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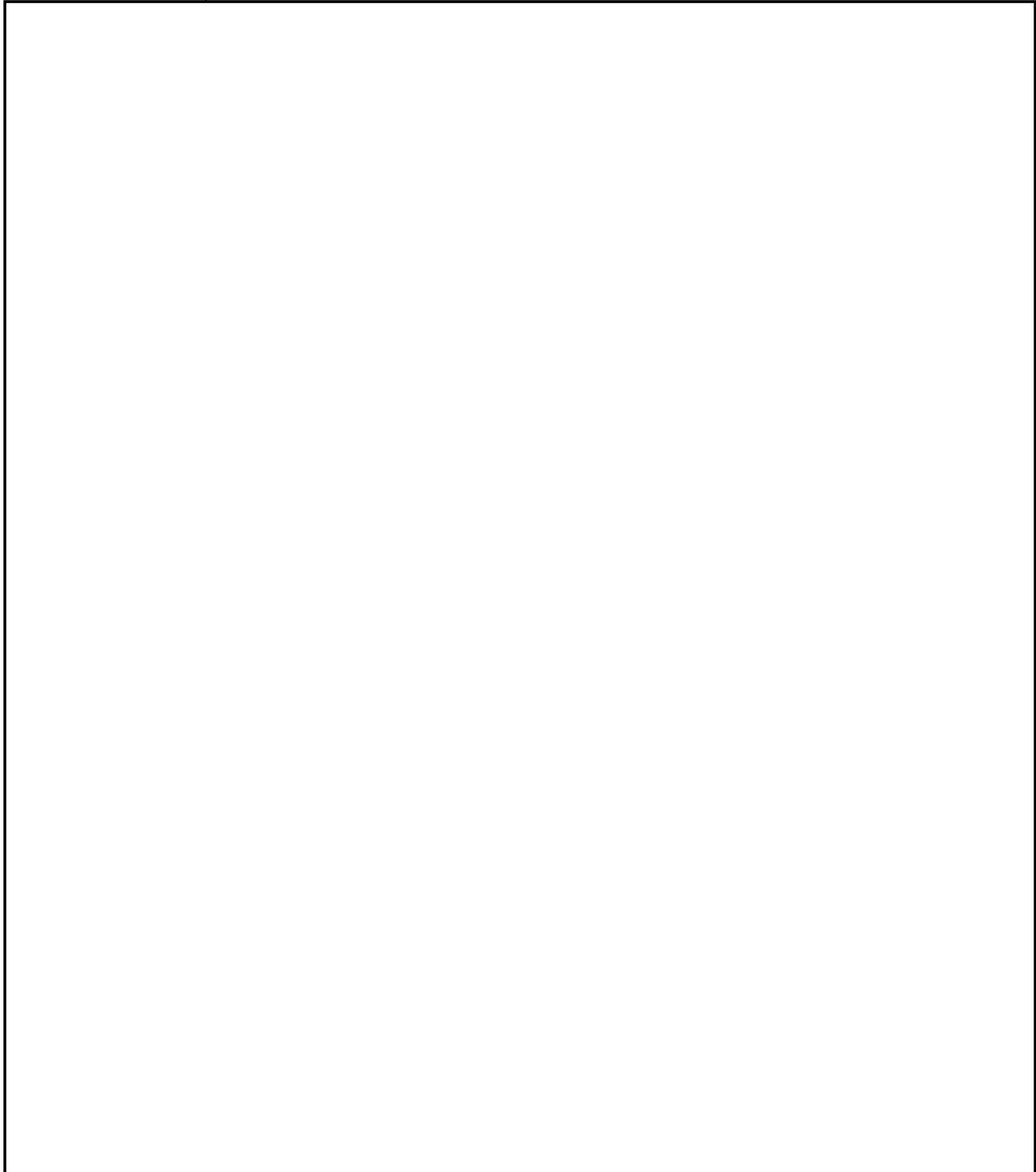
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## **Frequently Asked Questions concerning Counterterrorism and Counterespionage Investigations and FISA**





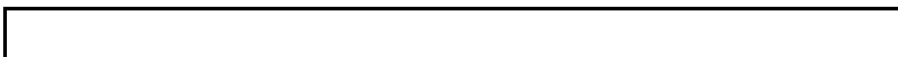
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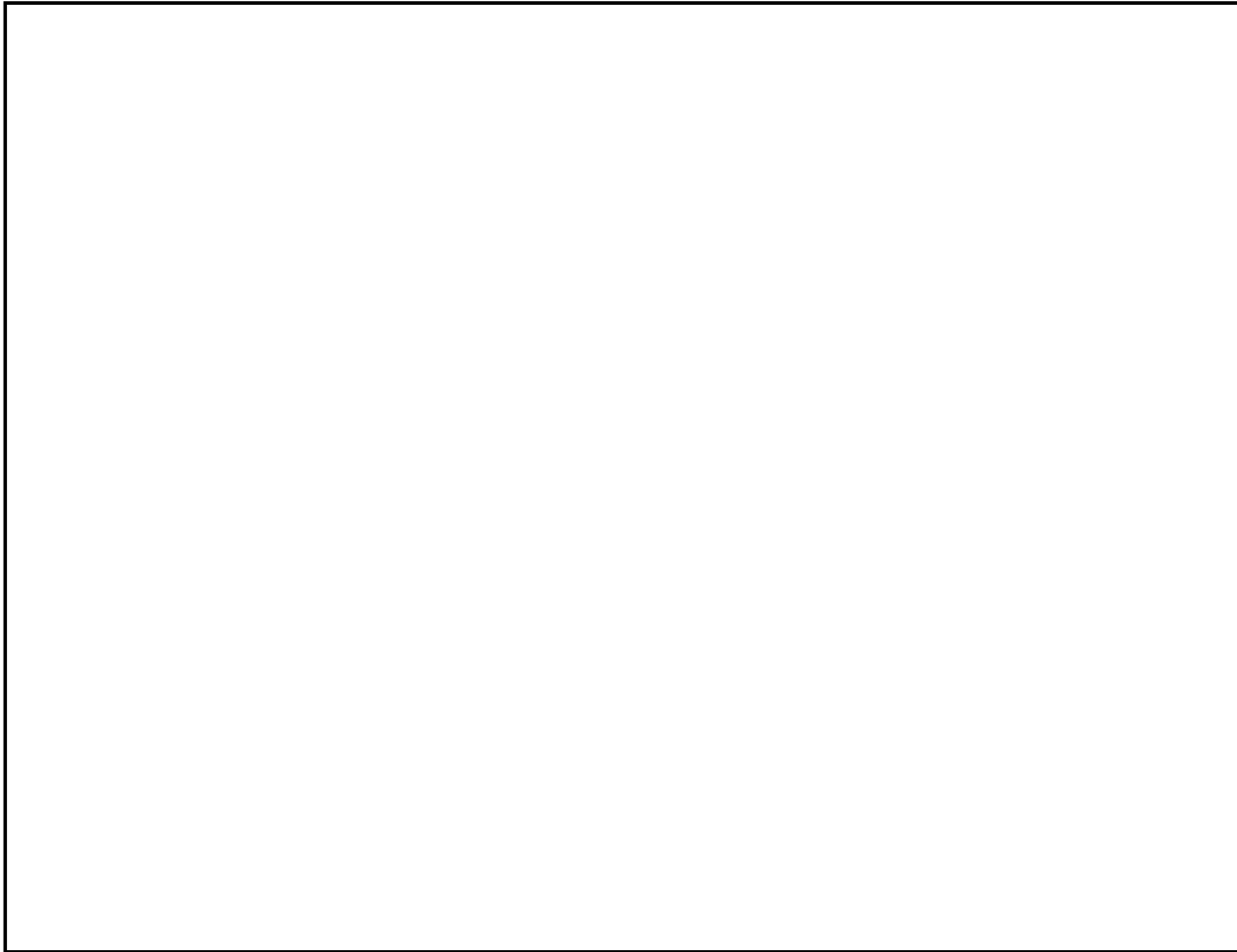
**Q: What is the precise, step-by-step procedure for approval of an initial FISA application, including the roles and units at FBI HQ, OIPR, ODAG and OAG offices?**

The following chart attempts to lay out the several steps that are necessary to move a FISA application from initial request to presentation to the FISA Court to execution of the resulting order.

Step	Unit	Role
1	FBI Special Agent	Completes OIPR's FISA Request Form
2	FBI Field Office	Reviews Request Form and supporting materials, provides approvals by appropriate personnel (e.g., squad supervisor, ASAC, CDC, etc.)
3	FBI HQ	FISA Unit: provides administrative support functions and ensures that applications move expeditiously through the process; coordinates with field offices, substantive HQ divisions, NSLB and OIPR
4	OIPR	Prepares draft application package, including application, affidavit and orders
5	FBI HQ	CT or CI Division: provide comments on draft; FISA Unit transmits to field office
6	FBI Field Office	Comments on draft; reviews as required by FBI's accuracy procedures
7	OIPR	Prepares final application package incorporating all appropriate comments; OIPR line attorney signs application
8	FBI HQ	SSA from substantive unit signs affidavit; NSLB reviews and obtains certification of the Director
9	OIPR	Presents application to AG, DAG, or acting AG for review, approval and signature
10	OIPR	Files completed signed application with FISA Court; represents government at court session; distributes court orders to FBI FISA Unit
11	FBI HQ	FISA Unit distributes court orders for service and execution

ACLU Sect. 215-2156



**Q: Can one obtain business records or tangible things under FISA?**

Yes. Prior to the enactment of the PATRIOT Act, FISA allowed federal intelligence officers to seek a court order for access to certain car rental, storage, and hotel accommodation records, 50 U.S.C. §§ 1861-1863 (2000 ed.). Section 215 of the PATRIOT Act (and a later enactment) amended those provisions, allowing the government to seek a court order to seize *any* tangible item, including "books, records, papers, documents, and other items," regardless of who is in possession of the item. The application for such an order must come from the Director of the FBI or a senior FBI official whose rank is no lower than Assistant Special Agent in Charge. The applicant must certify that the records or other things sought are sought for an authorized investigation to obtain foreign intelligence information, which does not concern a United States person, or to protect against international terrorism or clandestine intelligence activities. The statute expressly provides that such investigation of a United States person cannot be conducted solely on the basis of activities protected by the First Amendment to the constitution. The order may only be signed by a judge of the FISA Court or by a U.S. magistrate judge who has been publicly designated by the Chief Justice of the United States to hear such applications on behalf of a FISA Court judge (however, to date no magistrate judges have been so designated). The custodian may not disclose that the FBI has sought or obtained the item. See *generally* 50 U.S.C. § 1861. Section 215 also provided for Congressional oversight of this provision, which is subject to the sunset provision of Section 224 of the PATRIOT Act.

ACLU Sect. 215-2159



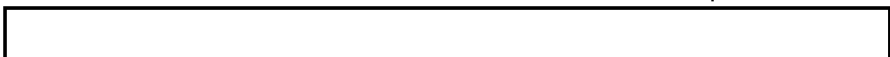
**Q: What are the key PATRIOT Act provisions that impact upon FISA, upon similar criminal investigative tools, and upon the intelligence community?**



[redacted] Filling another statutory gap, Section 215 granted the FISA Court the authority to issue an order requiring production of tangible items, including business records, and prohibits disclosure of the order or the fact of production. [redacted]



ACLU Sect. 215-2165



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