

(Rev. 01-31-2003)

# FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 4/26/2006

✓ To: Norfolk

From: Norfolk

Chief Division Counsel

Contact: [Redacted]

b6  
b7C

Approved By: [Redacted]

Drafted By: [Redacted]

Case ID #: 1Z-NF-C34389-A - 86  
1Z-NF-C34389 - 499

Title: LEGAL TRAINING  
MARCH AND APRIL 2006

Synopsis: Record of legal training.

Details: On 3/28/2006 and 3/31/2006, CDC [Redacted] provided two hours of mandatory legal training about the 3/9/2006 Reauthorization of the PATRIOT Act, which included changes pertaining to criminal law and procedure as well as intelligence law. Copies of the outline provided to attendees and the sign-in sheets are attached.

On 3/6, 3/7, 3/8, 4/9 and 4/26, CDC [Redacted] provided mandatory legal training concerning deadly force law and policy to all Agents and Task Force Officers who attended these firearms sessions. Sign-in sheets are maintained by the Firearms Instructors.

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1Z-NF-34389-A-86

SEARCHED	INDEXED
SERIALIZED <i>aw</i>	FILED <i>aw</i>
APR 26 2006	
FBI-NORFOLK	

## FISA BUSINESS RECORDS

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- 50 U.S.C. § 1861
- Hotly debated, though rarely used.
- Authority is broad (versus NSLs), access to:  
    “*any tangible things (including books, records,  
    papers, documents, and other items.*”
- But . . . new law requires additional procedures for  
    certain special categories of records.

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- Records from 3<sup>rd</sup> parties.
- Much heat, little light.
- Similar to Grand Jury subpoena in breadth.

## **FISA BUSINESS RECORDS (Cont.)**

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### **SPECIAL CATEGORIES:**

- Library circulation records
- Library patron lists
- Book sales records
- Firearms sales records
- Tax return records
- Educational records
- Medical records containing information which would identify a person

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Mention Buckley Amendment/ FERPA and Directory Information.

This list is clearly the work of the political process.

## FISA BUSINESS RECORDS (Cont.)

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SO WHAT HAPPENS IF YOUR RECORDS FALL  
WITHIN A SPECIAL CATEGORY?

- New approval levels designate who may apply to the FISA Court –
  - Director of the FBI
  - EAD for National Security (or any successor position)
  - No further delegation
- Special AG report / congressional oversight

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So, you'd better have a good reason.

## FISA BUSINESS RECORDS (Cont.)

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Tangible things are presumptively relevant if the facts show they pertain to:

- a foreign power or agent of foreign power,
- the activities of a suspected agent of a foreign power who is the subject of such investigation, *or*
- the individual in contact with, or known to, a suspected agent of a foreign power who is the subject of such authorized investigations.

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Applies to all FISA business records requests.

Think about these standards even when you write ECs supporting NSLs.

## FISA BUSINESS RECORDS (Cont.)

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### EACH ORDER MUST:

- describe the tangible things with sufficient particularity to permit them to be fairly identified  
provide for a return date, which must be reasonable
- only require things that would be available by grand jury subpoena or a district court order

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Your job, too!

Only require things that would be available by GJ subpoena or order - - in other words, privileges will apply

## **FISA BUSINESS RECORDS (Cont.)**

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NOTE:

1. Certain broad non-disclosure provisions apply
2. Recipient may challenge non-disclosure provision in FISA Court as well as the order itself.

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Very hard to challenge non-disclosures. Not likely to happen often.

## FISA BUSINESS RECORDS (Cont.)

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- AG shall adopt specific minimization procedures by about mid-September governing retention and dissemination of FISA business record information
  - will only govern non-publicly available information concerning unconsenting USPERS consistent with U.S. Intelligence Community need to obtain, produce and disseminate foreign intelligence information
  - procedures must allow for retention and dissemination of information that is evidence of crime.

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So if information is:

publicly available

or

concerns consenting USPERS

or

concerns non-USPERS

these specific minimizations procedures won't apply.



## **FISA BUSINESS RECORDS (Cont.)**

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DOJ IG will audit us for past and future use of this authority, and will report to Congress.

- Congress WANTS us to use it
- But use it well!

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Everything will be under the microscope

- how, why we did it,
- how often,
- were there bureaucratic impediments that prevent FBI from fully using authority?

**USA PATRIOT  
IMPROVEMENT &  
REAUTHORIZATION ACT**  
(USAPA IRA)

FBI Norfolk Legal Training  
March 2006  
CDC

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**USAPA IRA**

Signed March 9, 2006  
Deals with sunset provisions of PATRIOT ACT  
Significantly changes many national security  
legal authorities  
Makes changes to, and creates several new,  
criminal laws, some of which impact national  
security investigations

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There's material impacting every squad.

Outside the Scope

## USAPA IRA – Seven Titles

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Title I - USA PATRIOT Improvement and Reauthorization Act

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I will not discuss all of them,



## SENSE OF CONGRESS RELATING TO LAWFUL POLITICAL ACTIVITY

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One section of the Act expresses the sense of Congress that federal investigations should not be based solely upon an American citizen's membership in a non-violent political organization of their otherwise lawful political activity.

The **key word** is "solely."

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•Neither criminal nor national security investigations of U.S. persons may be predicated solely on the exercise of First Amendment rights.

•Wake-up call.

•Audits and oversight are a given, whether your work is classified or not. You are neither writing nor working for a small audience.


•Investigations can easily touch upon the 1<sup>st</sup> Amendment rights.

Note that it says investigations should not be based on an American citizen's membership in a non-violent, political, organization of their otherwise lawful political activity.

**GOOD NEWS – SUNSET PROVISIONS**

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Most of original Sunset Provisions of the 10/26/2001 PATRIOT Act are made permanent.




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**BUT ...**  
**NEW SUNSET PROVISIONS FOR:**

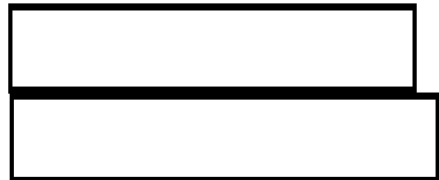
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FISA Business Records Authority – 12/31/2009



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FEDERAL BUREAU OF INVESTIGATION  
FOIPA  
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