

The structure of the FISA application.

In this piece, I'd like to lay out what we can learn about FISA applications from the [Carter Page FISA application](#). While I'll track what we can of the Steele dossier and other public content, I'm primarily interested, here, in how FISA applications are structured, in what needs to be proven how, and in what is likely to be boilerplate from application to application.

The [statute](#) requires certain things from an application. I'll map out Page's application to this structure, as the table of contents below shows pretty clearly maps onto the statute (which is what we see elsewhere in FISC applications). That said, the FBI affidavit appears to have three extra sections (10-12) not dictated by 18 USC §1804, though given the reference to electronic surveillance in section 9, they likely address unique requirements of [18 USC §1823](#).

This analysis is based off the first application. At the end of each section, it tracks noticeable changes made in subsequent applications. This is particularly useful in showing where addition information gets added; the applications primarily expand in section VI of the Carter Page section.

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The FBI Affidavit

Even before the actual application starts, it says what it wants to do. We know from [the Schiff memo](#) that the government conducted both electronic surveillance (data in motion) and physical surveillance (physical locations, plus data at rest) on Page. The first redaction must explain that. And the indication of two clauses may reflect a citation of both §1805 and §1824.

(X) The United States of America hereby applies to this Court for authority to conduct [REDACTED] as described herein, pursuant to the Foreign Intelligence Surveillance Act of 1978, as amended, Title 50, United States Code (U.S.C.), §§ [REDACTED] (FISA or the Act). b1-1 b3-1 b7A-1 b7E-1, 2, 3, 6

(1) the identity of the Federal officer making the application;

Then there's a paragraph laying out who is submitting this application and what his duties are.

1. (U) Identity of Federal Officer Making Application This application is made by [REDACTED] a Supervisory Special Agent (SSA) of the Federal Bureau of Investigation (FBI) whose official duties at FBI Headquarters include supervision of the FBI's investigation of the above-captioned target based upon information officially furnished to [REDACTED] b1-1 b3-1 b6-1 b7A-1 b7C-1 b7E-1, 2, 3, 6

Changes: while the names are redacted, by redaction length the agents in the first application and the subsequent ones are different.

(2) the identity, if known, or a description of the specific target of the electronic surveillance;

Next, the application describes Page. Given the reference to information obtained from State, it appears to tie his identification to his passport.

2. **(S) Identity of the Target** The target of this application is Carter W.

Page, a U.S. person, and an agent of a foreign power, described in detail below. The

status of the target was determined in or about October 2016 from information

provided by the U.S. Department of State. [REDACTED]

[REDACTED]

[REDACTED]

b1-1

b3-1

b7A-1

b7E-1, 2, 3, 6

(3) a statement of the facts and circumstances relied upon by the applicant to justify his belief that—

(A) the target of the electronic surveillance is a foreign power or an agent of a foreign power; and

This section is split into seven (and later, eight) sections, with some entirely redacted and others disclosing the items of concern.

Preamble: This section lays out what the rest will prove. It

- Lays out that Russia is a foreign power
- Describes Russia's clandestine efforts in the United States
- Names Page as an agent of Russia, hewing closely to the statutory language, and specifying that he's not being accused of intelligence collection activities. It specifically [accuses](#) Page of "(E) knowingly aiding or abetting any person in the conduct of activities described in subparagraph (A), (B), or (C) or knowingly conspiring with any person to engage in activities described in subparagraph (A), (B), or (C)."

Changes: In the second and following applications there's language saying this:

(U) ~~(S)~~ This verified application reports on developments in the FBI's investigation of the above captioned target since the most recent application described herein. Unless stated otherwise herein, information presented in previous applications has been summarized or removed not because it was factually inaccurate but in order to create a more concise document.

This must be boilerplate because the unredacted sections of the applications don't really change much.

I. RIS Efforts to Influence US Presidential Elections

This section cites the evidence for a generalized attempt to influence the elections to a public James Clapper statement, the public release of the stolen emails via WikiLeaks, and the DHS/ODNI October 7 statement attributing the attack to Russia, as well as a number of redacted passages that must describe evidence FBI had obtained thus far proving it was Russia.

Changes: The second application added a reference to the December 29th ICA.

II. The Russian government's attempts to influence the 2016 presidential elections

This section gets more specific about the events of 2016. It describes Trump appointing George Papadopoulos and Carter Page as advisors. It then says that it thinks Russia is coordinating their influence operation with Page and possibly other Trump advisors.

Changes: The transition from general to specific gets a big longer in the second application. Footnote 4, in the third application, appears to be new.

III. Carter Page

This is a multiple part section on Page.

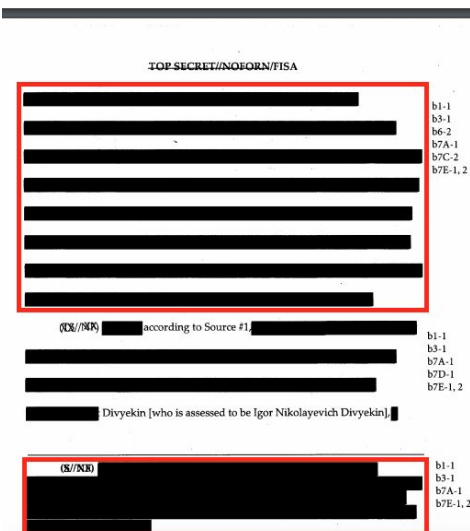
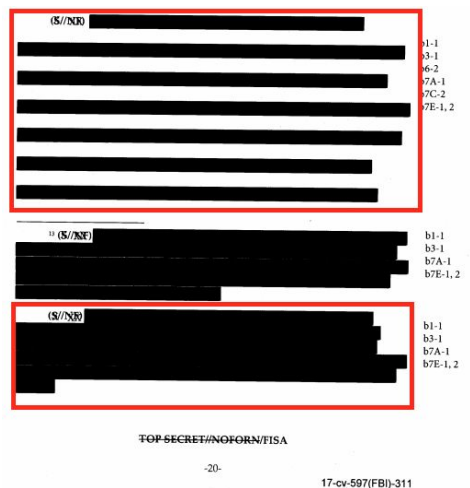
A. Page's connections to Russia and the RIS

This section talks about Page's energy consulting firm, his residence in Russia, what he has said in FBI interviews (which must include that he was a self-professed advisor to the Kremlin). It describes Evgeny Buryakov's efforts to recruit Page in 2013. It also includes a redacted paragraph that may include more concerns about Page's willingness to be recruited.

B. Page's coordination with Russian government officials on 2016 US presidential election influence operations

This section lays out evidence that Page was involved in Russian efforts to influence the presidential election. It includes the Christopher Steele uncorroborated report on Page's trip to Moscow, including a bunch of footnote that might describe FBI's efforts to corroborate it. It describes the change to GOP policy on sanctions, including a totally redacted paragraph ending the section.

Changes: Starting in the second application, the FBI explained how it cut Steele off after he shared information with the press. In the fourth application, there's a new section at 20 to 21 between two mostly redacted paragraphs that include Steele details, along with two more paragraph in footnote 13. These annotated passages are all new in the last application.



According to the Schiff memo (4-5), this section uses Page's meetings with other Russians over that meeting to quasi confirm the Steele dossier (even though they were other Russians, one of established friend of Page's).

In addition, the passage from the last (partial) paragraph on 26 through the end of that section -- almost two pages in length -- is new in the fourth application.

IV. Page's denial of cooperation with the Russian government

This section must be required to prove that Page was clandestinely carrying out his efforts to help Russia. This is the section that relies in significant part of the Mike Isikoff article (and another one). It includes both Page's own denials, his letter to Jim Comey denying the allegations, and the Trump campaign's denials that he had any ongoing association with the campaign.

V. Entirely redacted section

This is two pages, one section, classified at S/NF (Secret, No Foreign government)

Changes: Between the third and fourth application, the footnote at 30 is removed.

VI. Entirely redacted section

This is a 3-page section, with five titled sub-sections. The section is classified at Secret NoForn, and includes both law enforcement and privacy FOIA exemptions, suggesting it may include other communications. This is three pages, broken into five subsections, each with some b6 exemption for privacy, the paragraphs of which are all classified S/NF.

Changes: This section is 8 pages in application two. It is 18 pages in application three, of which one unredacted page (44-45) describes a letter attacking Hillary for the allegations against him. It is 23 pages in application four.

(VII). Entirely redacted section

Changes: This five page section gets added in the second application, and expanded by part of a page in the third. It appears to remain the same as the third in the fourth.

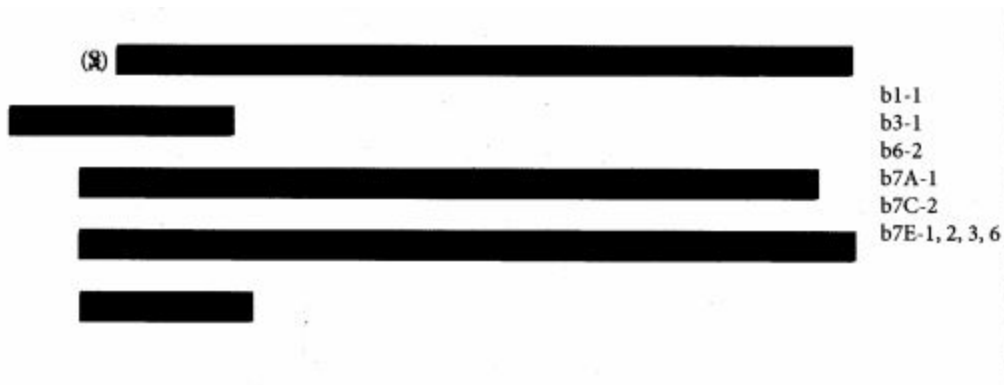
VII (VIII). Conclusion

In this section, FBI asserts that there is probable cause he is collaborating in Russian influence operations. It then asserts the influence operations involve or about to involve violations of criminal law, with two redacted lines, then another paragraph of three redacted lines, apparently describing those crimes.

Changes: The third application (but not the fourth) redacts this passage on page 56, which shouldn't be classified.

on behalf of such foreign power, or knowingly conspires with other persons to engage in such activities and, therefore, is an agent of a foreign power as defined by 50 U.S.C. § 1801(b)(2)(E).

This section in the fourth application, page 69, appears to be new (compare with page 60 in third application).



(B) each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power;

Starting on page 33, the application appears to spend 3.5 pages describing the facilities that will be targeted. That consists of:

- A title followed by a paragraph
- What appears to be another titled section with what might be five bulleted subsections (for example, this might describe various social media identifiers followed by the source of certainty Page used them)
- Two sections where a paragraph appears to introduce a list
- A final section with an unclassified heading and what might be another list

Changes: In the second application, the specific facilities section expands from 3.5 pages to 4.25 pages.

(4) a statement of the proposed minimization procedures;

The application then spends two page laying out the proposed minimization procedures, which presumably are based of the standard minimization procedures for electronic and physical

search (it's unclear whether FBI would also name the 704(b) minimization procedures if they planned to use that when he traveled overseas or not).

It's possible this section includes special protections either to bracket off the entire time when Page was formally on the campaign (which wouldn't help you figure out what Page was doing while on it), or it might involve special treatment for that information. What minimization procedures FBI proposed (and FISC approved) are, to my mind, one of the most important questions to determine how intrusive this surveillance was on legitimate political activities. That said, the changes to the minimization procedures are so minimal they're more likely just boilerplate from the SMPs.

Changes: This passage appears to be new in the third application.

(S//XNF)

TOP SECRET//NOFORN/FISA

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(5) a description of the nature of the information sought and the type of communications or activities to be subjected to the surveillance;

The application then explains what FBI expects to obtain. The first paragraph of this is unredacted; it says FBI expects to obtain information that is necessary to protect against the intelligence activities of a foreign power.

Three subsections after this are redacted. Two of those appear to include introductions followed by lists.

Changes: The second application added another five line paragraph.

(6) a certification or certifications [omitted]

The structure of this section (which is heavily redacted, which is by itself interesting) is of acute interesting for legal wonks. The certification is required to include the following (which likely follows this section).

(A) that the certifying official deems the information sought to be foreign intelligence information;

(B) that a significant purpose of the surveillance is to obtain foreign intelligence information;

(C) that such information cannot reasonably be obtained by normal investigative techniques;

(D) that designates the type of foreign intelligence information being sought according to the categories described in section 1801(e) of this title; and

(E) including a statement of the basis for the certification that—

(i) the information sought is the type of foreign intelligence information designated; and

(ii) such information cannot reasonably be obtained by normal investigative techniques;

But along the way, there's a redaction of one or (I suspect) more Executive Orders that describes who can affirm such a certification, followed by two redacted paragraphs.

An unredacted paragraph describes that some of this evidence might be used to prosecute a crime, but that a significant purpose of the collection is to collect intelligence information. This satisfies the "significant purpose" clause of the law.

Changes: This section has an additional line in the fourth application at page 75.

(8)

(7) a summary statement of the means by which the surveillance will be effected and a statement whether physical entry is required to effect the surveillance;

Most of the redacted section on page 42 must provide the description of how the surveillance will be effected. There appear to be two subsections here, with two things listed under each (remember, this application covers both electronic surveillance and physical search).

(8) a statement of the facts concerning all previous applications

This is a required section, but since this was the first application, it would be empty, so it's likely reflected by the single line at the end of page 42.

(9) a statement of the period of time for which the electronic surveillance is required to be maintained

The next section asks for 90 days of surveillance.

Unless I'm missing something, section 9 on page 43 fulfills everything required by statute. Yet there are four remaining sections in the affidavit.

(10) entirely redacted section

One full page with a subsection, pages 43-44

(11) entirely redacted section

Half a page, pages 44-45

(12) entirely redacted section

A full page, 45-46, with what appears to be a list in the middle

(13) Section including authorities requested

This includes a full page that is classified on 46-47. The number on page 46 shows that this is follows the earlier numbering (and so the interim sections must as well).

It appears the section describing “authorities requested” is part of section 13. Given the introduction, it appears each of the lists following would include a temporal description.

This is another section where FISC may provide some protections (or not) for the period when Page was overtly on the campaign. That is, the court could bracket off the campaign period, but permit collection for the period before that.

While it’s unclear, this may include two sections. The first, from 47-49, includes 5 subsections most of which are lists. The second (this is far less clear), from 49-52. Part of this seems to include several entries that consist of lists.

End of FBI Affidavit

The affidavit, which fulfills the terms of the statute, includes a certification that it adheres to the verification process imposed in 2001 in response to a lot of accuracy problems, then includes a separate signature page for the affiant. The affidavit ends on 54.

The Certification

The certification maps the statute paragraph for paragraph.

- (A) that the certifying official deems the information sought to be foreign intelligence information;
- (B) that a significant purpose of the surveillance is to obtain foreign intelligence information;
- (C) that such information cannot reasonably be obtained by normal investigative techniques;
- (D) that designates the type of foreign intelligence information being sought according to the categories described in section 1801(e) of this title; and
- (E) including a statement of the basis for the certification that—
 - (i) the information sought is the type of foreign intelligence information designated; and
 - (ii) such information cannot reasonably be obtained by normal investigative techniques;

The most interesting section is E, which is a 6 page, almost entirely redacted section. The first half seems to have a set of bullets, whereas the rest seems to be paragraphs.

Jim Comey signed the first, second, and third applications, Andrew McCabe signed the fourth, though any of nine people are able to do so.

Approval

Finally, there's a two page approval for the AG, DAG, or AAG NSD. There's a redacted paragraph, as well as a redacted description of the surveillance.

Sally Yates signed the first and second applications, Dana Boente signed the third, Rod Rosenstein signed the fourth.

The application Boente signed included the following paragraph explaining why he was serving as acting.

²⁷ (U) Pursuant to Executive Order 13787 (March 31, 2017), Dana J. Boente is serving as the Acting Attorney General with respect to this matter by virtue of the Attorney General's refusal.