Precedence: PRIORITY
Date: 02/21/2007

To: General Counsel
Inspection
Charlotte
Attn: NSLB
Attn: IIS
Attn: SAC
ASAC
SSA
CDC

From: Charlotte
Raleigh Resident Agency
Contact: SA

Approved By:

Drafted By:

Case ID #: (S) 278-HQ-C1229736-VIO (Pending)

Title: (S) INTELLIGENCE OVERSIGHT BOARD (IOB) VIOLATION
FBIHQ - CHARLOTTE DIVISION

Synopsis: (U) Report of a potential Intelligence Oversight Board (IOB) matter.

Derived From: G-3
Declassify On: 02/21/2032

Reference: (S) 278-HQ-C1229736 Serial 2572
(S)
(S)

Enclosure(s): (U) Enclosed for NSLB and IIS are the following:
One copy of a series of e-mails (3 pages) to include
an e-mail from [redacted] to ASC [redacted], et al,
FBIHQ, CTD, dated 07/21/2005.

Details: (S)

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

DATE: 05-29-2007
CLASSIFIED BY 65179 DMH/KSR/JW
REASON: 1.4 (C)
DECLASSIFY ON: 05-29-2032
To: General Counsel
From: Charlotte
Re: 278-HQ-C1229736-VIO, 02/21/2007

(S) As a result of the investigation

07/07/2005,

(X) On or about 07/13/2005, SA coordinated with United States Attorney's Office (USAO), Eastern District of North Carolina (EDNC), Chief of Criminal, to obtain a Grand Jury subpoena.

After receiving the subpoena, SA went to and met with Associate General Counsel and served the subpoena and had some records in hand when he received a call from SSRA, who had been notified by FBIHQ, ITOS I, CONUS II, Team 6, that we were not to utilize a Grand Jury subpoena and that we must obtain a National Security Letter (NSL). Therefore, SA returned the records to

(X) SSRA advised FBIHQ that our SAC was TDY out of the Division and therefore we would need to complete an EC addressed to General Counsel requesting an NSL be approved at FBIHQ. SSRA was then instructed by FBIHQ, ITOS I, CONUS II, that Charlotte would be required to draft the NSL due to time constraints, and then obtain approval from a neighboring division's SAC. SA then drafted an NSL to obtain the student records and forwarded the NSL to SSRA Division, for review. The NSL was then forwarded by SSRA to SAC for approval.

Agent served the NSL at does not recall.
To: General Counsel  From: Charlotte

Re: (X) 278-HQ-C1229736-VIO, 02/21/2007

the individual's name to whom the NSL was given. TFA was advised that the NSL was not the appropriate documentation to receive records declined to honor the NSL.

(SS) SSRA then contacted CDC, Charlotte Division, for guidance concerning the matter and the questioned legality of the NSL and FBIHQ, OGC, concerning the matter. SSRA also contacted ASAC, Charlotte Division, who in turn was also in contact with FBIHQ.

(SS) Subsequently, SSRA was advised by FBIHQ that a Grand Jury subpoena would be obtained which was the office of origin on the matter, and the Grand Jury subpoena would be forwarded to the Raleigh RA for service on

(SS) On 07/15/2005, the Raleigh RA received a copy of the Grand Jury subpoena served with the Grand Jury subpoena. After resistance to comply, SA advised that he had been served. SSRA was in contact with advising of reluctance to honor the Grand Jury subpoena and at this time contacted concerning the matter. Approximately one hour later contacted the Raleigh RA and advised that the records were waiting for our retrieval.
LEAD(s):

Set Lead 1: (Discretionary)

GENERAL COUNSEL
AT WASHINGTON, DC
(U) NSLB; For information and action deemed appropriate.

Set Lead 2: (Discretionary)

INSPECTION
AT WASHINGTON, DC
(U) IIS; For information and action deemed appropriate.

♦♦
Thanks for the rapid response.

We originally were in the process of obtaining a subpoena in the EDNC for the [redacted] records along with a sealed court order to be issued by Judge Boyle, (EDNC). This process was stopped at the direction of FBI HQ CTD, and I was told that we needed to serve an NSL. We prepared the NSL and it was e-mailed to SAC Atlanta Division, signed and returned. Our SAC is currently TDY at FBI HQ. The NSL was then served on [redacted] and their legal counsel advised that they would not accept it nor the NSL because the NSL was only for [redacted]. We had our CDC and FBI HQ involved in this throughout the process.

FBI HQ, MOS I, then advised Division would be forwarding us a GJ subpoena to serve. We obtained the GJ subpoena late Friday afternoon and served it on the attorney. He initially declined to honor the subpoena because he stated that we should have presented him with a court order under the Patriot Act and also that he wanted each individual who had records to be named in the subpoena. He also made some additional remarks that I will not go into at this time. Bottom line is we told him to consider himself served and provided him with the subpoena. As SAC also contacted concerning the matter at this point. About one hour later the attorney called our office and advised the documents were ready to be picked up.

This process delayed us approximately one day in obtaining the records. However, it occupied a great deal of my time and more importantly the time of two agents who could have been focusing on the investigation at hand. I would agree with the obvious, that administrative subpoena power in the field involving CT matters may be the single most important tool that the agents could use to improve/expedite their investigations.

If you require any additional info please let me know.

Thanks

12/19/2006
- Is the below true? Did we go NSL first and then GJS? Pls respond by e-mail.

Anyone with full knowledge to get this back to by e-mail?

I just got a call from [name] of OCA. The Director has requested a write up on the circumstances surrounding the NSL letter issued to [name].

It is the Director's understanding that an NSL letter was issued in connection with the London bombing, would not honor the NSL letter and because of this the FBI had to issue them a Grand Jury subpoena.

The Director would like to use this as an example tomorrow as to why we need administrative subpoenas's to fight the war on terror. In particular, he would like to know how much extra time was spent having to get the Grand Jury subpoena.

Please provide me with an e-mail regarding the particular facts of this incident. Just one paragraph in e-mail form will be sufficient.
From: (CE) (FBI) (INS) (FBI)
Sent: Thursday January 04, 2007 2:42 PM
To: (CE) (FBI) (INS) (FBI)
Cc: (CE) (FBI)
Subject: RE: Charlotte NSL Issue

UNCLASSIFIED NON-RECORD

Yes, we can call. We have no problem with that at all. The OIG can call anyone directly, just keep us in the loop as to what transpires. Would it be helpful to send you a copy of what we sent the OIG?

Just to give you all little information, we sent the following:

1) E-mail dated 12/19/06 to [redacted] re: FW: Facts on NSL letter ASAP.
2) 7/15/05 EC from Charlotte to CTD [redacted] lett. Al re:
3) 7/14/05 EC from Charlotte to CTD and OGC re:
4) 7/14/05 letter from [redacted] [redacted]

If you would like a copy, please let me know and I can send one ASAP to your office.

Thanks.

(202) 324

---Original Message---
From: (CE) (FBI)
Sent: Wednesday January 03, 2007 12:34 PM
To: (INS) (FBI) (INS) (FBI)
Cc: (CE) (FBI)
Subject: Charlotte NSL Issue

UNCLASSIFIED NON-RECORD

Regarding the NSL issue involving our Division and [redacted], one of our Agents received a call from [redacted] of the IGs office, inquiring about the matter. I contacted [redacted] and she advised that your office had forwarded documents and e-mails regarding the matter to OIG. I'm assuming by that, that you have studied the matter and we are responding to the inquiry. Should I have [redacted] call and detail his recollections of the matter? He's glad to do it, but I wanted to check with you first to make sure that was what you wanted us to do.

Also, would you please let me know what documents and information was furnished to OIG? I would appreciate it.

Thanks.

CDC Charlotte
704

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DATE: 05-29-2007
CLASSIFIED BY 65179 DMH/KSR/JW
REASON: 1.4 (c)
DECLASSIFY ON: 05-29-2032
FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

To: Charlotte

Counterterrorism

Inspection

From: Office of General Counsel

NSLB/CTLU I

Contact: UC

Approved By: Thomas Julie

Drafted By: 3205

Case ID #: ( ) 278-HQ-C1229736-VIO (Pending)

Title: ( ) INTELLIGENCE OVERSIGHT BOARD IOB MATTER 2007

Synopsis: ( ) It is the opinion of the Office of General Counsel (OGC) that the above-referenced matter must be reported to the IOB and to the Inspection Division. OGC will prepare and deliver the required correspondence to the IOB. Our analysis follows.

Reference: ( ) 278-HQ-C1229736-VIO Serial 2180

Details: ( )

As a result of the investigation

OIG/DOJ REVIEW:
FBI INVESTIGATION
OIG/DOJ INVESTIGATION:

DATE: 03/13/2007

OIG/DOJ REVIEW:
FBI INVESTIGATION
OIG/DOJ INVESTIGATION:

DATE: 05-29-2007

CLASSIFIED BY 65179 DMH/KSR/JW
REASON: 1.4 (C)
DECLASSIFY ON: 05-29-2032

ALL INFORMATION CONTAINED
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WHERE SHOWN OTHERWISE
To: Charlotte  From: Office of General Counsel  
Re: 278-HQ-C1229736-VIO, 03/13/2007

On or about 07/13/2005, SA coordinated with United States Attorney's Office (USAO), Eastern District of North Carolina (EDNC), Chief of Criminal, to obtain a Grand Jury subpoena after receiving the subpoena, SA went to and met with served the subpoena and had some records in hand when he received a call from SSRA. SSRA had been notified by FBIHQ, ITOS I, CONUS II, Team 6, that the field office was not to utilize a Grand Jury subpoena but must obtain a National Security Letter (NSL). Therefore, SA returned the records.

SSRA advised FBIHQ that their SAC, was TDY out of the Division and therefore FBIHQ would need to complete an EC addressed to General Counsel requesting an NSL be approved at FBIHQ. SSRA was then instructed by FBIHQ, ITOS I, CONUS II, that Charlotte would be required to draft the NSL, due to time constraints, and then obtain approval from a neighboring division's SAC. SA then drafted an NSL to obtain and forwarded the NSL to SSRA for review. The NSL was then forwarded by SSRA to SAC Atlanta Division, for approval.

On or about 07/14/2005, JTTF Task Force Agent served the NSL requesting the individual's name to whom the NSL was given. TFA does not recall was advised that the NSL was not the appropriate
To: Charlotte  From: Office of General Counsel
Re:  278-HQ-C1229736-VIO, 03/13/2007

(U) SSRA then contacted Acting CDC Charlotte Division, for guidance concerning the matter and the questioned legality of the NSL for CDC then conferred with legal counsel and FBIHQ, OGC, concerning the matter. SSRA also contacted ASAC Charlotte Division, who in turn was also in contact with FBIHQ.

(U) Subsequently, SSRA was advised by FBIHQ that a Grand Jury subpoena would be obtained which was the office of origin on matter, and the Grand Jury subpoena would be forwarded to the Raleigh RA for service on

(U) On 07/15/2005, the Raleigh RA received a copy of the Grand Jury subpoena and SA served with the Grand Jury subpoena After resistance to comply, SA advised that he had been served. SSRA was in contact with ASAC advising reluctance to honor the Grand Jury subpoena and at this time contacted the concerning the matter. Approximately one hour later, contacted the Raleigh RA and advised that the records were waiting for FBI retrieval.

(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 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. 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.

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.

In this instance, Charlotte served an NSL requesting records outside the permissible scope of an NSL. OGC notes that, according to Charlotte, Charlotte acted upon the advice and direction of FBIHQ, Charlotte personnel sought legal advice prior to the service of the NSL, and no records were obtained in response to the NSL. These mitigating factors should be considered when judging the performance of Charlotte personnel. However, the circumstances as a whole must be reported to the IOB since the service of the NSL in this case was not in compliance with ECPA and the NSIG.
(U) To: Charlotte  From: Office of General Counsel
Re: 278-HQ-C1229736-VIO, 03/13/2007

LEAD(s):

Set Lead 1: (Info)

CHARLOTTE

AT CHARLOTTE, NC

(U) For information.

Set Lead 2: (Info)

COUNTERTERRORISM

AT WASHINGTON, DC

(U) For information.

Set Lead 3: (Action)

INSPECTION

AT WASHINGTON, DC

(U) For review and action deemed appropriate.

cc: Ms. Thomas

IOB Library

**
INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER

CHARLOTTE DIVISION

IOB MATTER 2007 (U)

The Charlotte Division ("Charlotte") of the Federal Bureau of Investigation ("FBI") reported via electronic communication dated February 21, 2007, that a National Security Letter was served requesting records that were beyond the permissible scope of a National Security Letter. Specifically, the FBI sought to obtain [REDACTED] from a state university for an individual with ties to the July 2005 London bombings. [REDACTED] are outside the scope of records that may be obtained with a National Security Letter. The state university recognized this error and refused to produce any records in response to the National Security Letter. Accordingly, no records were obtained as a result of the service of this National Security Letter. The FBI rescinded the National Security Letter, and instead served a Federal Grand Jury subpoena for [REDACTED] The state university complied with the federal Grand Jury subpoena and produced [REDACTED]

The FBI's service of a National Security Letter requesting educational records was in violation of The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection, even though no records were obtained in response to the National Security Letter. Thus, the matter is being reported to the IOB.

This matter has been reported to the FBI's Inspection Division for appropriate action.

DATE: 05-29-2007
CLASSIFIED BY 65179 DM/NSR/JU
REASON: 1.4 (C)
DECLASSIFY ON: 05-29-2032

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

Derived from: G-3
Declassify on: 03/07/2032