



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
Washington, DC 20510

APR 28 2017

Dear Mr. Leader:

This report is submitted in accordance with sections 107 and 502 of the Foreign Intelligence Surveillance Act of 1978 (the "Act"), 50 U.S.C. § 1801 *et seq.*, and section 118 of USA PATRIOT Improvement and Reauthorization Act of 2005, Pub. L. No. 109-177 (2006), most recently amended by the USA FREEDOM Act, Pub. L. No. 114-23, 129 Stat. 268 (2015). This report provides information regarding: (1) all final filed applications made by the Government during calendar year 2016 for authority to conduct electronic surveillance and/or physical search for foreign intelligence purposes under the Act; (2) all final filed applications made by the Government during calendar year 2016 for access to certain business records (including the production of tangible things) for foreign intelligence purposes; and (3) certain requests made by the Federal Bureau of Investigation pursuant to national security letter authorities.

In addition to reporting statistics based on the number of *final filed* applications, as has been the Government's historical practice, this letter also includes for the first time statistics published by the Director of the Administrative Office of the United States Courts (AOUSC). Unlike the Government, AOUSC reports the number of *proposed applications* rather than the number of *final filed* applications. More specifically, Rule 9(a) of the Foreign Intelligence Surveillance Court Rules of Procedure requires the Government to submit proposed applications at least seven days before the Government seeks to have a matter entertained by the FISC. Modifications or withdrawals of applications may occur between the filing of a proposed application and the filing of a final application for a variety of reasons, including the Government modifying a proposed application in response to questions or concerns raised by the Court. The statistics prepared by the AOUSC, which use the number of *proposed* applications rather than final filed applications as their baseline, reflect this robust interaction between the Government and the Court, and thus are included herein to provide important additional context. The AOUSC Director's full report is available on its website.

**Applications Made to the Foreign Intelligence Surveillance Court During Calendar Year 2016** (section 107 of the Act, 50 U.S.C. § 1807)

During calendar year 2016, the Government filed 1,477 final applications to the Foreign Intelligence Surveillance Court (hereinafter "FISC") for authority to conduct electronic

surveillance and/or physical searches for foreign intelligence purposes. The 1,477 final filed applications include applications made solely for electronic surveillance, applications made solely for physical search, and combined applications requesting authority for electronic surveillance and physical search. Of these, 1,446 final filed applications included requests for authority to conduct electronic surveillance.

None of these final filed applications were withdrawn by the Government. The FISC did not deny any final filed applications in whole, or in part. The FISC made modifications to the proposed orders in 112<sup>1</sup> final filed applications. Thus, the FISC approved collection activity in a total of 1,446 of the final filed applications that included requests for authority to conduct electronic surveillance.

The AOUSC, applying the methodology outlined above, has reported that the FISC received 1,485 proposed applications in 2016 for authority to conduct electronic surveillance and/or physical searches for foreign intelligence purposes. In these matters, the AOUSC reported that 1,141 proposed orders were granted, 310 proposed orders were modified, 26 proposed applications were denied in part, and eight proposed applications were denied in full. As noted above, the AOUSC statistics include modifications made to proposed orders between the filing of the proposed application and the final application, as well as proposed applications withdrawn by the Government in full or in part after being advised that the Court would not grant the proposed application as initially submitted by the Government.

**Applications for Access to Certain Business Records (Including the Production of Tangible Things) Made During Calendar Year 2016** (section 502 of the Act, 50 U.S.C. § 1862(c)(1))

During calendar year 2016, the Government filed 124 final applications to the FISC for access to certain business records (including the production of tangible things) for foreign intelligence purposes. The FISC did not deny, in whole or in part, any such final filed application by the Government during calendar year 2016. The FISC made modifications to one of the proposed orders in a final application for access to business records.

The AOUSC, applying the methodology outlined above, has reported that the FISC received 125 proposed applications in 2016 for access to certain business records (including the production of tangible things) for foreign intelligence purposes. In these matters, the AOUSC reported that 108 proposed orders were granted, 16 proposed orders were modified, zero proposed applications were denied in part, and one proposed application was denied in full.

Twenty-one final filed applications did not specifically identify an individual, account, or personal device as the specific selection term.<sup>2</sup> The FISC did not modify the proposed orders in

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<sup>1</sup> Additionally, the FISC issued a second supplemental order, *nunc pro tunc*, to correct a typographical error in the original supplemental order. This second supplemental order is not included in the 112 substantive modifications being reported.

<sup>2</sup> Notably, the definition of “specific selection term” for obtaining an order for the production of tangible things is “a term that specifically identifies a person, account, address, or personal device, or any other specific identifier,” 50 U.S.C. § 1861(k), whereas the definition of “specific selection term” for the reporting requirement encompasses a smaller group of terms, to include only “an individual, account, or personal device,” 50 U.S.C. § 1862(c)(1)(C). Thus, the reporting requirement

these 21 applications for access to business records. Separately, the FISC did not direct additional, particularized minimization procedures beyond those adopted pursuant to section 1861(g) to the proposed orders in applications made by the Government.

**Requests Made for Certain Information Concerning Different United States Persons Pursuant to National Security Letter Authorities During Calendar Year 2016 (USA PATRIOT Improvement and Reauthorization Act of 2005, Pub. L. No. 109-177 (2006))**

Pursuant to Section 118 of the USA PATRIOT Improvement and Reauthorization Act, Pub. L. 109-177 (2006), as amended the Department of Justice provides Congress with annual reports regarding requests made by the Federal Bureau of Investigation (FBI) pursuant to the National Security Letter (NSL) authorities provided in 12 U.S.C. § 3414, 15 U.S.C. § 1681u, 15 U.S.C. § 1681v, 18 U.S.C. § 2709, and 50 U.S.C. § 436.

In 2016, the FBI made 8,727 NSL requests (excluding requests for subscriber information only) for information concerning United States persons. These sought information pertaining to 3,117 different United States persons.<sup>3</sup>

In 2016, the FBI made 6,651 NSL requests (excluding requests for subscriber information only) for information concerning non-United States persons. These sought information pertaining to 2,310 different non-United States persons.<sup>4</sup>

In 2016, the FBI made 9,423 NSL requests for information concerning only subscriber information for United States persons and non-United States persons. These sought information pertaining to 3,725 persons.<sup>5</sup>

We hope that this information is helpful. Please do not hesitate to contact this office if

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mandates inclusion in this report of certain requests that otherwise meet the definition of specific selection term in 50 U.S.C. § 1861(k). For example, the reporting requirement mandates inclusion of requests in which the specific selection term was an "address."

<sup>3</sup> In the course of compiling its National Security Letter statistics, the FBI may over-report the number of United States persons about whom it obtained information using National Security Letters. For example, NSLs that are issued concerning the same U.S. person and that include different spellings of the U.S. person's name would be counted as separate U.S. persons, and NSLs issued under two different types of NSL authorities concerning the same U.S. person would be counted as two U.S. persons.

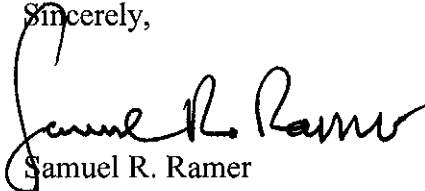
<sup>4</sup> In the course of compiling its National Security Letter statistics, the FBI may over-report the number of non-United States persons about whom it obtained information using National Security Letters. For example, NSLs that are issued concerning the same non-U.S. person and that include different spellings of the non-U.S. person's name would be counted as separate non-U.S. persons, and NSLs issued under two different types of NSL authorities concerning the same non-U.S. person would be counted as two non-U.S. persons.

<sup>5</sup> Because Congress has recognized that the FBI typically knows little about the user of a facility when requests for only subscriber information are made, Section 118(c)(2)(B) does not require the number of requests for NSLs seeking only subscriber information to be broken down to identify the number of requests related to United States persons and non-United States persons. See Section 118(c)(2)(B), USA Patriot Act Improvement and Reauthorization Act of 2005, Pub. L. No. 109-177, 120 Stat. 217 (2006), as most recently amended by the USA FREEDOM Act, Pub. L. No. 114-23, 129 Stat. 268 (2015).

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we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Samuel R. Ramer". The signature is fluid and cursive, with a large initial "S" and "R".

Samuel R. Ramer  
Acting Assistant Attorney General