

NSL GUIDANCE BY NSLB

DATE:	TO:	SUMMARY
10-26-2001	EC: All Divisions	Summarizes recent changes to FCI/IT legal authorities relating to NSLs, and describes implementation procedures. <ul style="list-style-type: none"> - Advises of 2001 Patriot Act signing - States and explains new standard predication - Explains statutory delegation authority - includes redline version and clean version of 3 statutes governing NSLs (ECPA, RFPA, FCRA)
10-1-2003	EC: FO, CTD, CD	Guidance on preparation, approval and service of NSLs to obtain Credit Reports in IT cases pursuant to 15 U.S.C. § 1681v of FCRA. <ul style="list-style-type: none"> - Introduction to Procuring Credit Information - General Policy on the Use of NSL Authority - The Mechanics of Producing NSLs - NSL Preparation Assistance
3-4-2005 b6 b7C	Email to CDCs from <div style="border: 1px solid black; width: 100px; height: 15px; margin: 5px 0;"></div>	Full credit reports in CI cases are available through grand jury subpoenas Followup to email sent 2-25-2005 which stated that full credit reports in FCI cases with no nexus to terrorism is inappropriate. No 1681v full credit report in a CI matter but can get a 1681u NSL for limited credit information.

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5-27-2005	EC: All FO, CTD, CD, CYD	Guidance on change to NSLs to allow for a return date. Due to problems receiving information requested through NSLs in a less than timely fashion, OGC opines: <ul style="list-style-type: none"> - NSLs may contain a return date which info must be provided. - Date must be reasonable & not oppressive, but should also account for how quickly the info is needed. - Actual time allotted is an operational call. - Suggest date be stated in terms of time that has elapsed since the NSL was served upon the recipient. - Absent extraordinary circumstances, OGC suggests a recipient be given at least 10 business days to produce - Suggestion of where return date should be inserted until OGC model is updated.
6-29-2005 b6 b7C	EC: All FO, CTD, CD, CYD (EC also sent via email to CDCs by [redacted] on 7/1/05)	Provides revised guidance on service of NSLs and the use of approved delivery services. In the past, OGC has opined that NSLs should be personally served or secure faxed to recipient, and responsive information personally delivered or secure faxed (extensive discussion on security issues in EC). Due to delays as a result of this policy, OGC revises restrictions on service as follows: <ul style="list-style-type: none"> - Use of controlled delivery services (such as USPS & FedEx) to serve NSLs upon recipients now allowed to designated person. - Use of controlled delivery services to return responsive information to FBI. - Prohibition on use of non-secure fax to serve NSLs and return responsive information to FBI remains unchanged.
7-22-2005	Email to CDCs from [redacted]	Email sending out the new NSL narrative that would be placed on our website.
8-22-2005	Email to CDCs from [redacted]	Regarding need to have a lead to NSLB for us to report to congress; do not need to reference the 66 NSL file number anymore.

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8-25-2005	EC: FO, Legats, CTD, CRIM, CYD, CTD	Emergency Disclosure Provision for information from Service providers under 18 U.S.C. § 2702(b). EC outlines emergency disclosure provision and provides a sample letter. Lays out approval requirements.
11-10-2005	Email to CDCs from [REDACTED]	Regarding standard that should be applied in getting NSLs - we generally cannot get second generation calls unless we know something about first generation calls.
11-22-2005	Email to CDCs from [REDACTED]	Improper NSL collection Provides stopgap measures on how to handle information on what to do if FBI obtains information improperly from issuance of an NSL, whether it be from FBI mistake or carrier mistake. - seal & sequester; remove any information uploaded into ACS.
2-17-2006	Email to CDCs from [REDACTED]	Advising CDCs not to hesitate in requiring more facts to support an NSI.. EC forms on our website were changed to reflect that the agent had to give a full explanation of the investigation, not just a barebones explanation.
3-9-2006	EC: All Divisions from the Director 3-9-2006 new Standard NSLs and ECS sent out via email to SACs & CDCs email sent to CDCs on 3-16-2006 advising them of new delegations under the new Patriot Act.	Inform of delegation of: signature authority for NSLs; non-disclosure certification authority; non-disclosure recertification authority. 2005 USAPA IRA enacted 3-9-06 provides for procedural changes in the issuance of NSLs: - FBI must certify that certain harm may come if the NSL recipient disclosed the request. - If NSL is challenged more than one year later, FBI must recertify that certain harm may come if NSL request disclosed. - Recipient of NSL can challenge receipt of NSL. - FBI has explicit enforcement authority and contempt penalties that attach to unlawful noncompliance with NSLs. EC includes director's delegations of authority to sign NSLs, make the initial non-disclosure certification and any necessary subsequent non-disclosure recertification.

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3-16-2006	Email from [REDACTED]	Email requesting that 7 NSL forms be replaced on website.
3-20-2006	EC: FO, CTD, CD, CYD	Guidance on service of NSLs by fax, and follow-up EC on expansion of approved methods of delivering NSLs. Use of non-secure fax is now permissible by FBI in its service of an NSL upon the recipient. EC outlines conditions to do this. The same is not true of faxing of NSL return information.
3-21-2006	Email to CDCs from [REDACTED]	Classification guidelines regarding all NSLs. Generally all NSLs should be declassified automatically in 10 years.
4-5-2006	Email to CDCs from [REDACTED]	email on IOBs and issuance of NSLs
4-7-2006	Email to CDCs from [REDACTED]	Email stating current IOB policy, including with respect to receiving information pursuant to an NSL that was not sought by the NSL.
4-11-2006	EC: CTD, CD, CYD, FO email with EC sent 5-2-2006	FBI Policy re: reimbursement of costs to recipients of NSLs. Details requirements, or lack thereof, in the 4 statutes that provide for issuances of NSLs. Touches on current variations in cost reimbursement policies among field offices. Provides policy on reimbursement costs incurred by recipients of NSLs under ECPA, and FCRA §§ 1681v, 1681u.
4-14-2006	Email to CDCs from [REDACTED]	Email of an example of what needs to be in an EC for more accuracy in Congressional reporting.
4-21-2006	Email to CDCs from [REDACTED]	Email sent out documenting a change in the standard attachment for telephone billing records so that it is clear what we consider "toll billing records;" so that we get additional relevant information; and to obviate some potential IOBs where we get additional account information we didn't ask for.
5-31-2006	Email to CDCs from [REDACTED]	In response to carriers giving us more than we asked for because of convenience, we changed the transaction record attachment sent with NSLs.

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10-27-2006	Email from [redacted]	email to change narratives on website with respect to NSLs.
10-31-2006	Email to CDCs from [redacted]	Reiterating importance of including the following in NSL ECS: whether subject is USP or non-USP; and what kind of NSL is being issued. These details are important for Congressional reporting requirements.
12-7-2006	Email to CDCs from [redacted]	OGC believes Congressional reporting requirements apply to the subject of the NSL even though it is unclear that NSL ECS have only been reporting the USP status of the target of the investigation.
12-8-2006	Email to CDCs from [redacted] on behalf of DGC Julie Thomas	FBI should not issue NSLs in cases involving leaks to the media..

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 12/15/2006

To: Can Valerie signout an all Division EC?

Attn: ADIC/SAC

CDC

From: Office of the General Counsel
National Security Law Branch

Contact: [Redacted]

Approved By:

Caproni Valerie E
Thomas Julie F

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Drafted By:

[Redacted]

Case ID #: (U) 319X-HQ-A1487720-OGC

Title: (U) LEGAL ADVICE AND OPINIONS;
UPLOADING OF NSL RETURN INFORMATION

Synopsis: (U) Provides guidance to the field as to the need to review NSL return information prior to uploading the information into FBI databases.

Details: (U)

It has come to the attention of the Office of General Counsel, National Security Law Branch (NSLB), that there may be occasions in which NSL information has been uploaded into Telephone Applications and other databases prior to having been reviewed by any FBI personnel. This is particularly likely to occur if the information is received in electronic form. However, a problem arises if the information that was received is not responsive to the NSL and thus, not relevant to an authorized national security investigation, or, alternatively, if there was a mistake by the FBI in the NSL such that the records are responsive but not relevant to an authorized investigation. Such deficiencies in the NSL return information may never be discovered, or, discovered too late to prevent the use of information that the FBI did not properly collect. Therefore, it is imperative that the records be reviewed before uploading to assure that they are relevant to an authorized national security investigation. Thereafter, if the records were properly obtained,

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To: All Divisions From: Office of the General Counsel
Re: 319X-HQ-A1487720-OGC 12/15/2006

they may be uploaded into a database. If there is a problem with the manner in which they were obtained, other steps need to be taken.¹

Any questions about this matter may be directed to AGC

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-- Ms. Caproni

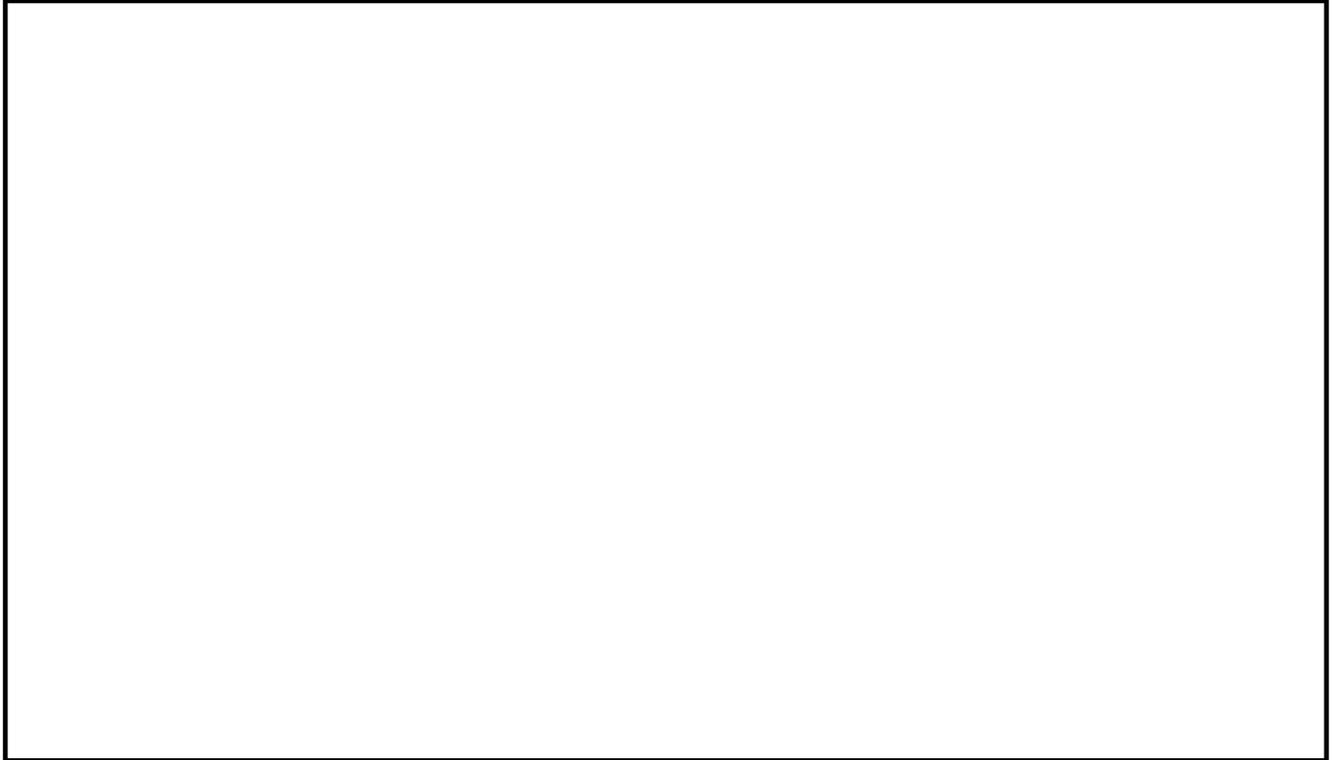
-- Ms. Thomas

-- [REDACTED]

¹ If the records were not properly obtained, i.e., there was a mistake by the carrier or the FBI in the NSL process, then the records should be sequestered with the CDC, and a potential IOE reported to NSLB. Thereafter, in its responsive EC, NSLE will indicate the proper disposition of the records. If the records were in fact properly obtained (e.g., the records are covered by the attachment, if not the body of the NSL)), they may be retained and uploaded. If the records were not properly obtained but are relevant to an authorized investigation (e.g., exceed the time frame of the NSL but pertain to the subject of the NSL), the records should remain sequestered until another NSL is issued to cover those records. If the records were not properly obtained and are not relevant to an authorized investigation, the CDC is expected to contact the owner of the records and determine if the entity wants the records returned to it or destroyed by the FBI. For a full explanation of the manner in which NSL records should be maintained for IOE purposes, see EC, dated 11/16/2006, 278-HQ-C1229736, serial 2570.

ATTACHMENT

In preparing your response to this National Security Letter, you should determine whether your company maintains the following types of information which may be considered by you to be toll billing records in accordance with Title 18, United States Code, Section 2709:



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We are not requesting, and you should not provide, information pursuant to this request that would disclose the content of any electronic communication as defined in Title 18, United States Code, Section 2510(8).

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