

FISA SECTION 702

A One Page Overview

In 2008, Congress enacted Section 702 of the Foreign Intelligence Surveillance Act (FISA), a critical intelligence collection authority that enables the Intelligence Community (IC) to collect, analyze, and appropriately share foreign intelligence information about national security threats. Section 702 authorizes targeted intelligence collection of specific types of foreign intelligence information—such as information concerning international terrorism or the acquisition of weapons of mass destruction—identified by the Attorney General and the Director of National Intelligence (DNI).

Section 702 only permits the targeting of non-United States persons who are reasonably believed to be located outside the United States. United States persons and anyone in the United States may not be targeted under Section 702. Section 702 also prohibits “reverse targeting”—the IC may not target a non-U.S. person located outside the U.S. if the purpose of the collection is to collect information about a United States person or anyone located in the United States.

Section 702 is not a bulk collection program; it is a substantial and important targeted intelligence collection program. Every Section 702 targeting decision is individualized and documented, approved pursuant to a multi-step process embodied in specific targeting procedures, and reviewed by an independent oversight team.

Although all Section 702 targets must be non-United States persons reasonably believed to be located outside the United States, Congress has always recognized that such targets may send an email or have a phone call with a United States person. For this reason, Section 702 requires specific procedures to minimize the acquisition, retention, and sharing of any information concerning United States persons. “Minimize,” however, does not always mean “eliminate” – if, for example, a foreign terrorist indicated that a United States person was a key member of an ongoing terrorist plot, this information would be appropriately shared to allow the FBI to take further investigative steps. Congress also amended Section 702 to require specific procedures to ensure the querying of any Section 702-acquired information is consistent with the Fourth Amendment.

The Section 702 program is subject to extensive oversight. The Attorney General must approve the targeting, minimization, and querying procedures, each of which are annually reviewed by the Foreign Intelligence Surveillance Court (FISC) for consistency with the FISA statute and the Fourth Amendment. Each of the IC elements involved in the Section 702 program has developed internal oversight processes and programs to ensure compliance with these procedures. The Department of Justice and the Office of the Director of National Intelligence conduct extensive, regular, and independent reviews of Section 702 activities. Any identified compliance errors are remedied and reported to the FISC and Congress.

