



U.S. Department of Justice

Office of the Inspector General

May 6, 2010

Marcia Hoffman
Staff Attorney
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, California 94110

Subject: Freedom of Information/Privacy Act Request [08-OIG-164]

Dear Ms. Hoffman:

I am writing regarding the above-captioned FOIA request in which you seek certain information relating to OIG reports concerning the FBI's issuance of national security and exigent letters. I apologize for the delay in responding to your request.

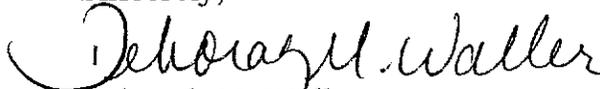
The OIG has no records responsive to items 2 and 3 of your request (correspondence or communications between the OIG and the IOB or between the OIG and the Privacy and Civil Liberties Oversight Board).

With regard to item 4 of your request (communications between the OIG and members of Congress), please find enclosed 21 pages of documents. Please note that we have not interpreted your request to include public testimony given by the Inspector General before congressional committees. In any event, transcripts of such testimony are available on the OIG's website.

We have located one document responsive to item 1 of your request. This document originated with the FBI. Accordingly, we have referred this document to the FBI for processing and direct response to you pursuant to 28 C.F.R. § 16.4(c). Please note that we have not interpreted your request to include the OIG's reports relating to NSLs or to communications between the FBI and the OIG made during the course of the OIG's NSL reviews for the purpose of gathering information and documents that the OIG used to prepare its reports.

If you are dissatisfied with my action on this request, you may appeal from this action by writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Avenue, Suite 11050, Washington, D.C. 20530. Your appeal must be received by OIP within 60 days of the date of this letter. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." In the event you are dissatisfied with the results of any such appeal, judicial review will thereafter be available to you in the United States District Court for the judicial district in which you reside or have your principal place of business, or in the District of Columbia, which is also where the records you seek are located.

Sincerely,

A handwritten signature in cursive script that reads "Deborah M. Waller". The signature is written in black ink and is positioned above the typed name.

Deborah M. Waller
FOI/PA Specialist
Office of the General Counsel

Enclosures



U.S. Department of Justice

Office of the Inspector General

May 9, 2007

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515-6216

Attention: Renata Strause

Dear Mr. Chairman:

Enclosed are my responses to questions for the record resulting from the hearing held before the House Committee on the Judiciary on March 20, 2007, concerning the Federal Bureau of Investigation's use of National Security Letters.

Sincerely,

A handwritten signature in cursive script that reads "Glenn A. Fine".

Glenn A. Fine
Inspector General

Enclosure

Response to April 19, 2007, Questions From Chairman Conyers'
Follow-up to March 20, 2007, Hearing Before the House Judiciary
Committee

1. Your report mentions some problems reconstructing the actual number of NSL requests. Will we ever know how many requests were actually made or even whether they all were grounded in an "authorized" investigation?

ANSWER: The FBI has stated that it is attempting to correct the data previously reported to Congress on national security letter (NSL) usage by correcting its database and, through a random sampling of 10 percent of the total entries in the database, manually checking the entries against relevant entries in its Automated Case Support System (ACS). Based on the results of this audit, the FBI has stated that it will supplement some of its prior reports to Congress. However, these steps will only provide estimates of the total number of NSLs issued during the relevant time periods. Moreover, we cannot say at this point whether these efforts will enable the FBI to document that each NSL was grounded in an authorized national security investigation.

For future reporting, the FBI has stated that it is developing a "workflow tool" that it believes will automate much of the work that is associated with preparing NSLs and related paperwork. The OIG will be closely monitoring these developments and will report its findings and analysis in our report due to Congress at the end of this year.

2. On page 109 of your Report, you explain that FBI agents are accessing "NSL information about parties two or three steps removed from their subjects without determining if these contacts reveal suspicious connections."

- Does this activity violate the standard that information sought must be relevant to an authorized investigation?

ANSWER: The NSL statutes do not require the FBI to examine the results of initial NSLs relating to the investigative subject before issuing NSLs on persons two or three steps removed from the subject. So long as the authorizing official certifies that the information requested is "relevant" to, sought for, or necessary for an authorized investigation (depending on the NSL statute involved), the FBI may request information two or three steps removed from a subject at the outset of its investigations. In our recent review, we did not see the FBI routinely asking for NSL information two or three steps removed from its investigative subjects, but we identified some instances where this

occurred. We also noted periodic concerns about this issue in communications between attorneys in the FBI's Office of the General Counsel's National Security Law Branch (NSLB) and various field-based Chief Division Counsels. The absence of any guidance on the use and sequencing of national security letters also raised concerns that their use could, in some cases, be inconsistent with the proviso in the Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSI Guidelines) requiring that the FBI use the "least intrusive collection techniques feasible" in its investigations. For this reason, we recommended that the FBI provide guidance and training on the application of the Attorney General Guidelines' proviso on using the "least intrusive collection techniques feasible" to the use and sequencing of national security letters.

3. Besides the FBI's relationship with the three telephone companies, did you find other instances in which the FBI formed close private sector relationships?

- How do these private sector relationships affect the integrity, if at all, of the FBI's operations?

ANSWER: The only private sector relationships that related to our review of the FBI's use of national security letters concerned the FBI's contractual relationship with the three telephone companies. We found that the expectations of the FBI's Communication Analysis Unit and the telephone companies, as reflected in contracts and other documents we reviewed, appeared to contemplate compliance with NSL statutes, Attorney General Guidelines, and internal FBI policy. However, we found that the use of exigent letters to obtain information from these three telephone companies did not comply with these requirements.

4. How would you equate the FBI's practice of using Certificate Letters with the Federal Reserve Bank with its use of exigent letters with the three telephone companies?

ANSWER: As noted in our report, we believe the FBI circumvented the Electronic Communication Privacy Act when it issued exigent letters to obtain records from the three telephone companies. We also believe the FBI violated the NSI Guidelines and its internal policies in issuing the exigent letters. In contrast, when we analyzed the FBI's practice of obtaining certain records known as Fedwire data from the Federal Reserve Bank of New York in response to certificate letters rather than Right to Financial Privacy Act (RFPA) national security letters, we could not reach a definitive conclusion as to whether the practice violated the RFPA. The reason we could not reach a definitive conclusion was that it is unclear whether Federal Reserve Banks are "financial institutions" for

purposes of the RFPA statute and whether Fedwire records are "financial records" under the statute.

With respect to the FBI's use of both the exigent letters and certificate letters, we noted in our report concerns about the ability of NSLB attorneys to obtain accurate, timely, and complete information from personnel in the Counterterrorism Division and the fact that NSLB attorneys were not consulted prior to the institution of these practices.

5. On April 6, 2006, the U.S. Attorney General responded to a question that was posed for the record by members of this Committee relating to the status and efficiency of the automated tracking system that would electronically connect the field divisions, FBI Headquarters, the FBI's National Security Law Unit, and the Office of Intelligence Policy Review (OIPR). The Attorney General responded that the Foreign Intelligence Surveillance Act Management System (FISAMS) has continued and has been highly efficient -- now with over 5,000 registered users. Based on your report, is it likely that the FISAMS, to the contrary, has not been functioning at all?

ANSWER: We did not review FISAMS as part of our national security letters or Section 215 reviews, and we therefore are not able to answer this question.

6. The Attorney General indicated that the Assistant Director of the FBI's National Security Branch issued a communication, dated January 24, 2006, reiterating the importance of accuracy in the FISA process, followed by a directive, dated February 2, 2006, requiring case agents to open and maintain FISA-subfiles containing written substantiation for each factual assertion contained in the FISA declaration. Please provide copies of this information to the Committee since issuance of the February 2 directive.

ANSWER: We did not review these directives in connection with our national security letters or Section 215 reviews. Consistent with our normal practices with regard to requests for FBI documents, we refer the Committee to the FBI to obtain copies of these documents.

7. On February 6, 2006, the FBI instituted a FISA Renewal Review Board, consisting of managers from OIPR, FBI, and the Criminal Division's Counterterrorism and Counterespionage Sections, to evaluate FISA renewal requests at regular intervals and to terminate non-productive FISAs, facilitating the more efficient use of limited resources. Can you comment on the substance and frequency of this Board's evaluation? Are the evaluations issued in writing? What is the ratio of "productive" FISA renewal requests and "non-productive" ones?

ANSWER: This subject was beyond the scope of the OIG's report on the FBI's use of national security letters. We believe the Committee should address this question, in the first instance, to the FBI and the Department's National Security Division.

8. The Attorney General has told the Committee about the advent of a half billion dollar "Sentinel" case management system for DOJ investigative matters. He alluded to its proposed expansion to include the work of U.S. Attorneys. Has this expansion occurred, and if so, what divisions of the Department are interoperable with the U.S. Attorneys?

ANSWER: This question discusses two separate systems being developed within the Department of Justice: Sentinel and the Litigation Case Management System (LCMS). Below is a brief summary of each project followed by our understanding of the interoperability of the systems.

The Sentinel case management system, initiated in 2005, is an ongoing FBI project to provide the FBI with an electronic case system, moving the FBI away from its current paper-based case management system. The Sentinel upgrade, if implemented successfully, should allow for significant improvements and efficiencies within the FBI, including the immediate dissemination of case file information within the FBI. According to the FBI, the project is scheduled to be completed in December 2009. Sentinel, which is being developed and implemented in four phases, is currently nearing the completion of its first phase. While the project is being developed by the FBI, the case management system is being built to utilize a framework of applications that may be able to be used by other investigative agencies within and outside the Department of Justice once the system is fully operational. The OIG is currently completing the third in a series of audits on the development and implementation of Sentinel.

Separate from Sentinel, the Department of Justice awarded a contract to Computer Sciences Corporation in May 2006 for the development of the LCMS. This project is scheduled to be completed in 2010. The LCMS is intended to provide the Department's litigating divisions greater data sharing capabilities through a centralized database with unique interfaces for the various divisions. The implementation of the LCMS is also to be phased, starting with the U.S. Attorney's Offices followed by other litigating divisions.

Based on our preliminary audit work on Sentinel, we believe that Sentinel and the LCMS may be interoperable on some level once both projects have been implemented. Sentinel is being built using the National Information Exchange Model (NIEM), a set of enterprise-wide

information exchange standards and processes. Although we have not audited the LCMS project and have limited information about it, we believe that the LCMS will likely also be implemented using the NIEM standards. This data exchange capability could allow the FBI to provide case information directly to the litigation divisions as cases move from investigation to litigation.

From: Leathers, Jennifer (Judiciary-Dem) [mailto:Jennifer_Leathers@Judiciary-dem.senate.gov]
Sent: Wednesday, April 04, 2007 4:44 PM
To: cynthia.schnedar@usdoj.gov
Subject: 03/21/2007 - Misuse of Patriot Act Powers Hearing: Questions for the Record

Attached please find a letter from Senator Leahy to Inspector General Glenn Fine with additional written questions for the record and related materials following the hearing titled "Misuse of Patriot Act Powers: The Inspector General's Findings of Improper Use of the National Security Letters by the FBI" on March 21, 2007.

Thank you,

Jennifer Leathers
Hearing Clerk
Senate Judiciary Committee
(202) 224-7703

PATRICK J. LEAHY, VERMONT, CHAIRMAN

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
MICHAEL O'NEILL, *Republican Chief Counsel and Staff Director*

April 04, 2007

Hon. Glenn A. Fine
Inspector General
U.S. Department of Justice
Office of the Inspector General
950 Pennsylvania Avenue, N.W.
Suite 4706
Washington, D.C. 20530-0001

Dear Mr. Fine:

Thank you for your testimony at the United States Senate Judiciary Committee hearing regarding "Misuse of Patriot Act Powers: The Inspector General's Findings of Improper Use of the National Security Letters by the FBI" on March 21, 2007.

Enclosed are written questions from Committee members. In order to complete the hearing record, please send your written responses as soon as possible and in no event later than Wednesday, April 18, 2007 to my office, attention Jennifer Leathers, Hearing Clerk, Senate Judiciary Committee, 224 Dirksen Senate Office Building, Washington, D.C., 20510. Please also send an electronic version of your responses to Jennifer_Leathers@judiciary-dem.senate.gov.

Again, thank you for your participation. If you have any questions, please contact Jennifer Leathers of my staff at (202) 224-7703.

Sincerely,


PATRICK LEAHY
Chairman

**Questions of Senator Patrick Leahy,
Chairman, Committee On The Judiciary
Hearing on "Misuse of Patriot Act Powers"
March 21, 2007**

Questions for Glenn Fine, Inspector General, Department of Justice

Exigent Letters

1. Your March 2007 report extensively discussed the FBI's use of more than 700 so-called "exigent letters." The relevant statute allows for companies to voluntarily provide records in an emergency involving immediate danger of death or serious physical injury. But you have observed that, in these exigent letters, where the government requests records and then says that it will follow that request with mandatory process, like a National Security Letter (NSL) or a subpoena, the production is no longer truly voluntary.
 - a. Do you think that the "exigent letter" process is legally proper even if done in a genuine emergency and followed up with an NSL?
 - b. According to press reports, the FBI still has contracts with three telephone companies allowing for instant production of records to be followed up with NSLs – essentially the exigent letter process you documented. Do you think that the FBI should change this policy?
 - c. Do you believe that the exigent letters used by the FBI satisfied the statutory requirement that the emergency involved an "immediate danger of death or serious physical injury" to a person before making the voluntary disclosures? Do you believe that the FBI's current, revised exigent letters satisfy this standard?

Counsel Approval

2. The PATRIOT Act reduced the level of approval necessary before an NSL can be issued. Now a Special Agent-in-Charge of any of the FBI's field offices can sign the NSLs, whereas previously only senior officials at FBI headquarters could sign NSLs. The only attorneys who now review NSLs are Division Counsels, who report to the Special Agents-in-Charge in their field offices. According to your report, because the Division Counsels are brought into the process late, and because they are in the same chain of command as the officials requesting the NSLs, Division Counsels have often been reluctant to question the NSLs presented to them and to exercise their independent professional judgment.

- a. Do you believe that the apparent constraints on the attorneys who review NSLs have contributed to the number of improper NSLs approved and sent out?
- b. Would it be beneficial for attorneys at the FBI or at the Justice Department with more independence from the field office officials requesting NSLs to review those NSLs to make sure that they meet legal and internal standards?

Prior Inaccuracies

3. The Judiciary Committee has received letters and briefings from Justice Department and FBI officials in the past, assuring the Committee that NSLs were being used properly, and that all appropriate safeguards and legal authorities were being followed. For example, in a November 2005 letter to Senator Specter, attached, the Justice Department asserted that the FBI was not abusing the process for seeking NSLs, and that all NSL activity was accurately being reported to Congress as required by law. Your report appears to contradict both assertions. Do you believe that the attached letter was accurate when sent, and do you conclude that any aspects of it were intentionally or unintentionally misleading as to NSLs?

Failure to Follow Rules

4. Your report found that, in 60 percent of the NSLs you reviewed, the FBI failed to comply with one or more of its own internal control policies. In many cases, you found that the NSLs were not reviewed by an appropriate supervisor, and in many others, there was no written record of the basis for the request. And in three of the four FBI offices you visited, the office did not systematically keep signed copies of NSLs that were sent out. How will the FBI be able to effectively protect against future abuse of the NSL process with new rules and policies, when it has, thus far, failed to follow its own rules and policies?

Library Records

5. In your report, you found that "the FBI did not obtain Section 215 orders for library records from 2002 through 2005." However, in a Windsor, Connecticut, case which has received media attention, the FBI served a National Security Letter, not a Section 215 order, on four librarians. In the course of your review, did you find any instances in which the FBI used National Security Letters to request public or academic library records, or book store records? If so, did you reach any conclusions about the propriety of those NSLs?

Preliminary Briefing on 2006 Report

6. Your office is conducting a follow up investigation of the FBI's use of NSLs in 2006. Would you or your staff be willing to brief the Judiciary Committee about preliminary findings of this follow-up investigation as soon as possible and well in advance of issuing the final report?

Use of Improperly Obtained Information in Criminal Cases

7. Your report suggests that much of the information improperly obtained with NSLs may have been placed in nationwide databases or used in other investigations, with no record of the source of the information.
 - a. Did you find that any of this information has, or is likely to have, been used in criminal cases?
 - b. Do you think that the FBI's failure to follow the law in obtaining NSLs may be exculpatory, or Giglio, information, that needs to be disclosed if information obtained through such NSLs is used in a criminal case in court?

Senate Judiciary Committee
Hearing on "Misuse of Patriot Act Power: The Inspector General's Findings
of Improper Use of the National Security Letters by the FBI"
Wednesday, March 21, 2007

Questions Submitted by U.S. Senator Russell D. Feingold
to Inspector General Glenn Fine

1. At the hearing, I asked you about an investigation in which, according to your report, nine NSLs were issued for a total of 11,100 separate phone numbers. Please provide in a classified response whatever information you can about the circumstances that led to thousands of phone numbers being covered by just a few NSLs.
2. Your report questioned whether case agents should be able to "access NSL information about parties two or three steps removed from their subjects without determining if these contacts reveal suspicious connections."
 - a. Is it correct that under current law these types of tenuous connections are all that is required to issue a National Security Letter (NSL) since the statutory standard for issuing an NSL is that the information is "relevant to" or "sought for" an authorized investigation?
 - b. Is it also correct that under current law the person whose records are obtained need not be the subject of the investigation?
 - c. Has the FBI or Justice Department provided any guidance to the field about what how to interpret these statutory standards, other than to state generally that agents are to use the least intrusive means available?
3. Your report explained that the FBI had no system for tracking how NSL-derived information was being used by the Bureau or other agencies. Is that unusual? For example, in the criminal context, don't investigators need to know how evidence was obtained if they want to rely on it to build a criminal case?
4. In Director Mueller's letter to you in response to the report, he said, "[T]he FBI does not believe that the use of exigent letters is improper in itself . . ." Do you agree with Director Mueller that exigent letters may be appropriate in some circumstances? Please explain.
5. According to your report, an associate general counsel with the National Security Law Branch (NSLB) at the FBI first raised concerns about the use of exigent letters in late 2004. Then in June 2006 – 18 months later – the

NSLB, rather than banning these letters, instead issued revised models for exigent letters that stated that the Bureau would follow up with an NSL instead of a grand jury subpoena. Your report found that did not solve the problem, as neither the old nor the new version of the exigent letter was authorized by statute.

- a. When did the FBI finally and completely bar the use of exigent letters?
 - b. Why do you believe it took so long to resolve this issue?
6. As you point out in the report, the NSL authority for financial records was expanded in 2003 to cover not just traditional financial institutions like banks, but also a range of other entities, from casinos to car dealers to insurance companies to real estate companies. To what extent has the FBI used this NSL authority to obtain information from these other types of entities that most of us would not think of as “financial institutions”?
7. As part of your review of the use of Section 215 business records orders, did you evaluate the breakdown between records sought that pertain to individuals who were already targets of investigations, and records sought that pertain to individuals who were not already targets of investigations? If so, what did you find?
8. The NSL report identified some undefined terms in the NSL statute covering communications records as one source of confusion for FBI agents. Specifically, the statute authorizes agents to obtain “toll billing records information” and “electronic communications transactional records,” but the statute defines neither term.
- a. How has the FBI interpreted these terms up to this point? Have agents in some offices been interpreting them differently than agents in other offices?
 - b. What type of information is the FBI actually getting with this authority?
9. At the hearing, you indicated to Senator Whitehouse that you do not believe the FBI, Congress, or the general public would know about the abuses of NSLs if not for your report. On December 14, 2005, the *Washington Post* quoted Attorney General Gonzales as saying, “[T]he PATRIOT Act has already undergone extensive review and analysis by Congress, by the DOJ Inspector General, and by other bodies This extensive review has uncovered not one verified example of abuse of any of the Act’s provisions.”

- a. At that point in time, had you undertaken any review or analysis of the Patriot Act other than investigating complaints by individual citizens?
 - b. Would the serious misuse of the NSL authorities that your report uncovered have come to light if Congress had relied solely on individual citizens to come forward with complaints?
10. During your testimony before Congress, several House Republicans and one Republican Senator implied that the NSL authority that existed prior to the Patriot Act is similar to the authority that exists today. However, in the Patriot Act, Congress replaced the old standard, requiring specific and articulable facts demonstrating that the records pertain to a suspected terrorist or spy, with a standard requiring only that the records be “relevant to” or “sought for” an authorized investigation, with no requirement that there be any individualized suspicion about the individuals whose records the FBI is obtaining. Would you agree that this was a dramatic expansion of the FBI’s authority?
11. In your testimony, you said, “[A]lthough we could not rule it out, we did not find that FBI employees sought to intentionally misuse NSLs or sought information that they knew they were not entitled to obtain.” What evidence prevented you from ruling out the possibility of intentional misuse of NSLs?

**Senator Charles Grassley
Questions for the Record**

**Senate Judiciary Committee Hearing: "The Inspector General's Findings of Improper Use
of the National Security Letters by the FBI"**

March 21, 2007

Questions from Senator Grassley

For Inspector General Fine:

1. On March 20, 2007, *The Washington Post* reported that in light of the developments surrounding the release of your report on national security letters, the FBI issued new guidance to field agents for seeking phone records on an emergency basis. This new guidance included a new template "emergency letter" and instructions telling agents there is no need to follow these letters with NSL's or subpoenas. Further, this guidance states that the letters are the preferred method in emergencies, but that agents may make these emergency records requests orally. FBI Assistant Director John Miller stated that these new procedures will include "an audit trail to ensure we [FBI] are doing it the right way".
 - a. How do you see these new procedures working?
 - b. Do you think FBI can provide adequate justification for emergency requests when they allow agents to make these requests orally?
 - c. What basic controls do you believe FBI should institute to ensure these new procedures aren't just a way to avoid a paper trail that leads to another report like this one you issued?
 - d. What review process or other controls has the FBI put in place to ensure that these new procedures are being followed?
 - e. Will there be any disciplinary action for agents and supervisors that do not comply with these new procedures?

2. About two weeks ago, the FBI issued a Bureau-wide directive prohibiting the use of the exigent letters and asked all FBI field offices to identify any use of an exigent letter. Have any similar letters been identified by other FBI offices, or is it limited to just the Communications Analysis Unit (CAU) at headquarters?

3. On page 93 of your report, you stated that, "CAU personnel circumvented the ECPA (Electronic Communications Privacy Act) NSL statute." On page 3 of your testimony, however, you state that the FBI's misuse of national security letters "violated" NSL statutes. Simply put, were the exigent letters illegal? If so, what penalties or remedies apply to the legal violations you found?

4. In high-profile indictments last year, several Hewlett-Packard executives were prosecuted under California law for obtaining telephone records using false pretenses. The Telephone Records and Privacy Protection Act of 2006, which was signed into law earlier this year, also makes it a federal crime to “knowingly and intentionally” obtain confidential phone records using false statements. Could there be potential criminal violations under these or other statutes if FBI officials knowingly issue exigent letters with false representations to obtain phone records? If so, what other state or federal statutes may apply?

5. According to FBI briefings, the only system for tracking National Security Letters was a simple Microsoft Access database operated by the FBI General Counsel. The FBI’s response to your report indicates that a more sophisticated computer system module is currently being designed to handle the preparation, issuance and tracking of National Security Letters and that the prototype of the module is scheduled for testing in the FBI’s Washington Field Office in July, 2007.

- a. Please describe what your office knows about the implementation of this module.
- b. Will it be part of the FBI’s Sentinel system? If so, what impact will the new, additional requirements have on the budget and schedule for implementing the Sentinel computer system?
- c. Why did the process of analyzing the FBI’s business processes during preparation for computer systems upgrades, first for the Virtual Case File and then for Sentinel, not identify the need to record and track the issuance of National Security Letters?
- d. Were the personnel involved in designing VCF and Sentinel unaware of the database maintained by the General Counsel’s Office or was a conscious decision made not to include that function in the development of Sentinel?
- e. Do you believe that the implementation of this system will eliminate most or all of the problems and abuses uncovered during your investigation?
- f. What is the timeframe for making this system available to every FBI official responsible for issuing and tracking National Security Letters?

6. What training, if any, did the supervisors at the FBI receive regarding the issuance of National Security Letters and exigent letters? In particular, what training did the Directors of the FBI’s Communications Analysis Unit receive on the legal requirements for the issuance of NSL’s prior to assuming the responsibilities of that office?

7. What written guidelines, if any, did the FBI’s Office of General Counsel draft to set forth the legal requirements for the issuance of National Security Letters and how were those written guidelines disseminated to the field?

8. What written guidelines, if any, did the FBI’s Office of General Counsel draft to set forth the legal requirements for emergency requests and how were those written guidelines disseminated to the field?

9. Are there currently any training programs being used within the Federal Bureau of Investigation to provide guidance to rank and file agents on the use of National Security Letters and exigent letters?

10. During briefings of Congressional staffers, the FBI has acknowledged having retroactively issued seven blanket National Security Letters to communications carriers to cover previously-issued exigent letters. Those letters are not covered in your report since they were issued outside the timeframe covered by the report, i.e., 2003-2005.

- a. Please describe in detail what your office currently knows about the issuance of these blanket letters. In complying with this request, please provide the title of the individual(s) who signed the blanket National Security Letters and the number of exigent letters covered by each blanket National Security Letter.
- b. Do you believe these blanket letters were an appropriate way to provide legal process for the records obtained inappropriately through the exigent letters?

From: Schnedar, Cynthia A. (OIG)
Sent: Friday, April 13, 2007 1:42 PM
To: (Larry.Hanauer@mail.house.gov)
Cc: Robinson, Jeanetta M. (OIG); Parker, Joan M. (OIG)
Subject: QFRs

Larry,

Attached is a cover letter and our response to the QFRs that were directed to the OIG.
Please call me if you have any questions.

Cynthia Schnedar
616-0542



U.S. Department of Justice

Office of the Inspector General

April 13, 2007

Michael J. Delaney
Staff Director
Permanent Select Committee on Intelligence
U.S. House of Representatives
H-405 The Capitol
Washington, D.C. 20515
Attention: Larry Hanauer

Dear Mr. Delaney:

Enclosed please find responses from the Department of Justice Office of the Inspector General to questions for the record resulting from the hearing held by the United States House of Representatives Permanent Select Committee on Intelligence on March 28, 2007. Inspector General Glenn A. Fine was one of three witnesses who testified at this hearing which was on the Federal Bureau of Investigation's use of National Security Letters. The enclosed document contains responses to the questions for the record which were directed to Mr. Fine. Please call me at (202) 514-3435 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Cynthia Schnedar".

Cynthia Schnedar
Counselor to the Inspector General

Enclosure

3. TO DOJ IG:

a. Did you find any evidence of profiling in the issuance of NSLs or "exigent letters"?

ANSWER: Our review examined the issues identified in Section 119 of the USA PATRIOT Improvement and Authorization Act of 2005 (Patriot Reauthorization Act), which did not include "profiling." However, in the file reviews and interviews we conducted in four field offices and FBI Headquarters, we did not come across evidence of "profiling" or other indications that investigative subjects or others were targeted in the FBI's use of NSL authorities due to their ethnicity.

b. Do you intend to look for patterns that would suggest profiling?

ANSWER: Our review of the FBI's use of national security letter authorities in 2006 will examine the comprehensive questions Congress directed us to address in the Patriot Reauthorization Act. We believe it would be difficult if not impossible to review patterns of "profiling" based on the information collected by the FBI in its centralized database.

c. Please tell the Committee how many non-profit entities were the subjects of NSLs. Given the FBI's abysmal record-keeping, how do you know this number is accurate?

ANSWER: The FBI's only centralized database that tracks NSL usage does not indicate whether the NSL recipient is a for-profit or non-profit institution.

d. Please tell the Committee how many religious institutions or organizations (or their officials) were the subject of NSLs. Given the FBI's abysmal record-keeping, how do you know this number is accurate?

ANSWER: The FBI's only centralized database that tracks NSL usage does not indicate whether the NSL recipient is a religious institution or organization or an official of such organizations.

12. TO DOJ IG:

Based upon Inspector General Fine's testimony, we understand that the IG investigation did not seek to determine whether, in improperly issuing NSLs, FBI personnel intended to violate law and policy.

a. Why was no effort made to determine the intent of FBI personnel in this regard?

ANSWER: As directed by the Patriot Reauthorization Act, our review sought to determine whether there was any "improper or illegal use" of national security letter authorities. We identified several instances in which the FBI misused national security letter authorities, including possible Intelligence Oversight Board (IOB) violations identified and reported by field agents to FBI-OGC, possible IOB violations that we identified in our site visits to four FBI field offices that were not identified or reported to FBI-OGC, and the practice of sending exigent letters rather than national security letters to obtain telephone toll billing records and subscriber information. When we learned of the use of exigent letters, we interviewed several key personnel in the FBI Counterterrorism Division's Communications Analysis Unit, FBI-OGC attorneys, and a senior Counterterrorism Division official. Based on this information, we were able to identify the general scope of the practice, how the practice evolved, and efforts by FBI-OGC attorneys to address the problem. However, our review did not attempt to assess the actions and motivations of each individual who signed the letters or to assign individual accountability for the issuance of the exigent letters. The OIG and the FBI are now conducting a joint investigation of the use of the exigent letters from the inception of the practice to date. During this review, we will assess the actions of relevant FBI personnel and their supervisors involved in the issuance of exigent letters.

b. Wouldn't that have been useful information in determining exactly what went wrong and why it happened?

ANSWER: See answer to 12(a) above.

c. Did you at least inquire as to whether the FBI personnel in question were aware of the correct procedures and the requirements of the law?

ANSWER: We did discuss these issues with the individuals we interviewed. In our current review, which is discussed in the answer to 12(a), we will probe these issues in depth.

d. Does the Inspector General have any plans to make inquiries along these lines?

ANSWER: Yes. As stated above, the OIG and the FBI are now conducting a joint investigation of the use of the exigent letters from the inception of the practice. We will include our findings on these issues in our calendar year 2006 report.