

OIG'S PATRIOT ACT REVIEW

DOCUMENT REQUEST: DOJ-OIG REQUEST of AUGUST 02, 2006

SUBJECT: EMAILS THAT WOULD HELP ESTABLISH THE DATE OF A MEETING AMONG
 REGARDING PROBLEMS WITH INCOMPLETE ECS REQUESTING APPROVAL TO
ISSUE NSLS AND ANY EMAILS OR OTHER DOCUMENTS REFERENCING THE MEETING
FBI TRACKING # : OIG REQ-PAR (08-02-06) - ITEM #2

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PACKET: #1
{AUGUST 04, 2006}

DATE	TYPE of DOCUMENT	SUBJECT	TOTAL PAGES	BATE STAMP #s
06/06/06	MEETING REQUEST	NSL REPORTING REQUIREMENT	1	001
06/02/06	 EMAIL	NSL REPORTING PROBLEMS	1	002
06/29/06	 EMAIL	RE: NSL DATA	6	003-008
06/29/06	 E-MAIL	RE: NSL DATA (WITH ATTACHED WRITE-UP ON NATIONAL SECURITY LETTERS UPDATED ON 3/15/2006)	10	009-018
TOTAL PAGES			18	

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ALL INFORMATION CONTAINED
 HEREIN IS UNCLASSIFIED
 DATE 07-18-2007 BY 65179 DMH/KSR/JW

1073946

[Redacted]

(OGC) (FBI)

Subject: NSL Reporting requirements
Location: Conference room

Start: Thu 6/1/2006 9:00 AM
End: Thu 6/1/2006 10:00 AM

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Recurrence: (none)

Meeting Status: Accepted

Required Attendees: [Redacted] (OGC) (FBI) [Redacted] (OGC) (FBI)

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 07-18-2007 BY 65179 DMH/KSR/JM

NSL VIO-15140

[Redacted] OGC) (FBI)

From: [Redacted] (OGC) (FBI)
Sent: Thursday, June 29, 2006 12:23 PM
To: [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI)
Cc: [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI)
Subject: RE: NSL DATA

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[Redacted]

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Thanks [Redacted] for picking this up. [Redacted] asked for my help earlier and I just completely dropped the ball. Sorry

[Redacted]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

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Assistant General Counsel
National Security Law Policy and Training Unit
FBI HQ Room 7975
STU III: (202) 324-[Redacted]
Unclassified Fax: (202) 324-[Redacted]
Secure Fax: [Redacted]

DATE: 07-26-2007
CLASSIFIED BY 65179 DMH/KSR/JW
REASON: 1.4 (C)
DECLASSIFY ON: 07-26-2032

Privileged Attorney-Client/Attorney Work Product Communication

-----Original Message-----

From: [Redacted] (OGC) (FBI)
Sent: Thursday, June 29, 2006 12:20 PM
To: [Redacted] (OGC) (FBI)
Cc: [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI)
Subject: RE: NSL DATA

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[Redacted]

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I think it addresses the issues at hand, now hopefully it will get read. [Redacted] thank you so much for hearing and answering my cry.

[Redacted]

Paralegal Specialist
National Security Law Branch
Office of the General Counsel
Room 7975/ext [Redacted]

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NSL VIO-15142

-----Original Message-----

From: [Redacted] (OGC) (FBI)
Sent: Thursday, June 29, 2006 12:09 PM
To: [Redacted] (OGC) (FBI)
Cc: [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI)
Subject: RE: NSL DATA

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~~SECRET RECORD~~

[Redacted]

Try this [Redacted] << File: nslwebsitejune2006.wpd >>

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-----Original Message-----

From: [redacted] (OGC) (FBI)
Sent: Thursday, June 29, 2006 11:52 AM
To: [redacted] (OGC) (FBI)
Cc: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Subject: RE: NSL DATA

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I have been and still am constantly e-mailing the field on this issue. It has not been an inconsistency on our part. I'm finding out that new agents are #1 not aware when requesting toll billing records there is no need to ask for subscriber info since tolls include subscriber information and #2 that both of the sentences I previously stated should agree in language. Can we not state this in the "Reporting Requirements" as well, to the affect whatever type of record(s) are being sought it should be **consistently** stated throughout the EC?

[redacted]

Paralegal Specialist
National Security Law Branch
Office of the General Counsel
Room 7975/ext [redacted]

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-----Original Message-----

From: [redacted] (OGC) (FBI)
Sent: Thursday, June 29, 2006 11:34 AM
To: [redacted] (OGC) (FBI)
Cc: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Subject: RE: NSL DATA

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[redacted] the forms on our website do not have that discrepancy. I just checked. The subscriber EC (both for telephone and ISPs) says we are seeking subscriber info and the mandatory reporting paragraph says to give the number of accounts for which subscriber information is being sought. So the discrepancy you are reporting apparently is because some other version of the EC is being used, and since we provided all of the forms, I suppose it means that at sometime in the past we had messed up and had inconsistencies between what we sought and what the mandatory reporting requirements sought.

I don't know how we remedy this except the next time it comes up, email the field and tell them that they need to use the forms on our website since apparently they are not.

NSL VIO-15143

-----Original Message-----

From: [redacted] (OGC) (FBI)
Sent: Thursday, June 29, 2006 10:56 AM
To: [redacted] (OGC) (FBI)
Cc: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Subject: RE: NSL DATA

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[redacted]

[redacted]

This is good. I'm also having problems with the "enclosure section" not being in agreement with the paragraph that states, "For mandatory reporting purposes, the

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enclosed NSL seeks..." i.e., in the enclosure section, a requestor states, "...requesting **subscriber information** for the telephone listed." However, the paragraph that states, "For mandatory reporting, would read, " "For mandatory reporting purposes, the enclosed NSL seeks **local and long distance toll billing records** for..." or vice versa. This happens more often than not and I'm constantly e-mailing agents to clarify what type of records were requested.

[Redacted]

Paralegal Specialist
National Security Law Branch
Office of the General Counsel
Room 7975/ext. [Redacted]

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-----Original Message-----

From: [Redacted] (OGC) (FBI)
Sent: Thursday, June 29, 2006 10:25 AM
To: [Redacted] (OGC) (FBI)
Cc: [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI)
Subject: RE: NSL DATA

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[Redacted] read the "Reporting Requirements" section towards the end of this revised website narrative. If you want to say more, please feel free to add anything you'd like that would make your job easier, and that applies to the entire document. Read it and see if there are places where we could be doing better. [Redacted]

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<< File: nslwebsitejune2006.wpd >>

-----Original Message-----

From: [Redacted] A. (OGC) (FBI)
Sent: Thursday, June 29, 2006 10:15 AM
To: [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI)
Cc: [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI)
Subject: RE: NSL DATA

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[Redacted]

That would be wonderful! I truly appreciate it.

[Redacted]

Paralegal Specialist
National Security Law Branch
Office of the General Counsel
Room 7975/ext. [Redacted]

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NSL/VIO-15144
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-----Original Message-----

From: [Redacted] (OGC) (FBI)
Sent: Thursday, June 29, 2006 10:13 AM
To: [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI)
Cc: [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI)
Subject: RE: NSL DATA

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[redacted] do you think it best if we put something on our website in the narrative about NSLs. I think if we put something in an EC, it will go unread. And if we put the EC on our website, it still has to be pulled up. So if we put what information we wanted to convey directly on the narrative portion of the website, we can refer to that and it would be easily accessible. I am more than willing to revise the narrative and make clear the reporting requirements. [redacted]

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-----Original Message-----

From: [redacted] (OGC) (FBI)
Sent: Thursday, June 29, 2006 10:07 AM
To: [redacted] (OGC) (FBI)
Cc: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Subject: FW: NSL DATA
Importance: High

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Would someone please help me with putting out an official document concerning the insufficient reporting of information in NSLs that come in from the field. Please see the below e-mail.

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[redacted]
Paralegal Specialist
National Security Law Branch
Office of the General Counsel
Room 7975/ext. [redacted]

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-----Original Message-----

From: [redacted] (FBI)
Sent: Thursday, June 29, 2006 9:53 AM
To: [redacted] (OGC) (FBI)
Subject: RE: NSL DATA

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[redacted]
I'm sorry if I inadvertently left something out. Our SAC mandates that we send combined NSL ECs whenever possible so he does not have to sign multiple ECs, hence, the numerous letters sent with one ec. Reporting requirements have been mentioned but have fallen upon deaf ears.

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NSL VIO-15145

Since the NSLB website is supposed to be where we obtain the language for the various NSL requests, perhaps NSLB would be kind enough to put an EC on the site that covers multiple requests. I'm not an attorney and, quite frankly, I don't have the time to sit down and figure out how the information, which you said is absent, should be cited in the ec.

Thank you.

[redacted]
SA, FBI [redacted]

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-----Original Message-----

From: [redacted] (OGC) (FBI)

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~~SECRET~~

Sent: Thursday, June 29, 2006 5:03 AM
To: [redacted] (FBI)
Subject: NSL DATA

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(S) [redacted]

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In ACS there is an EC drafted by you dated 5/17/06 file [redacted] which pertains to a NSL. In the EC it states that you have requested subscriber information on [redacted] addresses from [redacted] different telephone companies, in order to accurately fulfill congressional reporting requirements, please provide me with a break down as to how many addresses were requested from each telephone company. In addition, this information should be states within the EC of all future NSLs requesting information from more than one entity. Your prompt attention to this matter would be greatly appreciated.

[redacted]

Paralegal Specialist
National Security Law Branch
Office of the General Counsel
Room 7975/ext. [redacted]

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~~DERIVED FROM: G-1 FBI Classification Guide G-1, dated 1/99, Foreign Government Information
DECLASSIFICATION EXEMPTION 1
SECRET~~

~~DERIVED FROM: G-1 FBI Classification Guide G-1, dated 1/99, Foreign Government Information
DECLASSIFICATION EXEMPTION 1
SECRET~~

~~DERIVED FROM: G-1 FBI Classification Guide G-1, dated 1/99, Foreign Government Information
DECLASSIFICATION EXEMPTION 1
SECRET~~

NSL VIO-15146

~~DERIVED FROM: G-1 FBI Classification Guide G-1, dated 1/99, Foreign Government Information
DECLASSIFICATION EXEMPTION 1
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~~DERIVED FROM: G-1 FBI Classification Guide G-1, dated 1/99, Foreign Government Information
DECLASSIFICATION EXEMPTION 1
SECRET~~

~~DERIVED FROM: G-1 FBI Classification Guide G-1, dated 1/99, Foreign Government~~

~~SECRET~~

[redacted] (OGC) (FBI)

From: [redacted] (OGC) (FBI)
Sent: Thursday, June 29, 2006 10:25 AM
To: [redacted] (OGC) (FBI)
Cc: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Subject: RE: NSL DATA

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RECORD**

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[redacted] read the "Reporting Requirements" section towards the end of this revised website narrative. If you want to say more, please feel free to add anything you'd like that would make your job easier, and that applies to the entire document. Read it and see if there are places where we could be doing better. [redacted]



nslwebsitejune2006
.wpd (36 KB)...

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-----Original Message-----

From: [redacted] (OGC) (FBI)
Sent: Thursday, June 29, 2006 10:15 AM
To: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Cc: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Subject: RE: NSL DATA

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

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**SECRET
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DATE: 07-26-2007
CLASSIFIED BY: 65179 DMH/RSR/JW
REASON: 1.4 (C)
DECLASSIFY ON: 07-26-2032

[redacted]
That would be wonderful! I truly appreciate it.

[redacted]

Paralegal Specialist
National Security Law Branch
Office of the General Counsel
Room 7975/ex [redacted]

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-----Original Message-----

From: [redacted] (OGC) (FBI)
Sent: Thursday, June 29, 2006 10:13 AM
To: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Cc: [redacted] JR (OGC) (FBI); [redacted] (OGC) (FBI)
Subject: RE: NSL DATA

NSL VIO-15147

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[redacted] do you think it best if we put something on our website in the narrative about NSLs. I think if we put something in an EC, it will go unread. And if we put the EC on our website, it still has to be pulled up. So if we put what information we wanted to convey directly on the narrative portion of the website, we can refer to that and it would be easily accessible. I am more than willing to revise the narrative and make clear the reporting requirements [redacted]

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~~SECRET~~

-----Original Message-----
From: [redacted] (OGC) (FBI)
Sent: Thursday, June 29, 2006 10:07 AM
To: [redacted] (OGC) (FBI)
Cc: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Subject: FW: NSL DATA
Importance: High

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RECORD** [redacted]

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Would someone please help me with putting out an official document concerning the insufficient reporting of information in NSLs that come in from the field. Please see the below e-mail.

[redacted]

Paralegal Specialist
National Security Law Branch
Office of the General Counsel
Room 7975/ext [redacted]

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-----Original Message-----
From: [redacted] (FBI)
Sent: Thursday, June 29, 2006 9:53 AM
To: [redacted] (OGC) (FBI)
Subject: RE: NSL DATA

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**SECRET
RECORD** [redacted]

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[redacted]

I'm sorry if I inadvertently left something out. Our SAC mandates that we send combined NSL ECs whenever possible so he does not have to sign multiple ECs, hence, the numerous letters sent with one ec. Reporting requirements have been mentioned but have fallen upon deaf ears.

- Since the NSLB website is supposed to be where we obtain the language for the various NSL requests, perhaps NSLB would be kind enough to put an EC on the site that covers multiple requests. I'm not an attorney and, quite frankly, I don't have the time to sit down and figure out how the information, which you said is absent, should be cited in the ec.

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Thank you.

[redacted]

SA, FBI [redacted]

NSL VIO-15148

-----Original Message-----
From: [redacted] (OGC) (FBI)
Sent: Thursday, June 29, 2006 5:03 AM
To: [redacted] (FBI)
Subject: NSL DATA

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**SECRET
RECORD** [redacted]

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Cynthia,
In ACS there is an EC drafted by you dated 5/17/06 file # 225C-MP-64328-131 which pertains to a NSL. In the EC it states that you have requested subscriber information on thirty-one addresses from eight different telephone companies, in order to accurately

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fulfill congressional reporting requirements, please provide me with a break down as to how many addresses were requested from each telephone company. In addition, this information should be states within the EC of all future NSLs requesting information from more than one entity. Your prompt attention to this matter would be greatly appreciated.

[Redacted]

Paralegal Specialist
National Security Law Branch
Office of the General Counsel
Room 7975/ext [Redacted]

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~~DERIVED FROM: G-1 FBI Classification Guide G-1, dated 1/99, Foreign Government Information
DECLASSIFICATION EXEMPTION 1
SECRET~~

~~DERIVED FROM: G-1 FBI Classification Guide G-1, dated 1/99, Foreign Government Information
DECLASSIFICATION EXEMPTION 1
SECRET~~

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DECLASSIFICATION EXEMPTION 1
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DECLASSIFICATION EXEMPTION 1
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~~DERIVED FROM: G-1 FBI Classification Guide G-1, dated 1/99, Foreign Government Information
DECLASSIFICATION EXEMPTION 1
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NSL VIO-15149

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1073946

NATIONAL SECURITY LETTERS (UPDATED 3/15/2006)

National Security letters are a specific type of investigative tool that allows the FBI to obtain certain limited types of information without court intervention:

- 1) Under the Electronic Communications Privacy Act, 18 U.S.C. §2709, the FBI can obtain telephone and email communication records from telephone companies and internet service providers.
- 2) Under the Right to Financial Privacy Act, 12 U.S.C. §3414(a)(5)(A), the FBI can obtain the records of financial institutions (which is very broadly defined).
- 3) Under the Fair Credit Reporting Act, 15 U.S.C. §§1681u(a) and (b), the FBI can obtain a list of financial institutions and consumer identifying information from a credit reporting company.
- 4) Under the Fair Credit Reporting Act, 15 U.S.C. §1681v, the FBI can obtain a full credit report in an international terrorism case. This provision was created by the 2001 USA Patriot Act.

The standard for issuing an NSL is relevance to an authorized investigation to protect against international terrorism or clandestine intelligence activities provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the First Amendment of the Constitution of the United States. (The 1681v NSL standard is slightly different to reflect that it applies only to international terrorism investigations.) Prior to the 2001 USA PATRIOT Act, the standard for issuance of an NSL was that the target or the communication was tied to a foreign power. That is no longer the case. (See explanation of changes, per EC dated 10/26/2001.) Further, an NSL may be obtained in a preliminary or full investigation. The subject of the NSL does not need to be the target of the investigation, provided that the information is relevant to an authorized investigation.

A request for an NSL has two parts. One is the NSL itself, and one is the EC approving issuance of the NSL. The authority to sign NSLs has been delegated to the Deputy Director, Executive Assistant Director and Assistant EAD for the National Security Branch; Assistant Directors and all DADs for CT/CI/Cyber; General Counsel; Deputy General Counsel for the National Security Law Branch; Assistant Directors in Charge in NY, D.C., and LA; and all SACs. The authority to certify and recertify the non-disclosure requirement of NSLs has also been delegated to those same persons. Persons acting in those capacities may not exercise such signature, certification or recertification authority.

NSL VIO-15150

THE NSL

All NSLs must be addressed to the specific company point of contact (many of which are listed on NSLB's website). All NSLs should identify the statutory authority for the request; the type of records requested, and provide identifying information to assist the company in processing the request. One change has been made to the opening paragraph; recipients are now "DIRECTED" to produce the information rather than simply "requested." Such language will mute any conceivable argument by a non-compliant recipient upon enforcement of an NSL that

the recipient did not know that he was required to produce the information.

All NSLs require a certification that the records sought are relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities and that an investigation of a USP is not conducted solely on the basis of First Amendment rights (with the 1681v NSL certification being slightly different to reflect its application only to international terrorism investigations).

The major recent change in the format of the NSL derives from the newly enacted USA PATRIOT Improvement and Reauthorization Act of 2005. The non-disclosure provision is no longer automatically included in the NSL. If the requesting party seeks to have a non-disclosure provision included in the NSL, there needs to be a certification in the NSL that the disclosure may endanger national security, interfere with a criminal, counter terrorism, or counterintelligence investigation, or interfere with diplomatic relations or endanger a life. Once the certification is made, the recipient is under an obligation not to disclose the fact of the request to anyone except those in the company that have a need to know and to legal counsel, if necessary. Further, as to those NSL which contain a non-disclosure provision, the NSL recipient is informed that he must convey the non-disclosure requirement to persons who have such a need to know, and that, if asked, he must inform the FBI of the names of those persons. In addition, the NSL recipient is informed that he may challenge that non-disclosure provision. In all NSLs, the recipient is informed of his right to challenge the NSL itself if compliance would be unreasonable, oppressive or otherwise unlawful, as well as the right of the FBI to enforce the NSL, including the non-disclosure provision, if there is one.

The recipient is also informed that he may return the information to the FBI via federal express or personal delivery.

Certain NSLs (financial records, toll billing records, and ISP transactional records) have an attachment suggesting the type of information that the recipient may consider to fall within the parameters of the request.

NEW LANGUAGE OF THE MODEL NSLS

The following is the new language that you will now see in model NSLs. The first three paragraphs are optional, to be used if there is a need for non-disclosure.

NSL VIO-15151

In accordance with [cite to pertinent statute], I certify that a disclosure of the fact that the FBI has sought or obtained access to the information sought by this letter may endanger the national security of the United States, interfere with a criminal, counter terrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of a person. Accordingly, 18 U.S.C. § 2709(c)(1) and (2) prohibits you, or any officer, employee, or agent of yours, from disclosing this letter, other than to those to whom disclosure is necessary to comply with the letter or to an attorney to obtain legal advice or legal assistance with respect to this letter.

In accordance with [cite to pertinent statute], you are directed to notify any persons to whom you have disclosed this letter that they are also subject to the nondisclosure requirement and are therefore also prohibited from disclosing the letter to anyone else.

In accordance with [cite to pertinent statute], if the FBI asks for the information, you should identify any person to whom such disclosure has been made or to whom such disclosure will be made. In no instance will you be required to identify any attorney to whom disclosure was made or will be made in order to obtain legal advice or legal assistance with respect to this request.

In accordance with [cite to pertinent statute], you have a right to challenge this request if compliance would be unreasonable, oppressive, or otherwise unlawful and the right to challenge the nondisclosure requirement set forth above.

In accordance with [cite to pertinent statute], an unlawful failure to comply with this letter, including any nondisclosure requirement, may result in the United States bringing an enforcement action.

COVER EC

The cover EC serves five functions.

- 1) It documents the predication for the NSL by stating why the information sought is relevant to an authorized investigation,
- 2) It documents the approval of the NSL by appropriate personnel,
- 3) It documents certification of the necessity for non-disclosure, when applicable,
- 4) It contains information needed to fulfill Congressional reporting requirements for each type of NSL (subject's USP status, type of NSL issued, and the number of phone numbers, email addresses, account numbers or individual records being requested in the NSL), and
- 5) It transmits the NSL to NSLB for reporting requirements, to CTD, CD, or Cyber for informational purposes, and, in the case of personal service, to the requesting squad or delivering field division for delivery.

The requirement for certification for the need for a non-disclosure provision is the major change in the format of the EC. It derives from the USA PATRIOT Improvement and Reauthorization Act of 2005 in that the requesting party must affirmatively take steps to have a non-disclosure provision included in the NSL; it is not automatic anymore. If a non-disclosure provision is sought, the EC must set forth a factual predicate to require such a provision. As a general matter, the certification must assert that disclosure may endanger national security, interfere with a criminal, counter terrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of a person. More specifically, the manner in which those dangers may arise from disclosure of the issuance of an NSL could include:

1) disclosure may prematurely disclose a national security investigation to the target and cause him to change his behavior patterns and circumvent detection,

2) disclosure may prematurely disclose a national security investigation to persons affiliated with the target and/or the subject matter of the national security investigation and cause them to change their behavior patterns and circumvent detection,

3) [redacted]

[redacted]

4) [redacted]

[redacted]

(5) [redacted]

[redacted]

(6) [redacted]

[redacted]

(7) [redacted]

[redacted]

(8) [redacted]

[redacted]

(9) disclosure may prematurely disclose a national security investigation and could result in flight from potential prosecution by the subjects as well as the flight of potential material witnesses,

(10) disclosure may prematurely disclose a national security investigation and could result in the destruction of or tampering with evidence.

(11) disclosure may prematurely disclose a national security investigation and cause result in publicity that would make it difficult for the target to get a fair trial

(12) disclosure may prematurely disclose a national security investigation involving the investigation of an emergency hostage situation and could cause danger to life,

(13) disclosure may prematurely disclose a national security investigation involving an imminent threat of terrorism and could cause danger to life,

This is not an exclusive list. Therefore, if there are other reasons for requesting a non-disclosure provision, those reasons should be set forth in the EC.

NEW LANGUAGE OF THE MODEL ECS

NSL VIO-15153

The following is the new language that you will now see in model ECs.

[Option 1 - Invoking Nondisclosure Requirement]

(U) In accordance with [cite to pertinent statute] I, the senior official approving this EC, certify that a disclosure of the fact that the FBI has sought or obtained access to the information sought by this letter may endanger the national security of the United States, interfere with a criminal, counter

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terrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of a person.

(S) Brief statement of the facts justifying my certification in this case:

[Option 2 - Declining to invoke the nondisclosure requirement]

(U) I, the senior official approving this EC, have determined that the facts of this case do not warrant activation of the nondisclosure requirements under the applicable National Security Letter statute.

VARIOUS GUIDANCES

Attached are guidances that relates to NSLs.

- 1) EC dated 5/27/2005, which relates to a modification of NSL policy that allows for return dates on NSLs,
- 2) EC dated 6/29/2005, which relates to use of restricted delivery services to serve NSLs.
- 3) NSL powerpoint, which include a summary of NSL information.

The relevant delegation of signature authority EC is the one issued on 3/09/2006, set forth above. This encompasses all signature delegations and takes precedent over all of the other delegations (and supercedes some). So please look to it to determine who has authority to sign NSLs. The EC dated 3/09/2006 also provides for delegation of the authority to certify that the non-disclosure provision is necessary with respect to a given NSL. Further, this delegation also provides authority with respect to the ability to recertify the need for non-disclosure were the non-disclosure to be challenged a year or more after service of the NSL. As has been DOJ policy for quite some time, a person in an acting position does not have the authority to sign NSLs. It follows that those in an acting position do not have authority to certify or recertify the non-disclosure provision, either. Although the 3/09/2006 delegation contains all the relevant NSL delegations, it is not referenced in the model EC. This is a change from the previous model ECs.

If you need to view the statutory authority for these NSLs, copies of the ECPA, RFP, and FCRA statutes can be found on the OGC main library website. However, at the present time, those statutes have not been updated so that the procedures set forth in those statutes are not current.

APPROVAL STANDARD FOR NSLS

NSLs are reviewed by CDCs at the field office level. At headquarters, they are reviewed by NSLB. At all levels, they must meet the legal standards set forth above, namely relevance to an authorized national security investigation. A perfunctory recitation that (1) the subject is the

target of an investigation, (2) he has a telephone, and (3) therefore it follows that an NSL for his telephone records is relevant to the authorized investigation will not suffice. Otherwise, any target with a telephone or a bank account is subject to an NSL. And that is not the standard for issuance of an NSL. The model EC now states that a full recitation of the reason for initiating and maintaining the investigation is necessary in order to justify an NSL. The reason is common sensical - there can be no reason to issue an NSL if the subject matter or issue to which it supposedly relates is not worthy of investigation or if the investigation is based solely on the exercise of First Amendment rights. Conversely, if the subject matter is worthy of investigation, then it would be a rare occasion in which the subject's telephone records or bank account records are not relevant to the investigation. In other words, in order for an NSL to meet the legal standard set forth in the statutes, the reviewing party has to assure that there is a proper reason for investigating the target and not an improper reason, for instance, exercising First Amendment rights..

Moreover, the legal review that is done by the CDCs is consistent with the factual review that should be done by SAs in certifying that the NSL is relevant to an authorized national security investigation and that the investigation is not based on the exercise of First Amendment rights by a U.S.P. An SA can no more make the required certification than the CDC can make the required legal review if presented only with barebones information of the existence of an investigation and a target's telephone or bank account. Thus, the recitation of facts about the reason for initiating and maintaining an investigation serves to support both the SA certification and the CDC legal review.

Thus, approval of an NSL needs to include a review of why the FBI is conducting the investigation. The fact that there is no legal review of the opening of an investigation does not preclude review of the reason for the investigation in the course of determining whether an NSL request meets the legal standard of the NSL statute . \

REPORTING REQUIREMENTS

NSLB is required to report information about its NSL usage to Congress. Therefore, it is crucial that the portion of the EC that addresses reporting requirements is accurately addressed. While an EC may cover more than one target, more than one account, and more than one recipient, when all of the requests are related, the EC must break down the number of targeted phone numbers/email accounts/financial accounts that are addressed to each and every NSL recipient. Therefore, if there are three targets, ten accounts, and six recipients of an NSL, then the EC must state how many accounts are the subject of the NSL to recipient 1, to recipient 2, etc. It is not sufficient to tell us that there are ten accounts and six recipients.

DISSEMINATION OF NSL MATERIAL

Information obtained through the use of an NSL may be disseminated in accordance with general standards set forth in The Attorney General's Guidelines for FBI National Security Investigation and Foreign Intelligence Collection (NSIG). Dissemination is further subject to specific statutory limitations (e.g., toll record NSL statute, ECPA, 18 U.S.C. §2709, and financial

record NSL statute, RFP, 12 U.S.C. §3414(a)(5)(B), permit dissemination if per NSIG and information is clearly relevant to responsibilities of recipient agency; limited credit information NSL statute, FCRA, 15 U.S.C. §1681u, permits dissemination to other federal agencies as may be necessary for the approval or conduct of an FCI investigation; no special statutory rules for dissemination under full credit report NSL statute, FCRA, 15 U.S.C. §1681v).

Although the requesting EC is generally classified because it provides reasons for the investigation and the need for the NSL, the NSLs themselves are not classified, nor is the material received in return from NSLs classified. That information may be used in criminal proceedings without any declassification issue. However, be forewarned that if the information as to the account number or telephone number or subscriber found in the NSL is the result of a FISA, OIPR may consider all the information that follows from the NSL to be FISA-derived for purposes of needing AG approval for use in criminal proceedings.

POCS FOR NSL RECIPIENTS

Attached also please find a list of the names and addresses of appropriate offices/persons to whom NSLs should be addressed [redacted]

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[redacted] Since OGC generally does not have contact with these entities, we rely on the field to let us know when these points of contact are outdated or when new entities come into play for which POCs would be useful. So please let us know when you run across POC information that headquarters and other field offices might find useful.

MISCELLANEOUS

If you come across useful information on other NSL-related topics, please email [redacted]

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[redacted] of NSLB and we will add it to this website.

NSL VIO-15156