SUMMARY OF FISA AMENDMENTS ACT FOIA DOCUMENTS RELEASED ON NOVEMBER 29, 2010

In June 2010, the ACLU filed a lawsuit to enforce a Freedom of Information Act (FOIA) request for records related to the U.S. government's implementation of the invasive FISA Amendments Act (FAA) surveillance power. On November 29, 2010, in response to that lawsuit, the Office of the Director of National Intelligence (ODNI), National Security Agency (NSA), Department of Justice Office of Legislat

- Since "compliance incidents continue to occur, it is important for the agencies involved to have efficient, reliable data purging processes." (Second Semiannual AG/DNI Assessment at ODNI 5).

- "[E]ven a small number of incidents can have the potential of carrying broader implications." (First Semiannual AG/DNI Assessment at ODNI 45).

- The NSA Inspector General Assessment of FAA compliance for the period covering September 2008-August 2009 suggests there were mistakes and systemic problems that needed to be addressed. Although the NSA IG found "no reason to believe that any intelligence activities of the National Security Agency during [that period] were unlawful" (NSA 1), it noted that "[a]ction was taken to correct the mistakes and processes were reviewed and adjusted to reduce the risk of [redacted]." (NSA 2).

- In August 2009, the FISA court ordered "that DOJ provide reports to the FISC every 90 days providing the FISC with timely and effective notification of compliance issues." (Third Semiannual AG/DNI Assessment at ODNI 91). This notification requirement suggests the FISC was concerned about potential abuses and compliance problems.

- An FBI training document suggests that the "Compliance Occurrences" (violations) fall into the following categories, although the numbers of violations per category are redacted:

  - "Misspelling"

  - "Technical"

  - "Positive hit marked Negative"

  - "Search approved before [redacted] complete"

  - "Miscellaneous" (FAA 31)

- Determining the real scope of the violations may be complicated by:

  - Problems with the government's process of *documenting* the rationale for particular targeting ("documentation issues were identified and addressed during the reporting period, as set forth in the review memoranda" (First Semiannual AG/DNI Assessment at ODNI 67)). For example, documentation about particular acquisitions was sometimes "unclear, unfamiliar, or ambiguous," or too reliant on information that was "too old to be relied upon." (First Semiannual AG/DNI Assessment at ODNI 67–68).

  - Problems with the FBI's ability to assess violations ("During the relevant reporting period, the FBI did not develop any procedures to assess, in a manner consistent with

thus, that the surveillance authorizations are more categorical in nature. (FAA 32)

- An FBI slide discusses "Collection of Data by Topic" and "Parsing the Data Categorically," which might suggest categorical acquisition or sifting. (FAA 531–535)

- "PAA/FAA has replaced a labor intensive process, FISA, with a faster less labor intensive process involving fewer personnel" (FBI slide at FAA 32)

- The FBI training materials note that Section 702 allows the FBI to do electronic surveillance, get "stored communications from e-mail providers," and conduct collection in the United States with "significantly less documentation," without "Wood requirements" – meaning **"no accuracy**

- The targeting procedures appear to be categorical. One FBI slide described the targeting procedures as follows:
  - "Used to determine whether target is 'reasonably believed to be located outside the U.S."
  - "Proposed Procedures were submitted by AG and DNI to FISA Court"
  - "Approved by FISA Court" (FBI slide at FAA 53)
- The minimization procedures also appear to be categorical/standardized.

The documents confirm that the agencies see FAA surveillance as simply an extension of Protect America Act surveillance with only a few minor tweaks.

- "The processes used to implement Section 702's authorities—including the use of targeting and minimization procedures, and the oversight of the use of those authorities—share key elements with the processes used under the Protect America Act." (Second Semiannual AG/DNI Assessment at ODNI 4).
- "PAA Changes were incorporated into Section 702 of FISA with some minor differences." (FBI slide at FAA 15).

The documents shine a little more light on what "targeting procedures" mean.

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The documents shine a little more light on what "minimization procedures" means and how certain intercepted U.S. communications are handled.

- FAA minimization procedures are similar to traditional FISA minimization procedures (which are still largely secret), but at least one FBI document suggests the "acquisition" rules may be very different: "Section II.A ('Acquisition—Electronic Surveillance') will not apply." (FBI Minimization Procedures at FAA 704). This makes sense given that the FAA expressly allows mass acquisition of citizens' and residents' international communications, whereas traditional FISA did not.

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procedures at FAA 707–46). The Section 702 "Standard Minimization Procedures" are "[n]early identical to the 'Traditional SMPs" (FBI slide at FAA 65; FBI data-purging procedures at FAA 531-535)

The government's withholding of information in these records is also obscuring whether the FAA authority is really necessary.

- Some FAA-mandated reports require executive officials to assess whether the government is actually obtaining useful intelligence from FAA surveillance—i.e., whether the FAA is really necessary or useful. This type of information, however, has been redacted entirely.