

UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

2020 JUN -4 PM 1:01

LEEANN FLYNN HALL
CLERK OF COURT

(U) IN RE ACCURACY CONCERNS REGARDING FBI
MATTERS SUBMITTED TO THE FISC.

Docket No. Misc. 19-02

(U) MOTION TO MODIFY REPORTING PERIOD

(U) The United States of America, by and through the undersigned Department of Justice (DOJ) attorney, respectfully requests modification of a reporting requirement established by the Corrected Opinion and Order of the Foreign Intelligence Surveillance Court (FISC or the Court) entered on March 5, 2020 (the March 5, 2020 Order). Specifically, the Government requests modification of the March 5, 2020 Order to provide the subsequent description of planned technological improvements to the process of preparing FISA applications, or verifying the information contained in FISA applications, due to the Court on August 31, 2020 and additional updates every ninety days thereafter until these improvements have been fully implemented.

I. (U) INTRODUCTION

(U) As explained in greater detail in the Government's previous filings in the above-captioned docket, DOJ and the Federal Bureau of Investigation (FBI) have undertaken multiple corrective actions to ensure the continuing accuracy and completeness of applications submitted to the Court following the U.S. Department of Justice's Office of the Inspector General's report, *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation* (Dec. 9, 2019). In pertinent part, the March 5, 2020 Order directed the

Government to provide by March 27, 2020, "a description of any planned or implemented technological improvements to the process of preparing FISA applications or verifying the information contained in FISA applications and updates every thirty days thereafter until they have been fully implemented." March 5, 2020 Order at 17. Following the Court's grant of a one-week extension, the Government filed an initial response to this requirement on April 3, 2020. Response to the Court's Corrected Opinion and Order Dated March 5, 2020 and Update to the Government's January 10, 2020 Response at 19-20. The Government filed subsequent updates on April 30, 2020 and again on May 29, 2020. Supplemental Response to the Court's Order Dated December 17, 2019; the Court's Scheduling Order Dated January 17, 2020; and the Court's Corrected Opinion and Order Dated March 5, 2020, Attachment A at 10-12; Letter from the Office of Intelligence to the Honorable James E. Boasberg (May 29, 2020).

II. (U) THERE IS GOOD CAUSE FOR THE COURT TO MODIFY THIS REPORTING REQUIREMENT

~~(U//FOUO)~~ For the following reasons, the Government seeks leave to modify this thirty-day reporting period in order to file the subsequent update regarding planned or implemented technological improvements on August 31, 2020, and to file ensuing updates every ninety days thereafter until these improvements are fully implemented. As reflected in the Government's most recent update filed with the Court on May 29, 2020 and the previous filings in the above-captioned docket, the applicable technological developments underway at the FBI are unremitting but incremental. Accordingly, accomplishments achieved in thirty-day periods occur in ways often discernible only to the FBI's software engineers and developers. Final operational developments are more apparent, and their impact better explained, as these technical accomplishments compound. As explained previously, for example, the FBI is working to create a new

subfile in Delta, the system the FBI uses to manage workflow processes related to its confidential human sources (CHS). The FBI expects that this new subfile will store certain information related to FBI CHSes that will lead to more thorough documentation and reporting of a CHS's reliability, as well as the reliability of her or his reporting. Although work on this project is indeed continuing, the FBI anticipates there may not be final operational decisions or development accomplishments to describe for the Court in filings occurring in thirty-day increments.

~~(U//FOUO)~~ Based on the ongoing collaboration between FBI operational and technical personnel, the Government respectfully submits that providing the Court with ongoing updates on a ninety-day interval likely would provide the Court more meaningful and tangible information regarding the FBI's progress in implementing technological improvements related to the FISA process. The FBI's development teams review requirements, and receive authorization from operational personnel to implement those requirements, on a quarterly basis. This allows the teams the ability to prioritize their work within that time period and plan their development processes to meet objectives by the end of each quarterly cycle. Relatedly, given these quarterly cycles, the development teams may prioritize their resources during shorter time periods within the cycle to make progress on certain aspects of a project, but then place further advancements on hold until later in the cycle. This might occur, for instance, where developments in one system depend on those still underway in another system. In such cases, although the FBI is making progress within the quarterly development cycle, the purposeful pause in the development process may result in developments that are not well described to the Court on thirty-day intervals.

(U) The Government respectfully submits that modifying the reporting requirement in the March 5, 2020 Order regarding updates on technological developments would provide the Court with more meaningful descriptions of the FBI's technological improvements as well as their impact on the FISA process. For the foregoing reasons, the Government respectfully requests that the Court enter the proposed order accompanying this motion and require the Government to provide the Court with a subsequent update on August 31, 2020 and every ninety days thereafter until the technological developments referenced in the above-captioned docket are fully implemented.

Respectfully submitted,

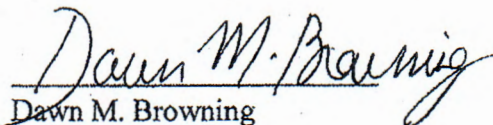


Office of Intelligence
National Security Division
U.S. Department of Justice

(U) VERIFICATION

(U) I declare under penalty of perjury that the foregoing Motion to Modify Reporting Period is true and correct with regard to the Federal Bureau of Investigation's policies and practices based upon my best information, knowledge, and belief.

(U) Executed pursuant to 28 U.S.C. § 1746 on June 3rd, 2020.


Dawn M. Browning
Deputy General Counsel
Federal Bureau of Investigation