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From: [redacted] (OGC) (FBI)
Sent: Thursday, March 29, 2007 4:21 PM
To: [redacted] (OGC) (FBI); [redacted] (OGC)
[redacted] (FBI); [redacted] (OGC) (FBI)
Subject: FW: RPPA NSI issue

Subject:
UNCLASSIFIED
NON-RECORD

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-26-2007 BY 65179 DMH/KSR/JE

FYI
-----Original Message-----

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From: [redacted] (FBI)
Sent: Thursday, March 29, 2007 4:19 PM
To: [redacted] (OGC) (FBI)
Cc: [redacted] (FBI)
Subject: RPPA NSI issue

UNCLASSIFIED
NON-RECORD

[redacted]

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After our conversation I spoke to [redacted]
[redacted] I think OGC
needs to clarify this issue.

Thanks,
[redacted]

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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 03/08/2007

To:

[Redacted]

Attn: SAC [Redacted]
ASAC [Redacted]
CDC [Redacted]

Attn: IIS, CRS [Redacted]

Inspection

From: Office of the General Counsel
NSLE/CILU/Room 7947

Contact: SSA [Redacted]

Approved By: Thomas Julie F

DATE: 11-26-2007
CLASSIFIED BY: 65179 DMH/KSR/JP
REASON: 1.4 (c)
DECLASSIFY ON: 11-26-2032

Drafted By:

[Redacted]

(U) Case ID #: ~~(S)~~ 278-HQ-C1229736-V10 (Pending)

(U) Title: ~~(S)~~ INTELLIGENCE OVERSIGHT BOARD
MATTER 2007- [Redacted]

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WHERE SHOWN OTHERWISE

(U) Synopsis: ~~(S)~~ It is the opinion of the Office of the General Counsel (OGC) that the matters in sections A and B (designated below) must be reported to the Intelligence Oversight Board (IOB). OGC will prepare and deliver the necessary correspondence to the IOB.

(U)

~~Derived From: G-3
Declassify On: 25X1~~

(U) Administrative: ~~(S)~~ This electronic communication (EC) contains information from the following documents: (1) a copy of the EC dated 02/22/2007 from the [Redacted] Field Office [Redacted] to OGC reporting eight potential IOB matters, and (2) the FBI's Automated Case Support system (ACS).

(U) ~~(S)~~ [Redacted] opted to submit all eight potential IOB issues in one EC. The EC was divided into five separate sections, A-E, and our response will be drafted in a similar manner for continuity purposes. These reported IOB matters are all derived from the audit conducted by the Office of Inspector General (OIG) which took place [Redacted] FBI field offices.

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To: [redacted] From: Office of the General Counsel
Re: 278-HQ-C1229736-VIO, 03/08/2007

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(U) Reference: (S) 278-HQ-C1229736-VIO, serial 2218
(U) 62F [redacted]-97317, serial 63

(U) Details: (S) By EC dated 02/22/2007, [redacted] provided OGC written documentation of eight issues that require a review of the facts in order to determine whether they warrant reporting to the IOB. In our opinion, as to three issues (the one in section A and the two in section B), it does. Our analysis follows.

(S) A. [redacted]

(S) [redacted]

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The issue brought to the attention of [redacted] and OGC, by the OIG, was that [redacted] allegedly issued a National Security Letter (NSL) without obtaining required approval [redacted]. A detailed review of ACS and the [redacted] EC indicate that [redacted] actions may have resulted in an unintentional error.

(S) On 10/29/2003, Philadelphia drafted and submitted an EC to FBIHQ requesting [redacted]

[redacted] The case agent, as taught, provided [redacted] expiration date of 01/29/2004 in his communication requesting an [redacted] making the assumption his request would be approved. FBIHQ did not respond to his request until 12/01/2003. In its response, FBIHQ granted [redacted]

[redacted] In its response, FBIHQ did not change [redacted] date entered by the [redacted] agent. Because of this failure, to all now reading this document, a presumption is made that [redacted] granted by FBIHQ should be added onto [redacted] date. However, this [redacted] date was never formally approved by FBIHQ. Therefore, [redacted] given by FBIHQ should have been [redacted]

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(S) To make the matter above more complicated, FBIHQ, after already having granted [redacted] requested on 02/05/2004 that [redacted] submit an annual Letterhead Memorandum (LHM) because FBIHQ advised [redacted]

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To: [redacted] From: Office of the General Counsel
Re: 278-HQ-CI229736-V10, 03/08/2007

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[redacted]

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(S) It is apparent, that the error was compounded by the fact that a new set of Attorney General Guidelines came into effect on 10/31/2003, further confusing the proper expiration date. Any error made by [redacted] in the described case was not malicious in nature, and was made in good faith. Had the case agent been aware that the case [redacted] and not the mistakenly believed date of [redacted], this error would have never occurred. Unfortunately for [redacted] the errors reflected on the previous communications in the case file caused an NSL to be issued on 06/23/2004, [redacted]. Although [redacted] never received any information from the carrier concerning this request, the issuing of the NSL still constitutes a violation which is reportable to the IOB.

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(S) B.

[redacted]

(S)

[redacted]

On 11/23/2004, [redacted] submitted two NSL requests, one to [redacted] and one to [redacted]. Both of the NSLs and the cover EC quoted the statutory authority to be Title 15, USC 1681v. This authority, however, deals solely with terrorism investigations and allows the FBI to obtain full credit reports. The authority that should have been quoted by Philadelphia in a counterintelligence investigation was Title 15, USC 1681u(a), which enables the FBI to obtain credit listings (information pertaining to financial institutions, addresses of those institutions, places of employment, etc.), but not full credit reports.

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(U)

[redacted] advised that all information received by this unintentional oversight was sequestered in the safe of their Chief Division Counsel. [redacted] advised that the improperly obtained information has not been used in their investigation. [redacted] recognizes the error and that the improperly collected information, although unintentional, constitutes a violation which is reportable to the IOB.

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(S) C.

[redacted]

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To: [redacted] From: Office of the General Counsel
Re: 278-HQ-C1229736-V10, 03/08/2007

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(S) [redacted]
[redacted] On 04/11/2005, [redacted] issued three NSLs [redacted] pursuant to Title 15, USC 1681v, the terrorism statute, requesting full credit reports on the subject of the investigation. The cover EC [redacted] used to request the issuance of the three NSLs used the language stating the authority was being granted pursuant to Title 15, USC 1681u(a), the counterintelligence statute. In the cover EC [redacted] only asked for the identity of financial institutions, as opposed to the full credit reports requested in the NSLs.

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(U) ~~(S)~~ A review of the 02/22/2007 EC from [redacted] reporting the potential IOB infractions caused some confusion for the writer, so on 03/08/2007 the writer had a phone conversation with the drafter of the [redacted] EC. [redacted] explained that since it was a terrorism case, the verbiage in the NSLs was correct, and each of the NSLs were reviewed and signed. [redacted] informed that the EC that was used was a mistake on the part of the agent that drafted the cover document. [redacted] added that the investigation warranted the requested NSLs and the credit reporting companies never would have been confused by the EC because they do not receive a copy of that document. The EC is merely used as a means of submitting the NSLs (that were attached) to the case file. The mistake in the EC, although sloppy, did not alter the investigation in anyway, and this scrivener's error, citing to 1681u rather than 1681v, did not violate any law. [redacted] had the ability under a terrorism investigation to request credit reports, and they made that request. Therefore, OGC believes that the mistake made by [redacted] was administrative in nature, and does not warrant reporting to the IOB.

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(S) D. [redacted]
(S) [redacted]
[redacted] On 10/03/2005, [redacted] issued a NSL which requested that [redacted] send toll records from [redacted] [redacted] Instead, [redacted] sent records to [redacted] for information from [redacted] [redacted] learned of the third-party mistake and took the appropriate steps to sequester the additional five weeks of records that were sent to them. [redacted] advised that they did not do any indexing or follow-up analysis on the over-collected information.

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To: [redacted] From: Office of the General Counsel
Re: 178-HQ-C1229736-V10, 03/08/2007

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(U) ~~(S)~~ Despite the mistake by [redacted] the FBI had a legal right to the over-collected information they received. However, since the records were not requested, [redacted] sequestered the documents. Therefore, no improper action on the part of [redacted] occurred, and OGC believes that this matter does not warrant reporting to the IOB.

(S) E. [redacted]

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(S) [redacted]
[redacted] On 09/26/2005, [redacted] issued a NSL requesting information on an email address from 01/01/2005 thru 09/26/2005. In response to that request, the provider produced information from [redacted]. This additional five months of data (two months prior to the requested date, and three months after the termination date) would have been obtainable by the field office had they requested it. The over-collected information has been sequestered by [redacted].

(U) ~~(S)~~ A review of all the facts in this section demonstrates that [redacted] was not at fault in receiving five months of records outside the scope of the properly issued NSL. OGC believes this matter does not warrant reporting to the IOB.

SUMMARY

(U) The President, by Executive Order 12334, dated 12/04/1981, established the President's Intelligence Oversight Board (PIOB). On 09/13/1993, by Executive Order 12863, the President renamed it the Intelligence Oversight Board (IOB) and established the Board as a standing committee of the President's Foreign Intelligence Advisory Board. Among its responsibilities, the IOB has been given authority to review the FBI's practices and procedures relating to foreign intelligence and foreign counterintelligence collection.

(U) Section 2.4 of Executive Order 12863 mandates that Inspectors General and General Counsel of the Intelligence Community components (in the FBI, the Assistant Director, Inspection Division (INSD), and the General Counsel, Office of the General Counsel (OGC), respectively) report to the IOB intelligence activities that they have reason to believe may be unlawful or contrary to Executive Order or Presidential Directive. This language has been interpreted to mandate the reporting of any violation of a provision of The Attorney General's Guidelines for FBI National Security Investigations and

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To: [REDACTED] From: Office of the General Counsel
Re: 178-HQ-C1229736-V10, 03/08/2007

Foreign Intelligence Collection (NSIG), effective 10/31/2003, or other guidelines or regulations approved by the Attorney General in accordance with EO 12333, dated 12/04/1981, if such provision was designed to ensure the protection of individual rights.

(U) Violations of provisions that merely are administrative in nature and not deemed to have been designed to ensure the protection of individual rights are generally not reported to the IOB. The FBI Inspection Division is required, however, to maintain records of such administrative violations for three years so that the Counsel to the IOB may review them upon request. The determination as to whether a matter is "administrative in nature" must be made by OGC. Therefore, such administrative violations must be reported as potential IOB matters.

~~(S)~~ (U) NSLs are a specific type of investigative tool that allows the FBI to obtain certain limited types of information without court intervention: (1) telephone and email communication records from telephone companies and internet service providers (Electronic Communications Privacy Act, 18 U.S.C. § 2709); (2) records of financial institutions (which is very broadly defined) (Right to Financial Privacy Act, 12 U.S.C. § 3414(a)(5)(A)); (3) a list of financial institutions and consumer identifying information from a credit reporting company (Fair Credit Reporting Act, 15 U.S.C. §§ 1681u(a) and (b)); and (4) full credit report in an international terrorism case (Fair Credit Reporting Act, 15 U.S.C. § 1681v). NSLs may be issued in conformity with statutory requirements, including 18 U.S.C. § 2709. NSIG, section V.12.

~~(S)~~ (U) In these eight potential IOB matters, OGC believes that only three, those in sections A and B, warrant reporting to the IOB. The other five matters are a result of administrative or third-party errors. In regard to the relevant, but unintentionally collected information, [REDACTED] is instructed to keep all information sequestered until a discussion is had with the issuing entity. As to the reportable matters in sections A and B, OGC will prepare a cover letter and a memorandum to report these matters to the IOB.

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To: [redacted] From: Office of the General Counsel
Re: 178-HQ-CI229736-V10, 03/08/2007

LEAD(s) :

Set Lead 1: (Action)

INSPECTION

AT WASHINGTON, DC

(U) For action deemed appropriate.

Set Lead 2: (Action)

[redacted]

AT

[redacted]

(U) In matters involving over-collected materials, the [redacted] Field Office should contact the parties in which NSLs were served and allow the entities to determine whether the improperly or unintentionally acquired information should be returned or destroyed with appropriate documentation to the file. If the information is relevant, a new NSL requesting the previously unrequested information may be submitted to the entity.

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(U) [redacted] is reminded of its responsibility, pursuant to Deputy Director Pistole's directive of 03/06/2007, to review all counterintelligence cases utilizing NSLs to determine if other full credit reports under 15 U.S.C. § 1681v were improperly obtained.

cc: Ms. Thomas

[redacted]

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IOB Library

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INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER

[REDACTED]

FIELD OFFICE

IOB MATTER 2007 [REDACTED] (U)

DECLASSIFIED BY: 65179 DMH/KSR/JB
ON 11-26-2007

(U) ~~(S)~~ By electronic communication dated February 22, 2007, the Federal Bureau of Investigation (FBI) [REDACTED] Field Office [REDACTED] reported that, on June 23, 2004, the FBI submitted a National Security Letter (NSL) seeking telephone toll billing records relating to a certain target to [REDACTED]. Due to confusion as to when the investigation was to have expired, the NSL was erroneously issued after the expiration date of the case. Clarification of the expiration date came to the attention of FBI [REDACTED] during an Office of Inspector General (OIG) audit [REDACTED]. FBI [REDACTED] was asked to sequester the provided phone records, but they responded that the carrier provided them with a letter advising that there were no records associated with the NSL request.

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(U) ~~(S)~~ By electronic communication dated February 22, 2007, FBI [REDACTED] reported that, on November 23, 2004, FBI [REDACTED] submitted two NSLs in an intelligence investigation seeking full credit reports pursuant to a statute specifically made available for terrorism matters only. These NSLs were issued to [REDACTED]. This mistake was an error on the part of FBI [REDACTED], who has since sequestered all documents received from these erroneously issued NSLs.

(U) ~~(S)~~ Due to the incorrect actions stated above, FBI [REDACTED] has taken steps to sequester all documents obtained from these two incidents. The errors were discovered during an OIG audit of the FBI's [REDACTED] Field Office [REDACTED]. Despite the inadvertent nature of the mistake, the fact remains that information was improperly collected. The improper collection of this information was a violation of the Attorney General's Guidelines for FBI National Security Investigations. Thus, the matter is being reported to the IOB.

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~~Derived from: G-3
Declassify on: 25X-1~~

~~SECRET~~

NSL VIO-32798

From: [redacted] (OGC) (FBI)

Sent: Thursday, March 29, 2007 2:16 PM

To: [redacted] (OGC) (FBI) [redacted] (OGC)

(FBI) [redacted] (OGC) (FBI)

Subject: NSL Field Question

SENSITIVE BUT UNCLASSIFIED

NON-RECORD

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DATE 11-26-2007 BY 65179 DMH/KSR/JB

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I am getting a question similar to #5 on [redacted] sheet. [redacted]

[Large redacted block]

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SSA [redacted]
Office of General Counsel
National Security Law Branch
Counterintelligence Law Unit
202-324-[redacted]

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SENSITIVE BUT UNCLASSIFIED

From: [redacted] (OGC) (FBI)
Sent: Tuesday, May 23, 2006 3:55 PM
To: [redacted] (OGC) (FBI)
Subject: RE: FYI - IOB policy

~~SECRET~~
~~RECORD XXXXX~~

DECLASSIFIED BY: 65179 DMH/KSR/JE
ON 11-26-2007

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I see what she put. I don't think [redacted]

[redacted]

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

From: [redacted] (OGC) (FBI)
Sent: Tuesday, May 23, 2006 3:49 PM
To: [redacted] (OGC) (FBI)
Subject: FW: FYI - IOB policy

~~SECRET~~
~~RECORD XXXXX~~

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[redacted]

I know that you don't want this, but just in case I need an SSA to back me up, I thought that you would be interested. [redacted]

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

From: [redacted] (OGC) (FBI)
Sent: Tuesday, May 23, 2006 10:46 AM
To: [redacted] (OGC) (FBI)
Subject: RE: FYI - IOB policy

~~SECRET~~
~~RECORD XXXXX~~

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No, I really don't think so. [redacted]

[redacted]

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

From: [redacted] (OGC) (FBI)
Sent: Tuesday, May 23, 2006 10:34 AM
To: [redacted] (OGC) (FBI)
Subject: RE: FYI - IOB policy

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~~RECORD XXXXX~~

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I think that, under the AG Guidelines, this is permissible. [redacted]

[redacted]

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

From: [redacted] (OGC) (FBI)
Sent: Tuesday, May 23, 2006 10:28 AM
To: [redacted] (OGC) (FBI); [redacted] (FBI)
Subject: RE: FYI - IOB policy

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NSL VIO-32800

~~SECRET~~
~~RECORD XXXXX~~

How about this [redacted]

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[redacted]

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

From: [redacted] (OGC) (FBI)
Sent: Tuesday, May 23, 2006 10:27 AM
To: [redacted] (OGC) (FBI)
Cc: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Subject: RE: FYI - IOB policy

~~SECRET~~
~~RECORD XXXXX~~

[redacted]

I understand what you are saying, but I do not think that [redacted]

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[redacted]

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

From: [redacted] (OGC) (FBI)
Sent: Tuesday, May 23, 2006 10:16 AM
To: [redacted] (OGC) (FBI)
Cc: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Subject: RE: FYI - IOB policy

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~~SECRET~~
~~RECORD XXXXX~~

[redacted]

isn't the issue whether in fact [redacted]

[redacted]

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

From: [redacted] (OGC) (FBI)
Sent: Tuesday, May 23, 2006 9:49 AM
To: THOMAS, JULIE F. (OGC) (FBI)
Cc: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)

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Subject: RE: FYI - IOB policy

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~~RECORD XXXXX~~

Julie:

As we discussed last week [redacted]

[redacted]

[redacted]

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[redacted] Do you want to meet some time to discuss these issues?
[redacted] do you have plans to come to FBIHQ? [redacted] will not be
available to discuss these issues until next Tuesday. She has a double

ear infection and will be out of the office the rest of the week.
Thank you.

[Redacted]

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

From: [Redacted] (OGC) (FBI)
Sent: Tuesday, May 23, 2006 8:56 AM
To: THOMAS, JULIE F. (OGC) (FBI)
Cc: [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI)
Subject: FW: FYI - IOB policy

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Julie, I was discussing IOBs with [Redacted] last week and she said that [Redacted]

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

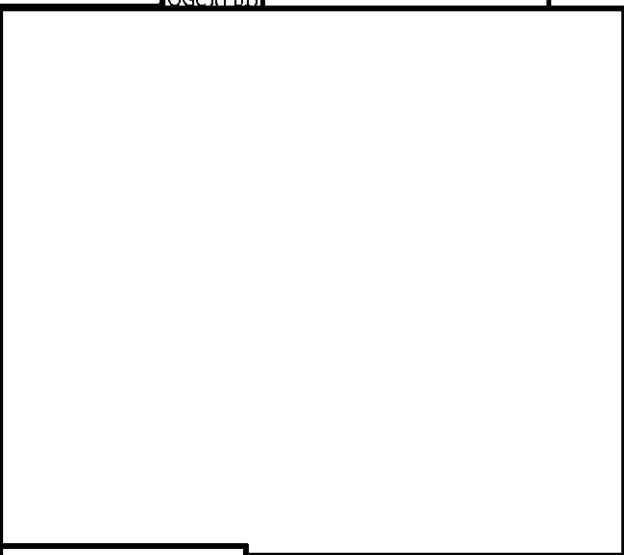
From: [Redacted] (OGC) (FBI)
Sent: Friday, April 07, 2006 3:47 PM

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To:
Cc:

FBI ALL CDCs

(OGC)(FBI)



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(OGC) (FBI)

(OGC)(FBI): THOMAS, JULIE F

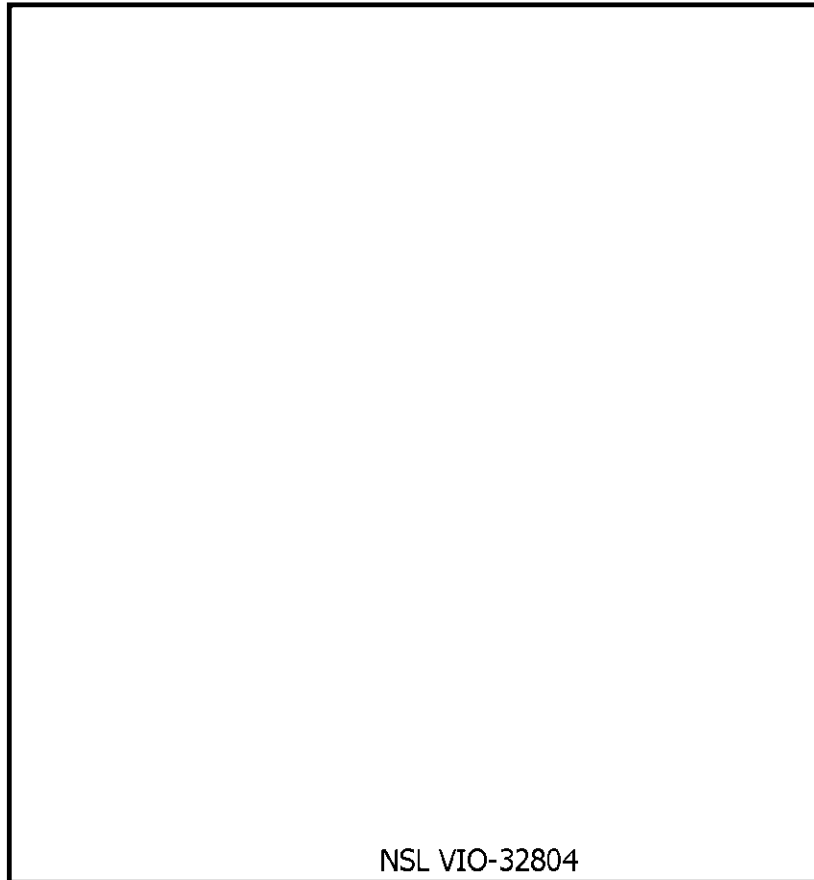
(OGC) (FBI)

Subject:

FYI - IOB policy

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This is the current IOB policy:



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NSL VIO-32804

OGC will be issuing official guidance to reflect the principles set forth above shortly.



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~~**DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97, Foreign CounterIntelligence Investigations**
DECLASSIFICATION EXEMPTION 1
SECRET~~

~~**DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97, Foreign CounterIntelligence Investigations**
DECLASSIFICATION EXEMPTION 1
SECRET~~

~~**DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97, Foreign CounterIntelligence Investigations**
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DECLASSIFICATION EXEMPTION 1
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DECLASSIFICATION EXEMPTION 1
SECRET~~

~~DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97, Foreign CounterIntelligence
Investigations
DECLASSIFICATION EXEMPTION 1
SECRET~~

SECRET

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From: [redacted] (FBI)
Sent: Wednesday, March 07, 2007 4:02 PM
To: [redacted] (OGC) (FBI)
Cc: [redacted] (FBI); [redacted] (FBI); [redacted]
Subject: RE: NSL

(S)

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RECORD [redacted]

DATE: 11-26-2007
CLASSIFIED BY: 65179 DMH/KSR/JE
REASON: 1.4 (c)
DECLASSIFY ON: 11-26-2032



Serial 351.wpd



Serial 350.wpd

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

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-----Original Message-----
From: [redacted] (OGC) (FBI)
Sent: Wednesday, March 07, 2007 7:30 AM
To: [redacted] (FBI); [redacted] (SF) (FBI)
Cc: [redacted] (FBI)
Subject: NSL

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RECORD [redacted]

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I have reviewed the potential IOB EC. I know the position that you all have taken. My question is, [redacted]. Thanks. The General Counsel needs the answer in preparation for her testimony. [redacted]

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SSA [redacted]
Office of General Counsel
National Security Law Branch
Counterintelligence Law Unit
202-324-[redacted]

~~DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97, Foreign Counterintelligence Investigations
DECLASSIFICATION EXEMPTION 1
SECRET~~

~~DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97, Foreign Counterintelligence Investigations
DECLASSIFICATION EXEMPTION 1
SECRET~~

NSL VIO-32807

SECRET

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From: [redacted] (OGC) (FBI)
Sent: Thursday, March 29, 2007 3:52 PM
To: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)

Subject: RE: NSL Field Question

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-26-2007 BY 65179 DMH/KSR/JR

I hate to say it, but [redacted] for one, is VERY confused and doesn't see the difference. I agree with him. I explained [redacted]

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[redacted]

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

From: [redacted] (OGC) (FBI)
Sent: Thursday, March 29, 2007 2:49 PM
To: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Subject: RE: NSL Field Question

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SENSITIVE BUT UNCLASSIFIED
NON-RECORD

That's a PIOB because [redacted]
[redacted]

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

From: [redacted] (OGC) (FBI)
Sent: Thursday, March 29, 2007 1:16 PM
To: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Subject: NSL Field Question

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SENSITIVE BUT UNCLASSIFIED
NON-RECORD

I am getting a question similar to #5 on [redacted] sheet. [redacted]

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[redacted]

SSA [redacted]
Office of General Counsel

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National Security Law Branch
Counterintelligence Law Unit
202-324-

SENSITIVE BUT UNCLASSIFIED

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