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U.S. FOREIGN INTELLIGENCE SURVEILLANCE

UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

Docket No.: PRTT [REDACTED]

GOVERNMENT'S RESPONSE TO THE COURT'S SUPPLEMENTAL ORDER ENTERED ON [REDACTED] IN DOCKET NO. PR/TT [REDACTED]

1. The United States hereby responds to the [REDACTED] Supplemental Order issued in Docket Number PR/TT [REDACTED], in which the Foreign Intelligence Surveillance Court (FISC or the Court) ordered the government to:

(a) show cause, in writing, why NSA's continuing use of the master list of

[REDACTED] is necessary and appropriate;

(b) explain in writing why any ongoing use of PR/TT metadata in connection

with [REDACTED] is consistent with this

Court's orders and otherwise appropriate; and

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Classified by: David S. Kris, Assistant Attorney General,
National Security Division, Department of Justice

Reason: 1.4(c)

~~Declassify on:~~ [REDACTED]

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(c) explain, by written submission, why sharing the unminimized results of properly predicated manual queries of the PR/TT metadata with NSA analysts other than the [REDACTED] analysts authorized to access PR/TT metadata is necessary and appropriate on an ongoing basis.

See Docket Number PR/TT [REDACTED] Supplemental Order at pp. 3-4. This filing is supported by the Declaration of [REDACTED] Chief, Special Foreign Intelligence Surveillance Act Oversight and Processing, Oversight and Compliance, Signals Intelligence Directorate, The National Security Agency. (TS//SI//NF)

The Continued Use of the Master Defeat List [REDACTED] is Necessary and Appropriate (TS//SI//NF)

2. The government submits that, for the following reasons, NSA's use of the master list [REDACTED] to reduce and manage data in its data repositories is a necessary and appropriate use of the metadata collected pursuant to the authority granted under this and previous related docket numbers. (TS//SI//NF)

3. In many of its data repositories, including the data repository into which the PR/TT data is placed [REDACTED] the NSA employs data reduction and management strategies, including use of the "master defeat list," [REDACTED] [REDACTED] See Declaration of [REDACTED] (attached) at pp. 1-2. Currently, the NSA's metadata system, [REDACTED] is ingesting more than [REDACTED]

1 [REDACTED]

[REDACTED]² NSA's data reduction and management strategies. [REDACTED]

[REDACTED] save approximately [REDACTED]

[REDACTED]³ See [REDACTED] Declaration at p. 2. (~~TS//SI//NF~~)

4. As discussed more fully in the attached declaration, the NSA has articulated several specific reasons why these data reduction and management strategies are necessary and appropriate. [REDACTED]

[REDACTED]

[REDACTED] Third, data reduction and management strategies preserve finite storage space. Finally, the NSA's data reduction and management strategies also ensure optimal performance of analytic tools. *Id.* at pp. 1-3. The ingestion of [REDACTED] unwanted electronic communications would hinder the speed and performance of the analytic tools and, consequently, the speed and performance of the analysts who use them. *Id.* at pp. 2-3.

(~~TS//SI//NF~~)

5. For these reasons, notwithstanding the use of a certain amount of PR/TT metadata in a manner not contemplated by the Court, the government submits that NSA's

² As discussed more fully in the attached declaration, [REDACTED] is NSA's metadata contact chaining repository. (~~TS//SI//NF~~)

[REDACTED]

continuing use of its master list [REDACTED] is necessary to the successful performance of its counterterrorism mission. Moreover, given that the use of the master list [REDACTED] results in the overall reduction of the volume of metadata searched and accessed by analysts in NSA's data repositories, the United States submits that continued use of this list is appropriate.⁴ Accordingly, the government requests that the Court authorize the NSA to use the master defeat, as presently constituted, for data reduction and management activities in [REDACTED]

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

NSA's Creation and Use of PR/TT Metadata in Defeat Lists (TS//NS//NF)

6. In its Primary Order in Docket No. PR/TT [REDACTED] and prior PR/TT dockets, this Court noted that "certain processes must be performed by NSA technical personnel in order to make the metadata collected pursuant to this Order usable by analysts. The restrictions on access contained in this Order shall not apply to those processes." Docket No. PR/TT [REDACTED], Primary Order, p. 8, footnote 5. The NSA noted in its PR/TT Applications that it would eliminate unwanted communications metadata from the PR/TT database before any analyst could access the metadata. It did not, however, describe in detail the processes it would employ to do so. [REDACTED]

⁴ The NSA advises that, at present, there are more than [REDACTED] selectors on the master defeat list. Because the NSA cannot say with any certainty which ones may have been placed there in a manner inconsistent with the Court's orders, the only alternative to continued use of the list with the questionable selectors would be to dispose of the entire list and create a new one. See Declaration of [REDACTED] at p. 6. (TS//SI//NF)

[REDACTED]

(TS//SI//NF)

7. The attached Declaration of [REDACTED] describes two processes by which PR/TT-cleared technical personnel (process one) and analysts (process two) identified [REDACTED] [REDACTED] for inclusion on the master defeat list and use for data reduction and management purposes in the [REDACTED] including the PR/TT metadata repository. As each process was used to create the master defeat list that was employed against PR/TT metadata [REDACTED] [REDACTED] the inclusion of PR/TT metadata in the master defeat list presents [REDACTED] different applications of the PR/TT metadata for data reduction and management activities. The government submits that [REDACTED] of the applications [REDACTED] consistent with the Court's Order; the [REDACTED] application, as stated in NSD's Preliminary Notice of Compliance Incident, [REDACTED] not. See Preliminary Notice of Compliance Incident in Docket number PR/TT [REDACTED] at pp. 2-4 [REDACTED]

[REDACTED].⁵ (TS//SI//NF)

8. In regard to the first process, since issuance of the first PR/TT Order in July 2004, the NSA technical personnel responsible for managing the PR/TT metadata have identified, through their various metadata management activities, [REDACTED]

⁵ In the government's preliminary notice to the Court regarding this matter, incorrectly stated that NSA continues to identify and use [REDACTED] from the PR/TT metadata for metadata reduction and management activities. Specifically, the preliminary notice stated:

Currently, if NSA technical personnel identify [REDACTED] through their access to the PR/TT metadata, the selector is only used for metadata reduction and management activities in the PR/TT repository. If PR/TT cleared analysts identify [REDACTED] through their access to the PR/TT metadata, the selector is used for metadata reduction and management in various NSA repositories, to include but not limited to the PR/TT repository.

[REDACTED] Preliminary Notice at 2. As set forth in the attached declaration, NSA has not added to the master defeat list or a PR/TT specific defeat list, newly identified [REDACTED] derived from [REDACTED] since approximately [REDACTED]. See Declaration of [REDACTED] at p. 3, n. 2. (TS//SI//NF)

[REDACTED] See [REDACTED] Declaration at pp. 3-5. Once identified [REDACTED] [REDACTED] were added to a master defeat list, which NSA's technical personnel used to block and purge metadata from [REDACTED] metadata repositories, [REDACTED]

[REDACTED] *Id.* The NSD submits that the application of PR/TT metadata identified by NSA technical personnel on the master defeat list for metadata reduction and management within the PR/TT metadata was contemplated by the Court's Orders (*see* Docket No. PR/TT [REDACTED], Application at p. 7, n. 5), but that [REDACTED]

9. While the government has concluded that the application of [REDACTED] identified by technical personnel from the PR/TT metadata for metadata reduction and management of [REDACTED] was not permitted by the Court's orders, the government believes such an application is desirable as it serves to reduce, rather than to increase, the volume of data in many NSA repositories. Accordingly, the government requests that the Court authorize NSA to use [REDACTED] identified by technical personnel from the PR/TT metadata for metadata reduction and management of [REDACTED] PR/TT [REDACTED]

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

10. The second process NSA employed to identify [REDACTED] occurred during the routine metadata querying activities of the PR/TT-cleared analysts. A PR/TT-cleared analyst who recognized [REDACTED] in the results of a query on a RAS-approved seed could mark that selector, and provide it to the technical personnel for addition to

the master defeat list. As with the first process, the master defeat list was used for metadata reduction and management of the PR/TT metadata and [REDACTED]. For the reasons set forth below in relation to the sharing of PR/TT query results with non-PR/TT cleared analysts, the government submits that the sharing and use of the results of an authorized query of the PR/TT metadata within NSA for data reduction and management activities in the PR/TT metadata [REDACTED] is permitted by the Court's Orders. Therefore, the NSD submits that the application of analyst-identified [REDACTED] on the master defeat list for metadata reduction and management of both the PR/TT metadata [REDACTED] [REDACTED] were permitted by the Court's orders. Moreover, as to the application of analyst-identified [REDACTED] on master defeat list for metadata reduction and management activities within the PR/TT repository, the government submits that application is permitted by the Court's Orders as a process performed by technical personnel to make the PR/TT metadata useable by analysts. See Docket No. PR/TT [REDACTED] Application at p. 7, n. 5. (~~TS//SI//NF~~)

The Sharing of PR/TT Unminimized Query Results with Non-PR/TT Analysts is Consistent with the Court's Orders Entered Under the PR/TT Docket Numbers
(~~TS//SI//NF~~)

11. From the inception of the PR/TT collection, the primary safeguards ordered by the Court have been the controls on access to the PR/TT metadata. The Court's orders in this matter restrict "[t]he ability to retrieve information derived from the pen register and trap and trace devices . . . to [REDACTED] specially cleared analysts . . ." See Docket Number PR/TT [REDACTED] Primary Order at p. 8. Additionally, the Court's orders limit the means by which

information may be retrieved by the specially cleared analyst to contact chaining [REDACTED]
[REDACTED] Once a specially cleared analyst has retrieved information via a query from the PR/TT data, the Court's orders require that NSA "apply USSID 18 [United States Signals Intelligence Directive] to minimize information concerning U.S. persons," and follow the Court-ordered procedure prior to "disseminating any U.S. person information outside of the NSA." *Id.* at p. 12.

~~(TS//SI//NF)~~

12. Sharing the unminimized results of authorized queries of the PR/TT metadata inside the NSA is consistent with the orders of this Court. This logic applies equally to the sharing of the same unminimized query results with non-PR/TT-cleared NSA analysts. Moreover, in addition to being appropriate, such sharing is necessary. The current PR/TT Order identifies [REDACTED]

[REDACTED] See Docket Number [REDACTED] Primary Order at pp. 2-3, n. 1 & n. 2. NSA's collective expertise in these Foreign Powers resides in more than [REDACTED] intelligence analysts from various NSA organizations and product lines. See [REDACTED] Declaration at p. 7. Because so many analysts touch upon terrorism information, it is impossible to estimate how many analysts might be served by access to PR/TT query results. ~~(TS//SI//NF)~~

13. Less than approximately ten percent of NSA intelligence analysts responsible for tracking and reporting foreign intelligence on counterterrorism matters generally may query the PR/TT metadata (the Primary Order in Docket Number PR/TT [REDACTED] currently authorizes [REDACTED]). The collective expertise of these analysts represents a small fraction of the NSA's expertise on

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Foreign Power targets. Consequently, the inability to share the results of queries to the PR/TT metadata with other analysts within NSA would diminish the value of the collection. *Id.* at p. 8.

~~(TS//SI//NF)~~

14. For the reasons set forth above, the sharing of PR/TT-authorized query results among NSA analysts is consistent with the Court's orders, and necessary in order for the NSA to carry out its mission. ~~(TS//SI//NF)~~

Respectfully submitted,



Attorney
National Security Division
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Dated:



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