

Congress of the United States

Washington, DC 20515

May 24, 2022

The Honorable Christopher A. Wray
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, DC 20535

Dear Director Wray:

The House Committee on the Judiciary and the House Permanent Select Committee on Intelligence continue to conduct oversight of the executive branch's use of Foreign Intelligence Surveillance Act (FISA) authorities, which is of particular importance as Congress considers reauthorization of FISA Section 702. In November 2020, the Foreign Intelligence Surveillance Court (FISC) issued an order expanding the FBI's FISA reporting requirements to include "the number of U.S. person queries run by the FBI against Section 702-acquired information."¹ As a result, ODNI's recently released *Annual Statistical Transparency Report* included this information for the first time. The report revealed that from December 2020 through November 2021 the FBI conducted over 3.3 million U.S. person queries against its Section 702 holdings.² This was a substantial increase from the number of U.S. person queries the FBI conducted from December 2019 to November 2020, which the report stated was approximately 1.3 million.³ This dramatic increase raises significant questions. We therefore write to request your full and prompt cooperation with our oversight efforts as we seek to understand why the number of U.S. person queries more than doubled from the prior year.

As you know, under Section 702, the Attorney General (AG) and the Director of National Intelligence (DNI) may jointly authorize the targeting of (i) non-U.S. persons (ii) who are reasonably believed to be outside of the United States (iii) to acquire foreign intelligence information.⁴ Section 702 requires the AG, in consultation with the DNI, to adopt targeting, minimization, and querying procedures that meet the requirements of Section 702 and are consistent with the Fourth Amendment.⁵ These procedures must be reviewed and approved by the FISC on an annual basis.⁶

The FBI receives a portion of the information the government collects under Section 702, and is authorized to conduct queries of this information that are reasonably likely to return

¹ Memorandum Opinion and Order, *Document re Section 702 Certification* at 63 (FISA Ct. Nov. 18, 2020).

² Off. of the Director of National Intelligence, *Annual Statistical Transparency Report, Calendar Year 2021* at 21 (Apr. 2022).

³ *Id.*

⁴ See 50 U.S.C. § 1881(a).

⁵ 50 U.S.C. § 1881(d)-(f)(2).

⁶ 50 U.S.C. § 1881(h)-(j).

foreign intelligence information or evidence of a crime. Queries that involve U.S. persons raise particular oversight sensitivities to ensure rights are protected. As noted above, according to ODNI, the FBI's U.S. person queries dramatically increased in 2021.⁷ Specifically, ODNI estimated that the FBI conducted 3,394,053 U.S. person queries in 2021 compared to about 1,324,057 U.S. person queries in 2020,⁸ representing over a 250 percent increase in a single year. ODNI stated that more than half of the queries, or about 1.9 million, were related to attempts to compromise U.S. critical infrastructure by foreign cyber actors, which the Biden Administration has attributed to Russian hackers.⁹ The ODNI report also noted that, on at least four occasions, the FBI failed to obtain an order from the FISC before accessing the contents of Section 702-acquired information.¹⁰

Rigorous Congressional oversight of the FBI's Section 702-related activities is essential given FBI's track record utilizing its FISA authorities. In November 2020, the FISC disclosed that "the government ha[d] reported numerous incidents" in which the FBI queried Section 702-acquired information for criminal investigations and reviewed unminimized content results without first obtaining court permission.¹¹ The FISC noted the discovery of 40 queries in which the FBI accessed information for investigations involving "healthcare fraud, transnational organized crime, violent gangs, domestic terrorism involving racially motivated violent extremists, as well as investigations relating to public corruption and bribery," all of which were unrelated to foreign surveillance.¹² According to the FISC, "[n]one of these queries was related to national security, and they returned numerous Section 702-acquired products in response."¹³ This is just one example of FBI's habitual compliance failures, which both the Department of Justice Office of Inspector General and the FISC have substantiated in other reports.¹⁴

As Congress continues to evaluate the potential reauthorization of Section 702, we must have all necessary information to assess the executive branch's use of the existing authorities. To inform our ongoing oversight, please provide the following documents and information:

1. A full accounting of the approximately 3,394,053 U.S. person queries conducted by the FBI in calendar year (CY) 2021, including:

⁷ ODNI report, *supra* note 2.

⁸ *Id.* at 4, 21.

⁹ *Id.* at 20; Dustin Volz, *FBI Conducted Potentially Millions of Searches of Americans' Data Last Year*, Report Says, WALL ST. J. (May 5, 2022). The Administration declined to disclose additional details on the alleged cyber threats like whether the Russian government was involved. Volz, *supra*.

¹⁰ ODNI report, *supra* note 2, at 22.

¹¹ Memorandum Opinion and Order, *Document re Section 702 Certification*, at 38-43 (FISA Ct. Nov. 18, 2020).

¹² *Id.* at 42.

¹³ *Id.*

¹⁴ See Dep't of Justice Off. of Inspector Gen., *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation* (Dec. 2019); Dep't of Justice Off. of Inspector Gen., *Management Advisory Memorandum for the Director of the Federal Bureau of Investigation Regarding the Execution of Woods Procedures for Applications Filed with the Foreign Intelligence Surveillance Court Relating to U.S. Persons* (Mar. 2020); Memorandum Opinion and Order, *Document regarding the Section 702 2018 Certification* at 66 (FISC Oct. 2018); Memorandum Opinion and Order, *Document re Section 702 Certification* (FISA Ct. Nov. 18, 2020); Dep't of Justice Off. of Inspector Gen., *Audit of the Federal Bureau of Investigation's Execution of Its Woods Procedures for the Applications Filed with the Foreign Intelligence Surveillance Court Relating to U.S. Persons* (Sept. 2021).

- a. The total number of unique query terms that are a U.S. citizen, an alien lawfully admitted for permanent residence, an unincorporated association, or a corporation which is incorporated in the United States. If the FBI does not have the capability to identify the number of unique query terms, provide an explanation as to why;
 - b. The Section 702-derived contents reviewed in each query, if any; and
 - c. The number of preliminary or full investigations into any U.S. citizens the FBI has initiated as a result of information obtained through any of these U.S. person queries, and the nature of the predication for each such investigation.
2. An explanation of the facts and circumstances of the approximately 1.9 million U.S. person queries that are apparently the result of an FBI investigation into alleged Russian hackers who sought to compromise U.S. critical infrastructure, including:
 - a. The rationale for why these queries were found to be compliant with the FBI's Section 702 querying procedures;
 - b. The total number of U.S. citizens the FBI identified as victims of these compromises(s) pursuant to these queries;
 - c. The total number of U.S. victims the FBI notified about the compromises(s) pursuant to the Crime Victims' Rights and Restitution Act, 34 U.S.C. § 20141, or the Crime Victims' Rights Act, 18 U.S.C. § 3771; and
 - d. A detailed statement about the FBI's investigation, including the status of the investigation and any information uncovered about the identity of the Russian actors and their involvement with or connection to the Russian government, if any.
3. Provide the total number of FBI U.S. person queries of Section 702-derived information, by year, for CY 2015 through CY 2019.
4. An explanation for why the FBI failed to comply with the statutory requirement to obtain an order from the Foreign Intelligence Surveillance Court before accessing the contents of Section 702-acquired information on at least four instances in 2021, including:
 - a. The basis for each query;
 - b. A description of the contents accessed, and a statement about whether the query was conducted in order to retrieve such contents; and
 - c. The date on which the FBI discovered each violation and the date on which the FISC was alerted to each violation.

Additionally, Republicans on the Judiciary Committee have sent multiple letters requesting information about the FBI's use of FISA authorities that have not been sufficiently answered, and this information is relevant to Committees' ongoing oversight. Therefore, please provide the following documents and information:

1. Provide a detailed accounting of every instance since December 2019 in which the FBI has queried, accessed, otherwise used information obtained pursuant to Section 702 for evidence of a crime unrelated to national security;
2. Identify the frequency of batch queries of FISA-acquired data for 99 or fewer queries, and explain why users must only obtain attorney approval before conducting a batch search of 100 or more queries;
3. Explain whether the FBI has located all of the missing Woods Files identified in the Department of Justice's Office of Inspector General September 2021 report, and provide the reason(s) why the FBI cannot locate all missing Woods Files;
4. Quantify the number of FBI employees who have access to Section 702 FISA-acquired data; and
5. Produce all guidance documents and training materials currently issued to FBI personnel with access to FISA-acquired data.

Please provide this information as soon as possible, but no later than 5:00 p.m. on June 7, 2022. If a full response requires the disclosure of classified information, please provide such information under separate cover. After you have provided this information in writing, we ask that you arrange for the FBI to provide a staff-level briefing.

Thank you for your prompt attention to this important matter.

Sincerely,



Jim Jordan
Ranking Member
House Committee on the Judiciary



Michael R. Turner
Ranking Member
House Permanent Select
Committee on Intelligence

cc: The Honorable Jerrold Nadler, Chairman, House Committee on the Judiciary
The Honorable Adam Schiff, Chairman, House Permanent Select Committee on
Intelligence