

U.S. FOREIGN
INTELLIGENCE
SURVEILLANCE COURT

UNITED STATES
FOREIGN INTELLIGENCE SURVEILLANCE COURT
WASHINGTON, D.C.

2014 JAN 27 PM 3:48

LEEANN FLYNN HALL
CLERK OF COURT

IN RE MOTION FOR DECLARATORY)	
JUDGMENT OF A FIRST AMENDMENT)	Docket No. Misc. 13-03
RIGHT TO PUBLISH AGGREGATE)	
INFORMATION ABOUT FISA ORDERS)	
_____)	
)	
IN RE MOTION TO DISCLOSE AGGREGATE)	Docket No. Misc. 13-04
DATA REGARDING FISA ORDERS)	
_____)	
)	
IN RE MOTION FOR DECLARATORY)	
JUDGMENT TO DISCLOSE AGGREGATE)	Docket No. Misc. 13-05
DATA REGARDING FISA ORDERS)	
AND DIRECTIVES)	
_____)	
)	
IN RE MOTION FOR DECLARATORY)	
JUDGMENT TO DISCLOSE AGGREGATE)	Docket No. Misc. 13-06
DATA REGARDING FISA ORDERS)	
AND DIRECTIVES)	
_____)	
)	
IN RE MOTION FOR DECLARATORY)	
JUDGMENT TO REPORT AGGREGATED)	Docket No. Misc. 13-07
DATA REGARDING FISA ORDERS)	
_____)	

NOTICE

The Government hereby informs the Court that, pursuant to the terms of the attached letter from the Deputy Attorney General, the Government will permit the petitioners to publish the aggregate data at issue in the above-captioned actions relating to any orders issued pursuant to the Foreign Intelligence Surveillance Act (FISA). The parties are separately stipulating to the

dismissal of these actions without prejudice. The Director of National Intelligence has declassified the aggregate data consistent with the terms of the attached letter from the Deputy Attorney General, in the exercise of the Director of National Intelligence's discretion pursuant to Executive Order 13526, § 3.1(c). The Government will therefore treat such disclosures as no longer prohibited under any legal provision that would otherwise prohibit the disclosure of classified data, including data relating to FISA surveillance. It is the Government's position that the terms outlined in the Deputy Attorney General's letter define the limits of permissible reporting for the parties and other similarly situated companies.

Dated: January 27, 2014

Respectfully submitted,

JOHN P. CARLIN
Acting Assistant Attorney General
for National Security

TASHINA GAUHAR
Deputy Assistant Attorney General
National Security Division

J. BRADFORD WIEGMANN
Deputy Assistant Attorney General
National Security Division

CHRISTOPHER HARDEE
Chief Counsel for Policy
National Security Division

/s/ Alex Iftimie

ALEX IFTIMIE
U.S. Department of Justice
National Security Division
950 Pennsylvania Ave., N.W.
Washington, DC 20530
Phone: (202) 514-5600
Fax: (202) 514-8053

Attorneys for the United States of America



Office of the Deputy Attorney General
Washington, D.C. 20530

January 27, 2014

Sent via Email

Colin Stretch, Esquire
Vice President and General Counsel
Facebook Corporate Office
1601 Willow Road
Menlo Park, CA 94025

Kent Walker, Esquire
Senior Vice President and General Counsel
Google Corporate Office Headquarters
1600 Amphitheater Parkway
Mountain View, CA 94043

Erika Rottenberg, Esquire
Vice President, General Counsel/Secretary
LinkedIn Corporation
2029 Stierlin Court
Mountain View, CA 94043

Brad Smith, Esquire
Executive Vice President and General Counsel
Microsoft Corporate Office Headquarters
One Microsoft Way
Redmond, WA 98052-7329

Ronald Bell, Esquire
General Counsel
Yahoo Inc. Corporate Office and Headquarters
701 First Avenue
Sunnyvale, CA 94089

Dear General Counsels:

Pursuant to my discussions with you over the last month, this letter memorializes the new and additional ways in which the government will permit your company to report data concerning requests for customer information. We are sending this in connection with the Notice we filed with the Foreign Intelligence Surveillance Court today.

In the summer of 2013, the government agreed that providers could report in aggregate the total number of all requests received for customer data, including all criminal process, NSLs,

and FISA orders, and the total number of accounts targeted by those requests, in bands of 1000. In the alternative, the provider could separately report precise numbers of criminal process received and number of accounts affected thereby, as well as the number of NSLs received and the number of accounts affected thereby in bands of 1000. Under this latter option, however, a provider could not include in its reporting any data about FISA process received.

The government is now providing two alternative ways in which companies may inform their customers about requests for data. Consistent with the President's direction in his speech on January 17, 2014, these new reporting methods enable communications providers to make public more information than ever before about the orders that they have received to provide data to the government.

Option One.

A provider may report aggregate data in the following separate categories:

1. Criminal process, subject to no restrictions.
2. The number of NSLs received, reported in bands of 1000 starting with 0-999.
3. The number of customer accounts affected by NSLs, reported in bands of 1000 starting with 0-999.
4. The number of FISA orders for content, reported in bands of 1000 starting with 0-999.
5. The number of customer selectors targeted under FISA content orders, in bands of 1000 starting with 0-999.
6. The number of FISA orders for non-content, reported in bands of 1000 starting with 0-999.¹
7. The number of customer selectors targeted under FISA non-content orders, in bands of 1000 starting with 0-999.

A provider may publish the FISA and NSL numbers every six months. For FISA information, there will be a six-month delay between the publication date and the period covered

¹ As the Director of National Intelligence stated on November 18, 2013, the Government several years ago discontinued a program under which it collected bulk internet metadata, and no longer issues FISA orders for such information in bulk. See <http://icontherecord.tumblr.com/post/67419963949/dni-clapper-declassifies-additional-intelligence>. With regard to the bulk collection of telephone metadata, the President has ordered a transition that will end the Section 215 bulk metadata program as it currently exists and has requested recommendations about how the program should be restructured. The result of that transition will determine the manner in which data about any continued collection of that kind is most appropriately reported.

by the report. For example, a report published on July 1, 2015, will reflect the FISA data for the period ending December 31, 2014.

In addition, there will be a delay of two years for data relating to the first order that is served on a company for a platform, product, or service (whether developed or acquired) for which the company has not previously received such an order, and that is designated by the government as a "New Capability Order" because disclosing it would reveal that the platform, product, or service is subject to previously undisclosed collection through FISA orders. For example, a report published on July 1, 2015, will not reflect data relating to any New Capability Order received during the period ending December 31, 2014. Such data will be reflected in a report published on January 1, 2017. After data about a New Capability Order has been published, that type of order will no longer be considered a New Capability Order, and the ordinary six-month delay will apply.

The two-year delay described above does not apply to a FISA order directed at an enhancement to or iteration of an existing, already publicly available platform, product, or service when the company has received previously disclosed FISA orders of the same type for that platform, product, or service.

A provider may include in its transparency report general qualifying language regarding the existence of this additional delay mechanism to ensure the accuracy of its reported data, to the effect that the transparency report may or may not include orders subject to such additional delay (but without specifically confirming or denying that it has received such new capability orders).

Option Two.

In the alternative, a provider may report aggregate data in the following separate categories:

1. Criminal process, subject to no restrictions.
2. The total number of all national security process received, including all NSLs and FISA orders, reported as a single number in the following bands: 0-249 and thereafter in bands of 250.
3. The total number of customer selectors targeted under all national security process, including all NSLs and FISA orders, reported as a single number in the following bands, 0-249, and thereafter in bands of 250.

* * *

I have appreciated the opportunity to discuss these issues with you, and I am grateful for the time, effort, and input of your companies in reaching a result that we believe strikes an appropriate balance between the competing interests of protecting national security and furthering transparency. We look forward to continuing to discuss with you ways in which the

Letter to Colin Stretch, Kent Walker, Erika Rottenberg, Brad Smith and Ronald Bell
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government and industry can similarly find common ground on other issues raised by the surveillance debates of recent months.

Sincerely,

A handwritten signature in black ink, appearing to read 'James M. Cole', written in a cursive style.

James M. Cole
Deputy Attorney General