b7E

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

quantify the specific impact that a requirement for a written justification prior to reviewing a 702 product returned as the result of a U.S. person query would have on its resources and operations. However, as I mentioned above, FBI conducts on average [REDACTED]

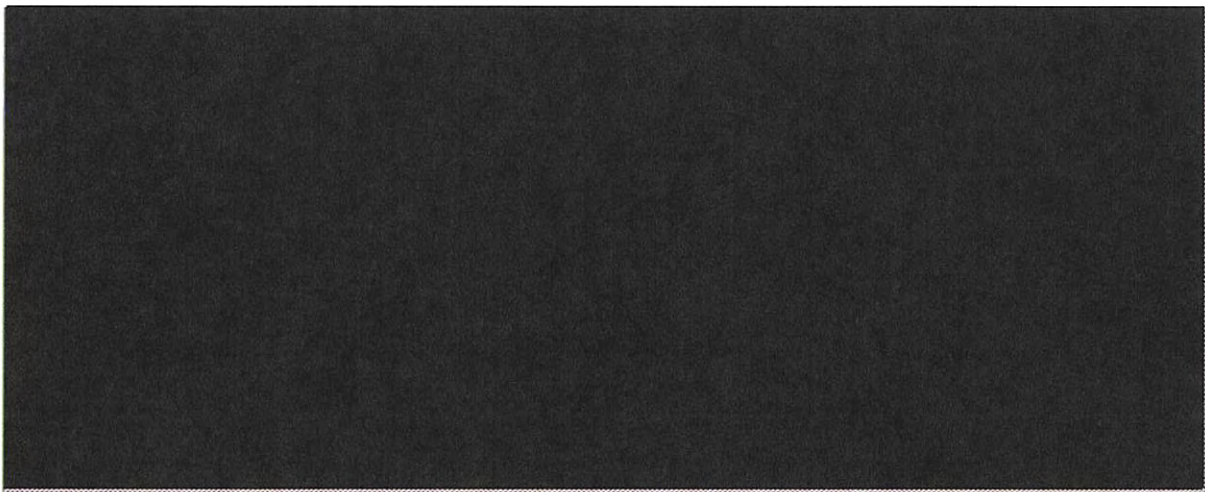
b3 Per FBI
b7E

[REDACTED] including in systems that contain raw FISA information.

As a result, such a requirement would certainly have an impact, and given the critical nature of the FBI's ability to conduct queries—and in particular, U.S. person queries—to its mission as described above, it is my assessment that there is a substantial likelihood that the impact would be significant.

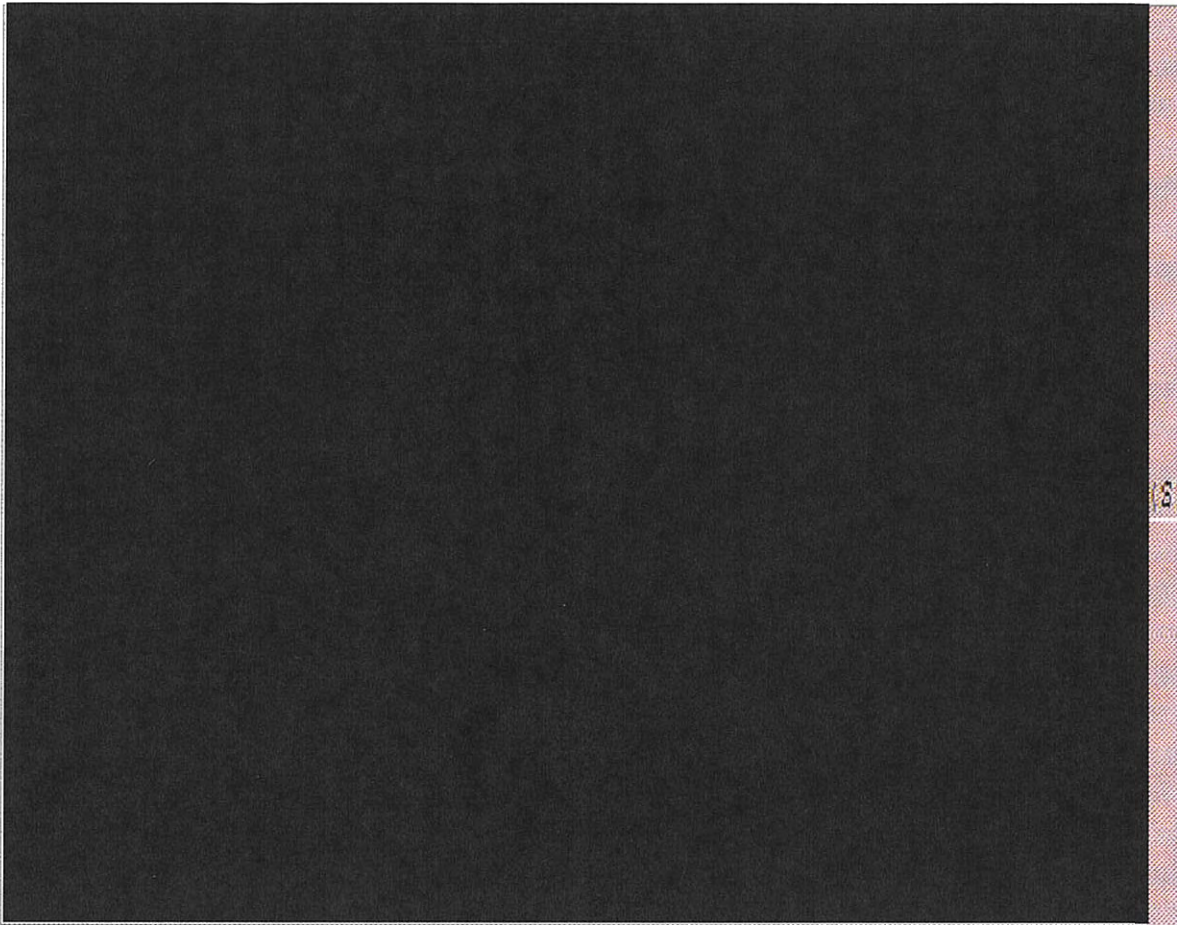
~~(U)~~ ~~(S//NF)~~ As an alternative to documenting justifications for every U.S. person query that returns Section 702 results, I understand that the Government has proposed to the Court an approach that, in my assessment, reduces the operational concerns described above and also addresses certain compliance incidents involving queries of unminimized Section 702 collection that have been reported to the Court. [REDACTED]

b3 Per FBI
b7E



~~SECRET//NOFORN~~

~~SECRET//NOFORN~~



b1 Per FBI
b3
b7E

(U) Conclusion

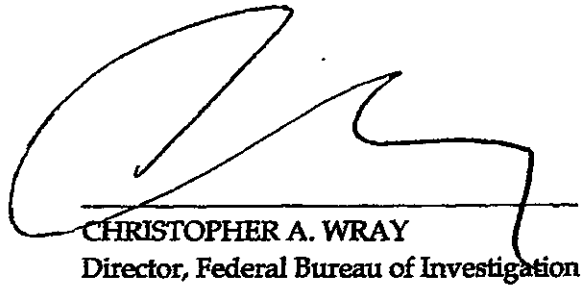
(U) For the reasons set forth above, I believe that requiring the FBI to (1) maintain records that distinguish between its queries of U.S. person and non-U.S. person selectors in its holdings collected pursuant to 50 U.S.C. § 1881a (Section 702), and 2) provide a written justification to view the contents provided in response to a query of a U.S. person selector in the FBI's Section 702 holdings would substantially hinder the FBI's ability to investigate and protect against threats to the national security.

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

(U) I declare the foregoing to be true and correct, under penalty of perjury.

Signed this 14th day of September, 2018.



CHRISTOPHER A. WRAY
Director, Federal Bureau of Investigation

~~SECRET//NOFORN~~