

MORE CONTRACTOR PROBLEMS — AND FISC DISCLOSURE PROBLEMS?

In the updated minimization procedures approved in 2011, the NSA added language making clear that the procedures applied to everyone doing analysis for NSA.

For the purposes of these procedures, the terms “National Security Agency” and “NSA personnel” refer to any employees of the National Security Agency/Central Security Service (“NSA/CSS” or “NSA”) and any other personnel engaged in Signals Intelligence (SIGINT) operations authorized pursuant to section 702 of the Act if such operations are executed under the direction, authority, or control of the Director, NSA/Chief, CSS (DIRNSA).

It told the FISA Court it needed this language to make it clear that militarily-deployed NSA personnel also had to abide by them.

The government has added language to Section 1 to make explicit that the procedures apply not only to NSA employees, but also to any other persons engaged in Section 702-related activities that are conducted under the direction, authority or control of the Director of the NSA. NSA Minimization Procedures at 1. According to the government, this new language is intended to clarify that Central Security Service personnel conducting signals intelligence operations authorized by Section 702 are bound by the procedures, even when they are deployed with a military unit and

subject to the military chain of command.

But to me both these passages rang alarms about contractors. Did they have to include this language, I wondered, because contractors in the past had claimed not to be bound by the same rules NSA's direct employees were?

Lo and behold the Bloomberg piece reporting that NSA's IG undercounts deliberate violations by roughly 299 a year includes this:

The actions, said a second U.S. official briefed on them, were the work of overzealous NSA employees or contractors eager to prevent any encore to the Sept. 11, 2001, terrorist attacks.

It sure seems that at least some of the worst violations – the ones even NSA's IG will call intentional – were committed by contractors. Which suggests I may be right about the inclusion of that language to make it clear it applies to contractors.

If that's the case, then why did NSA tell the FISA Court this new language was about militarily-deployed NSA employees, and not about contractors?