

ONE HUNDRED SEVENTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
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January 27, 2022

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

Dear Director Wray:

We continue to conduct oversight of the Federal Bureau of Investigation's use of Foreign Intelligence Surveillance Act (FISA) authorities. On December 2, 2021, the Committee received both unclassified and classified briefings from FBI officials about its FISA authorities.¹ The FBI subsequently provided additional information about section 702 of FISA via a letter dated December 23, 2021.² We write to follow up on a number of matters raised during the December 2 briefings and the December 23 letter.³

Section 702 authorizes the Attorney General and the Director of National Intelligence, subject to limitations, to jointly authorize warrantless surveillance of non-U.S. persons reasonably believed to be located outside the United States.⁴ In November 2020, the Foreign Intelligence Surveillance Court (FISC) issued a memorandum opinion and order finding that the FBI had committed "apparent widespread violations" of privacy rules in conducting surveillance under section 702 of FISA.⁵

In addition to those documented concerns raised by the FISC, the DOJ's Office of Inspector General (OIG) has issued troubling reports over the last several years suggesting a

¹ Briefing of H. Comm. on the Judic. (Dec. 2, 2021).

² Letter from Jill C. Tyson, Assistant Director, Federal Bureau of Investigation, to the Rep. Jim Jordan, Ranking Member, H. Comm. on the Judic. (Dec. 23, 2021) (on file with committee).

³ During the December 2 unclassified briefing, we also raised several questions with respect to the FBI's use of federal counterterrorism resources to target concerned parents at school board meetings. The FBI officials at the briefing could not answer the questions at the time but promised to answer those questions promptly. As of today, almost two months after the briefing—and three months since my letters to you on this topic—the FBI still has ignored fundamental questions and refused to produce any documents about its use of counterterrorism resources at school board meetings.

⁴ 50 U.S.C § 1881(a)-(b).

⁵ Memorandum Opinion and Order, *Document re Section 702 Certification* (FISA Ct. Nov. 18, 2020); Ellen Nakashima, *Federal court approved FBI's continued use of warrantless surveillance power despite repeated violations of privacy rules*, WASH. POST (Apr. 26, 2021).

pattern of abuses and deficiencies in the FBI's internal FISA processes.⁶ Most recently, in September 2021, the OIG issued a detailed report—confirming its March 2020 initial findings—of widespread non-compliance with Woods Procedures, which are an internal FBI process to minimize factual inaccuracies in FISA applications by requiring the FBI to maintain supporting documentation for each factual assertion in the application.⁷ The September 2021 report documented over 400 instances of non-compliance with the Woods Procedures in connection with 29 FISA applications.⁸ The OIG also found that out of over 7,000 FISA applications approved between January 2015 and March 2020, there were 183 FISA applications for which the Woods File was missing in whole or in part.⁹ This lack of documentation suggests, at best, the FBI maintains sloppy oversight of its use of warrantless spying authorities. At worst, it suggests the FBI holds a cavalier disregard for the fundamental protections enshrined in the Bill of Rights.

It is imperative that Congress is fully informed about the FBI's steps to improve its respect for the constitutional and statutory parameters of FISA—including section 702, which will be up for reauthorization in 2023. Therefore, to assist the Committee's oversight of the FBI's use of FISA and its related provisions, we ask that you please provide the following documents and information:

1. Quantify the number of FBI employees who have access to section 702 FISA-acquired data;
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 the processes developed by the FBI's new Office of Internal Auditing relating to FISA, including section 702 compliance measures;
4. Explain whether the FBI has located all of the missing Woods Files identified in the OIG's September 2021 report, and provide the reason(s) why the FBI cannot locate all missing Woods Files;
5. Provide an update on the FBI's implementation of the five recommendations from the OIG's September 2021 report that the FBI has not yet implemented; and

⁶ 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 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); 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).

⁷ 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).

⁸ *Id.* at 7, 19.

⁹ *Id.* at ii, 28.

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6. Produce all guidance documents or training materials 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 February 10, 2022. In addition, we ask that your staff provide a staff-level in-person review of the FBI's FISA processes, which the FBI offered during its December 2, 2021, briefing.

If you have any questions about this request, please ask your staff to contact Committee staff at (202) 225-6909. Thank you for your prompt attention to this important matter.

Sincerely,



Jim Jordan
Ranking Member



Mike Johnson
Ranking Member
Subcommittee on the Constitution,
Civil Rights, and Civil Liberties

cc: The Honorable Jerrold Nadler, Chairman

The Honorable Steve Cohen, Chairman, Subcommittee on the Constitution, Civil Rights,
and Civil Liberties