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NATIONAL SECURITY AGENCY

FORT GEORGE G. MEADE, MARYLAND 20755-6000

Serial: GC/009/09

25 February 2009

MEMORANDUM FOR STAFF DIRECTOR, HOUSE PERMANENT SELECT
COMMITTEE ON INTELLIGENCE

SUBJECT: (U) Congressional Notification - Incidents of Noncompliance -
INFORMATION MEMORANDUM

(U) The purpose of this correspondence is to notify the Committee of compliance matters that are currently under review by the Foreign Intelligence Surveillance Court and which relate to subjects of prior testimony to the Congress.

~~(TS//SI//NF)~~ Under two separate sets of orders issued by the Court pursuant to Sections 1841 and 1861 of the Foreign Intelligence Surveillance Act of 1978, as amended ("FISA"), the National Security Agency ("NSA" or "Agency") receives telephony and electronic communications metadata in order to produce foreign intelligence related to the activities of [REDACTED] the [REDACTED]

On 15 January 2009, the Department of Justice ("DoJ") notified the Court that an automated alert process NSA used to compare the telephony metadata against a list of telephone identifiers that were of foreign intelligence interest to NSA's counterterrorism personnel did not operate in conformity with the Court's orders. The Government also advised the Court that NSA had incorrectly described the alert process in prior reports to the Court. As part of a comprehensive review ordered by the Director of NSA, the Agency identified another automated process used to query the telephony metadata that also did not operate in conformity with the Court's orders. The review also identified some manually entered queries that were noncompliant with the Court's orders. None of the compliance incidents resulted in the dissemination of any reporting from NSA to any other department or agency. Upon discovery of these compliance incidents, NSA immediately made changes to its processes to ensure that the Agency is handling and querying the telephony metadata in accordance with the Court's orders. The corrective measures include implementation of controls that prevent any automated process from querying the telephony metadata NSA receives pursuant to the Court's orders and which also guard against manual querying errors.

Derived From: NSA/CSSM 1-52

Dated: 20070108

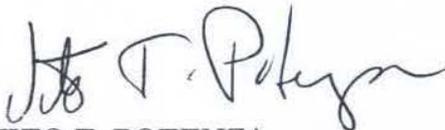
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~~(TS//SI//NF)~~ In response to the Government's compliance notice, on 28 January 2009, the Court directed the Government to file a brief and supporting documentation describing how the compliance and misreporting incidents occurred so the Court can determine what remedial action, if any, is warranted. Since the Court was aware that there are similarities between NSA's processing of telephony metadata and electronic communications metadata under separate orders, the Court also directed the Government to determine whether NSA has been processing the electronic communications metadata in accordance with the terms of the Court's orders for this category of material. As part of this review, the Government concluded that NSA was processing the electronic communications metadata in accordance with the terms of the Court's orders, with one exception. The review identified one particular process that the Government concluded was not in conformity with the Court's order. NSA had employed the process in a small number of cases to approve queries against the electronic communications metadata. Although the Agency had previously reported the process to the Court [REDACTED] [REDACTED] this process, too, has been discontinued.

~~(S)~~ NSA and DoJ have already identified a number of steps designed to improve the Agency's ability to comply with the relevant orders and implementation of these changes has begun. Also, in addition to notifying the Court, the Government has notified a number of senior Executive Branch officials about these compliance matters. Officials who have received such notification include the President's Intelligence Oversight Board, the Director of National Intelligence, NSA's Inspector General, and the Under Secretary of Defense for Intelligence. My office is also prepared to brief the Committee on these matters at the Committee's convenience.

(U) Should you have any questions, please contact Jonathan E. Miller, Associate Director of Legislative Affairs, at [REDACTED]



VITO T. POTENZA
General Counsel

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Minority Staff Director, House Permanent
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