

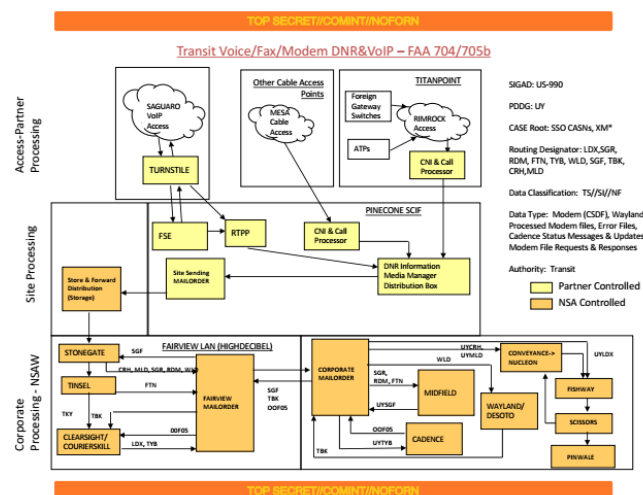
NSA CONDUCTS FISA SECTION 704 COLLECTION USING TRANSIT COLLECTION

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It's going to be a long four years.*

The Intercept has a fascinating new story confirming what many people already intuited: AT&T's spooky building at 33 Thomas Street is a key NSA collection point, and the NSA has equipment inside the building (it's almost certainly not just NSA; this is probably also where AT&T collects much of their Hemisphere database and it likely includes AT&T's special service center for FBI NSLs).

The Intercept released a bunch of documents with the story, including this one on FAIRVIEW.

It shows that FISA Section 704/705a are among the authorities used with FAIRVIEW, ostensibly collected under "Transit" authority, but with the collection done at TITANPOINT (which is the code name for 33 Thomas Street).



As I explain in this post, there are three authorities in the FISA Amendments Act that are supposed to cover US persons: 703 (spying with the help of domestic partners on Americans who are overseas), 704 (spying on Americans who are

overseas, using methods for which they would have an expectation of privacy), and 705, which is a hybrid.

But Snowden documents – and this IG Report – make it clear only 704 and 705b are used.

- (U) **FAA §704**
~~(U//FOUO)~~ *Other Acquisitions Targeting USPs Outside the United States.* A FISC Order is required, but surveillance techniques are not reviewed by the court.
- (U) **FAA §705b**
~~(U//FOUO)~~ *Joint Applications and Concurrent Applications.* When a FISA Order that authorizes surveillance of a target inside the United States is in place, the Attorney General can authorize targeting while the USP is reasonably believed to be outside the United States.
- (U) **FBI FISA Order**
~~(S//SI//REL TO FVEY)~~ The FBI is authorized under a FISC Order to perform searches and electronic surveillance against agents of a foreign power. Under FISC docket number [REDACTED] (known as the Raw Take Sharing Order) dated July 2002, NSA is able to receive most FBI FISA collection.

Unsurprisingly, the disclosure standards are higher for 703 – the authority they don't use – than they are for 704. In other words, they're using the authority to spy on Americans overseas that is weaker. Go figure.

But here's the other problem. 704/705b are two different authorities and – as reflected in Intelligence Oversight Board reports – they are treated as such. Which means they are using 704 to spy on targets that are overseas, not just defaulting to 705b hybrid orders (which would require the person to be in the US some of the time).

But they are doing it within the US, using the fiction that the collection is only "transiting" the US (that is, transiting from one foreign country to another). ~~This seems to indicate the NSA is conducting electronic surveillance on US persons located overseas – which seems clearly to fall under 703 – but doing it under 704 by claiming traffic transiting the US isn't really collection in the US.~~ Correction: Because the person is located overseas, it doesn't count as electronic surveillance. In any case, this seems to be effectively a way around the intent of 703.