

I CON THE RECORD TRANSPARENCY BINGO: PLAYING CARD

In this post, I'll cover the rest of the I Con the Record 2016 Transparency Report.

Title I, III, VII 703 and 704

As the report notes, these are the individually approved orders. To be assholes, ODNI includes Section 703, which is not used. I Con the Record reports 1,559 orders, which it does not break down.

FISA "Probable Cause" Court Orders and Targets

Titles I and III and Sections 703 and 704 of FISA	CY2013	CY2014	CY2015	CY2016
Total number of orders	1,767	1,519	1,585	1,559
Estimated* number of targets of such orders	1,144	1,562	1,695	1,687

See 50 U.S.C. § 1873(b)(1).

*Throughout this report, when numbers are *estimated*, the estimate comports with the statutory requirements to provide a "good faith estimate" of a particular number.

For the same authorities (1805, 1824, 1805/1824, and 1881c), the FISA Court, which uses different and in most cases more informative counting metrics, reports 1,220 orders granted, 313 orders modified, and 26 orders denied in part (which add up to I Con the Record's 1,559), plus 8 orders denied, which I Con the Record doesn't mention.

Section	Applications or Certifications	Orders Granted	Orders Modified	Orders Denied in Part	Applications or Certifications Denied
1805 only	105	61	39	5	0
1824 only	42	28	11	3	0
1805 and 1824 ¹	1,338	1,052	260	18	8
1842	60	50	10	0	0
1861	125	108	16	0	1
1881a	[redacted] ²	0	0	0	0
1881b	0	0	0	0	0
1881c	82	79	3	0	0

¹ Requests for combined authority to conduct electronic surveillance and physical searches under 50 U.S.C. § 1805 and § 1824, respectively, are included in this row and are not separately reflected in the rows addressing requests for authority to conduct electronic surveillance (Section 1805) and physical search (Section 1824) above.

² The government submitted this number of certification(s) during calendar year 2016 but the Court did not take action on any such certification(s) within the calendar year. After completing the declassification review specified in 50 U.S.C. § 1873 (a)(1), the U.S. Department of Justice has advised the AO that this number is currently classified for national security reasons.

As an improvement this year, I Con the Record has broken down how many of these targets are US persons or not, showing it to be 19.9%. That

means the vast majority of targeted FISA orders are targeted at people like Sergey Kislyak, the Russian Ambassador all of Trump's people talked to.

FISA "Probable Cause" Targets – U.S. Persons*

<u>Titles I and III and Sections 703 and 704 -- Targets</u>	CY2016
Estimated number of targets who are <i>non</i> -U.S. persons	1,351
Estimated number of targets who are U.S. persons	336
Estimated percentage of targets who are U.S. persons	19.9%

*While not statutorily required to publicly provide these statistics, the IC is providing them consistent with the commitment to its *Principles of Intelligence Transparency*.

This is the target number for the original report, not the order number, and it is an estimate (which is curious). This means at least 28 orders target multiple people. Neither ICTR nor FISC reveals how many US persons were approved for 705b, meaning they were spied on when they went overseas.

Section 702

This is the authority that covers upstream and PRISM. After presenting its useless report that it had one certificate in 2016 (leftover from 2015), ICTR reports there were 106,469 knowably discrete 702 targets last year, an 11% increase off last year.

Section 702 Targets*

<u>Section 702 of FISA</u>	CY2013	CY2014	CY2015	CY2016
Estimated number of targets of such orders	89,138	92,707	94,368	106,469

*While there is no statutory requirement to disclose this number, it is provided in this report to foster public understanding of the IC's use of the Section 702 collection authority. The IC is committed to sharing as much information as possible with the public without jeopardizing mission capabilities.

Note: one of the games played in the USA Freedom Act transparency procedures was that, once the other counts moved to a selector based count, this was removed from the required reports (which is why ICTR says they weren't required by law to release it). They presumably did this to hide the likely fact that for every one of these 106,469 targets, there are multiple – possibly very many – selectors tasked, which would make the spying number look huge.

NSA and CIA provide the number of content

queries they conducted. Since CIA has stopped double counting selectors it uses more than once, this represents more than the 12% increase in queries suggested by the numbers. So queries are increasing at a higher – potentially significantly higher – rate than targets.

Section 702 Search Terms Used to Query Content

Section 702 of FISA	CY2015	CY2016
Estimated number of search terms concerning a known U.S. person used to retrieve the unminimized contents of communications obtained under Section 702 (excluding search terms used to prevent the return of U.S. person information)*	4,672	5,288

See 50 U.S.C. § 1873(b)(2)(A).

*Consistent with § 1873(d)(2)(A), this statistic does not include queries that are conducted by the Federal Bureau of Investigation (FBI).

Given the way the NSA’s querying process ties queries to deadlines (60 days, for example, or to the underlying authorization), it’s likely NSA just keeps these queries targeted throughout that period (which may mean CIA moved to do the same this year). If that’s right, it would effectively alert an analyst any time a new communication involving the US person came in.

This post talks about what the report’s claim that just one query of FBI holdings designed to find criminal information had a positive hit – and was reviewed– on 702 information really means.

Meanwhile, NSA’s US person metadata queries have gone up much faster than content queries or target selectors, a 32% increase. As noted in this post, FBI doesn’t have to count their queries and CIA still does not do so.

Section 702 Queries of Noncontents

Section 702 of FISA	CY2013	CY2014	CY2015	CY2016
Estimated number of queries concerning a known U.S. person of unminimized noncontents information obtained under Section 702 (excluding queries containing information used to prevent the return of U.S. person information)*	9500	17,500	23,800	30,355

See 50 U.S.C. § 1873(b)(2)(B).

*Consistent with § 1873(d)(2)(A), this statistic does not include queries that are conducted by the FBI.

Also note, this is an estimate. The underlying NSA document makes it clear this is done via

algorithm or business rule to estimate these queries, which suggests they're done automatically.

To put these queries into perspective, Jim Comey today said there were 1,000 Islamic extremists in the US who were communicating overseas. Even assuming they track the other 1,000 extremists not known to be communicating overseas, that's just a tiny fraction of the Americans they're tracking.

ICTR provided better information on unmasked US person identities this year than last, revealing how many USP identities got released.

Section 702 – U.S. person (USP) information disseminated by NSA	CY2016
Total number of NSA disseminated §702 Reports containing USP identities	3,914
Of those NSA disseminated §702 Reports containing USP identities (from the first row in this chart), the USP identity was originally <i>masked</i> in this many reports	2,964*
Of those NSA disseminated §702 Reports containing USP identities (from the first row in this chart), the USP identity was originally <i>revealed</i> in this many reports	1,200*
Of those NSA disseminated §702 Reports containing USP identities where the USP identities was originally masked (from the second row in this chart), the number of USP identities that NSA later released in response to specific requests to unmask a USP identity**	1,934

*A single report may contain both masked and unmasked U.S. person identities.

As I said last year, ICTR is not doing itself any favors by revealing what a tiny fraction of all 702 reports the 3,914 – it must be truly miniscule.

All that said if you do get reported in one of those rare 702 reports that includes a USP identity, chances are very good you'll be unmasked. In 30% of the reports with USP identities, last year, at least one USP identity was released in original form unmasked (as might happen, for example, if Carter Page or Mike Flynn's identity was crucial to understanding the report). Of the remainder, though, 65% had at least one more US person identity unmasked. I believe that means that only roughly 26% of the names originally masked remained masked in the reports.

Pen Registers

See this post for an explanation of why we shouldn't take too much from a seeming significant decline in pen registers. Note, I didn't mention that 43.9% of the 41 targets are estimated to be US persons – but are estimates, which is a bit nutty given the small numbers involved.

Note, of the 60 pen registers ICTR shows, FISC shows 10 were modified (perhaps to include minimization procedures).

Section 215

The section on “traditional” Section 215 shows that for each order (of which up to 4 had more than one target), there were almost 1,000 selectors sucked in.

“Traditional” Business Records Statistics

Business Records “BR” – Section 501(b)(2)(B)	CY2016
Total number of orders issued pursuant to applications under Section 501(b)(2)(B)	84
Estimated number of targets of such orders	88
Estimated number of unique identifiers used to communicate information collected pursuant to such orders	81,035

See 50 U.S.C. §§ 1873(b)(4), 1873(b)(4)(A), and 1873(b)(4)(B).

Except!

Except the number is likely far, far higher, because this metric doesn't track people sucked in via financial or travel or other Section 215 orders.

This post explains why the 151 million call session records sucked in via the new Section 215 phone dragnet may not actually be that much – but also likely represents edge cases.

Note, the FISC report shows 125 total Section 215 reports, with 108 approved, 16 modified, and 1 rejected (the latter of which ICTR doesn't mention). The approved reports adds up to the same 124 that ICTR shows. The modified orders likely include minimization procedures.

Here's the number of queries of returned new phone dragnet data done by NSA and CIA (note, in the old dragnet, this data would not have been as readily available even within NSA, much less at CIA).

Call Detail Record (CDR) Statistics

Call Detail Records "CDR" – Section 501(b)(2)(C)	CY2016
Estimated number of search terms that included information concerning a U.S. person that were used to query any database of call detail records obtained through the use of such orders*	22,360

See 50 U.S.C. § 1873(b)(5)(C).

*Consistent with § 1873(d)(2)(A), this statistic does not include queries that are conducted by the FBI.

As always with meaningful metrics, FBI is exempt. I'll return to this metric.

NSLs

I may come back to this as well, but for now, know that FBI requested fewer NSLs last year than in previous years.

NSL Statistics

National Security Letters (NSLs)	CY2013	CY2014	CY2015	CY2016
Total number of NSLs issued	19,212	16,348	12,870	12,150
Number of Requests for Information (ROI)	38,832	33,024	48,642	24,801

See 50 U.S.C. § 1873(b)(6).