

memorandum

DATE: 25 February 1998

Serial: [REDACTED]

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REPLY TO  
ATTN OF: General Counsel (Operations)

SUBJECT: Collection, Processing, Retention, and Dissemination of "Domestic" Communica-  
tions under the Foreign Intelligence Surveillance Act—INFORMATION  
MEMORANDUM  
TO: DISTRIBUTION

1. (FOUO) The guidance provided in this memorandum applies to communications collected pursuant to a Court Order issued by the Foreign Intelligence Surveillance Court and will specifically address frequently asked questions about "domestic" communications. The FISA minimization procedures found in USSID 18, ANNEX A, Appendix 1 govern the collection, processing, retention, use, and dissemination of U.S. person information intercepted during the course of FISA surveillances. Section Five of the minimization procedures deals exclusively with domestic communications. All citations within this memorandum refer to sections within ANNEX A of USSID 18.

2. (S-CCO) Under the FISA minimization procedures, "domestic" communications are all non-foreign communications. A foreign communication is defined as "a communication that has at least one communicant OUTSIDE the United States, or that is entirely among: (1) foreign powers; (2) officers or employees of foreign powers (also called "agents of foreign powers"); or (3) a foreign power and officers or employees of a foreign power" (See Section 2 (e)). Anything that is not a foreign communication is a domestic communication. Generally, all domestic communications should be destroyed upon recognition unless they fall under one of the following three exceptions: communications that contain foreign intelligence; [REDACTED]

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all

3. (S-CCO) Analysts may review each communication ([REDACTED]) to determine whether it is a domestic or foreign communication to or from [REDACTED] and is reasonably believed to contain foreign intelligence information or [REDACTED]. Only such communications may be processed." (See Section 3(c)(5)). Communications that do not contain foreign intelligence, [REDACTED] should be destroyed. USSID 18 requires each individual who monitors or processes the communications to "exercise reasonable judgement" (Section 3(c)(2)). The analyst must make decisions exercising reasonable judgement based on target knowledge as well as the content of the communication. If questioned, an analyst should be able to support his/her determination based on the information available. Reasonable judgement does not mean

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that an analyst can "listen to or look at everything" and decide after the fact to "keep it" if the analyst has reason to believe or knows that the individual communication is domestic, non-relevant, and/or from/to a U.S. person.

4. (S-CCO) The minimization procedures identify "categories of communications" that have been determined to be "non-pertinent" to the authorized purpose of the surveillance (See Section 3(f)): Generally, communications from these categories should not be monitored, retained, or disseminated unless they contain foreign intelligence, ~~and~~

These categories include ~~and~~

~~and~~ When electronic surveillance is first initiated (e.g. an initial FISA Application), ~~and~~

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The list in

Section 3(f) serves as a guide and is not all inclusive.

5. (S-CCO)

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(a)

(b)

(c)

6. (S-CCO)

7. (S-CCO)

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8. (S-CCO) Domestic communications that contain information that reveals

Analysts should notify the OGC via P023 when they encounter any domestic communications that appear to fall within this category. The OGC will review the information and provide appropriate guidance.

9. (S-CCO)

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HANDLE VIA COMINT CHANNELS ONLY

[REDACTED] through [REDACTED] (See Section 5(a)(3)). [REDACTED]

10. (S-CCO) The examples provided in the attachment represent "types" of situations which may involve the processing or dissemination of domestic communications. The most important thing to remember is that every situation is FACT SPECIFIC. A change in the facts could result in a different outcome. If you have any doubts on how to handle domestic communications or how to interpret the FISA minimization procedures, call your staff element, P023, or the Office of General Counsel (Operations) at 963-3121s.

[REDACTED] Attorney  
Office of Associate General Counsel  
(Operations)

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Encls:  
a/s

DISTRIBUTION:

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cc: [REDACTED]

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