

Per your request, a long, but still only very partial list, of declassified facts. I added a new item #9 to highlight two important declassifications related to upstream collection:

- (1) The CIA and FBI's role in many aspects of the 702 program. Declassified facts include:
 - The fact that CIA and FBI "nominated" targets to Section 702 has been previously hinted at in prior Government declassifications. The Board's report clarified that there is a formal nomination process whereby CIA and FBI personnel propose targets to NSA for Section 702 collection. Such nominations are subject to the NSA's targeting procedures. (Pg. 42)
 - The Board's report further reports that it is the CIA and FBI, not necessarily the NSA, that review the collection from these nominations to ensure that individuals have been properly targeted (Pg. 44) and are charged with reporting instances where a US person or person in the US has been targeted to ensure that the tasked selectors are immediately detasked (Pg. 69).

- (2) Directly related to the CIA's role in the program, with the exception of what was released in the letter to Senator Wyden just prior to the release of the Board's report, the report includes pretty much everything that is publicly known about the CIA minimization procedures (which have yet to be declassified; such declassification was one of the Board's recommendations). Declassified facts include:
 - That the CIA's retention standard in the CIA minimization procedures "is comparable to the standard found in the NSA's minimization procedures." (pg. 63). And, more specifically:
 - That the CIA has a default 5 year age-off period for unreviewed data or data not found to meet the retention standard. (Pg. 60).
 - That the CIA's standard for retaining United States person information is that the information is necessary or may reasonably become necessary to understand foreign intelligence information. (Pg. 63)
 - That the CIA retains communications found to meet this standard in access-controlled repositories that are limited to CIA personnel, but not limited to CIA personnel who have been trained in CIA's minimization procedures. (Pg. 63)
 - That CIA may also retain data in order to report it federal law enforcement agencies as evidence of a crime, even if that information has no foreign intelligence information. (Pg. 63)
 - That despite the similarities to the NSA's minimization procedures, CIA's minimization procedures contain no requirement "that a communication containing no U.S. person information upon recognition that the communication contains no foreign intelligence information." (Pg. 62)
 - A number of facts regarding how CIA queries the data. The number of content and metadata queries conducted by CIA was first released in the Government's response to the Wyden letter (both Senator Wyden and the PCLOB had requested this information be declassified). The Board's report included further details, including:
 - The standard content queries have to meet, i.e., that they must be "reasonably designed to find and extract foreign intelligence information." (Pg. 57)

- And that CIA employees are required to write contemporaneous justifications of their queries using United States person identifiers (but are not required to seek pre-approval for conducting such queries). (Pg. 58)

- The fact that there is no comparable standard applied to metadata queries other than that they “may not be conducted for an unauthorized purpose (such as trying to find information about a love interest).” (Pg. 58)

- That the CIA does not track how many metadata queries using U.S. person identifiers it conducts. (Pg. 58)

- That CIA’s minimization procedures also permit it to disseminate any United States person information that CIA concludes is

necessary to understand foreign intelligence information, some United States person information that CIA believes may become

necessary to understand foreign intelligence information, as well as evidence of a crime. (pgs. 65-66).

(3) Similarly, with the exception of what was released in the letter to Senator Wyden just prior to the release of the Board’s report, the report includes pretty much everything that is publicly known about the FBI minimization procedures (which have yet to be declassified; such declassification was one of the Board’s recommendations). Declassified facts include:

- That the FBI’s retention standard permits FBI to retain communications “indefinitely if the communications either contain no

U.S. person information or if the communications contain information that ‘reasonably appears to be foreign intelligence

information. [is] necessary to understand foreign intelligence information or assess its importances, or [is] evidence of a crime.” (Pg. 63)

- That the FBI has a default 5 year age-off period for unreviewed data, but unlike NSA and CIA, FBI’s retention period for data that has been reviewed but has not been found to meet the retention standard for a longer retention period. (Pg. 60).

- That the FBI is also “required to retain reviewed information that reasonably appears to be exculpatory or that reasonably appears to be discoverable in a criminal proceeding.” (Pgs. 63-64)

- That like the CIA’s procedures, the FBI’s minimization procedures also contain no requirement (apart from the overall age-off requirements) to delete upon recognition communications that contain no United States person information. (Pg. 62).

- Additional facts beyond the number of such queries regarding FBI’s querying of Section 702 data, including precisely why the uncounted number of queries using United States person identifiers is likely to be “substantial” because of the prevalence of such queries when new assessment or investigations are opened (Pgs. 59-60).

- The standards for FBI’s dissemination of United States person information acquired via Section 702 (which are comparable to the now declassified CIA standards), and the fact that FBI’s procedures permit the dissemination of minimized information to foreign governments. (Pg. 66)

(4) Various aspects of the NSA targeting procedures – including:

- The due diligence requirements for determining the non-USP status (pg. 29) and non-US location (pg. 30) of Section 702 targets. Some advocates had previously believed that such due diligence was not required under the NSA targeting procedures.

- Though there were some hints in previously declassified documents, the Board highlighted and fleshed out the diminished requirement (as opposed to what is required for location) for NSA to

document the basis for its determination that a targeting will result in the acquisition of foreign intelligence information (Pgs. 45-46).

- The post-tasking requirements imposed to ensure that collection remains lawful, including:
 - The CIA and FBI's role in post-tasking review of their nominations (pg. 48).
 - That NSA has developed automated systems to remind analysts to review collection from Internet traffic, but not yet telephony traffic, to ensure that targets remain properly targeted (Pg. 48).
 - The NSA's annual requirement to re-verify that foreign intelligence information is expected to be acquired from each selector. (Pg. 48)
 - The fact that failures to engage in the post-tasking checks of Section 702 targets in the manner represented to the Court (representations which exceed what is actually stated in the targeting procedures themselves) have been reported to the FISA court and Congress as compliance incidents. (Pg. 48)

(5) Whether the targeting procedures actually are effective or not. Specifically:

- The fact that targeting results in a United States person or person in the US being targeted 0.4% of the time. (Pgs. 44-45)
- Also that the compliance incident rate for the application of FBI targeting procedures has been 0.04%. (Pg. 71-72)

(6) The percentage of NSA reporting based on 702 information (-- 25% and climbing) (Pg. 108).

(7) The number of times in which an NSA intelligence report based in whole or in part on Section 702 included a "masked" reference to the identity of a U.S. person, and in which the NSA subsequently "unmasked" the U.S. person identity at the request of agencies that received the report. This happened approximately 10,000 times in 2013 (Pg. 132).

(8) Descriptions of the types of compliance incidents that have occurred, with some specific examples of more substantial compliance incidents beyond MCTs (examples -- issues with purges, changes in communication technology, and problems with post-tasking checks) (Pgs. 77-79). The discussion on compliance also includes the fact that to date there have been two incidents of reverse targeting (Pg. 79).

(9) Additional information regarding upstream collection, to include:

- the fact electronic communications are first filtered to eliminate potential domestic transactions, and are then subsequently screen captured transactions containing a selector (Pg. 36).
- The FISC's legal justification for finding "about" collection justifiable under the statute (Pg. 37-38).

Most importantly, the Board pulled together many facts that had been previously unclassified in a variety of different documents by the Government and explained how the Section 702 program actually worked -- instead of disparate facts declassified over the last year, this is a comprehensive overview of the program and its efficacy.