



**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 28, 2010

The Honorable Patrick Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Chairman Leahy:

Enclosed please find responses to questions for the record stemming from the appearance of Robert Mueller, Director of the Federal Bureau of Investigation, before the Committee on January 20, 2010, at a hearing entitled "Securing America's Safety: Improving the Effectiveness of Anti-Terrorism Tools and Inter-Agency Communication." Please note that the attached document includes a response to question 13(a) and therefore represents a complete response to the unclassified questions. We hope that this information is of assistance to the Committee.

Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that there is no objection to submission of this letter from the perspective of the Administration's program.

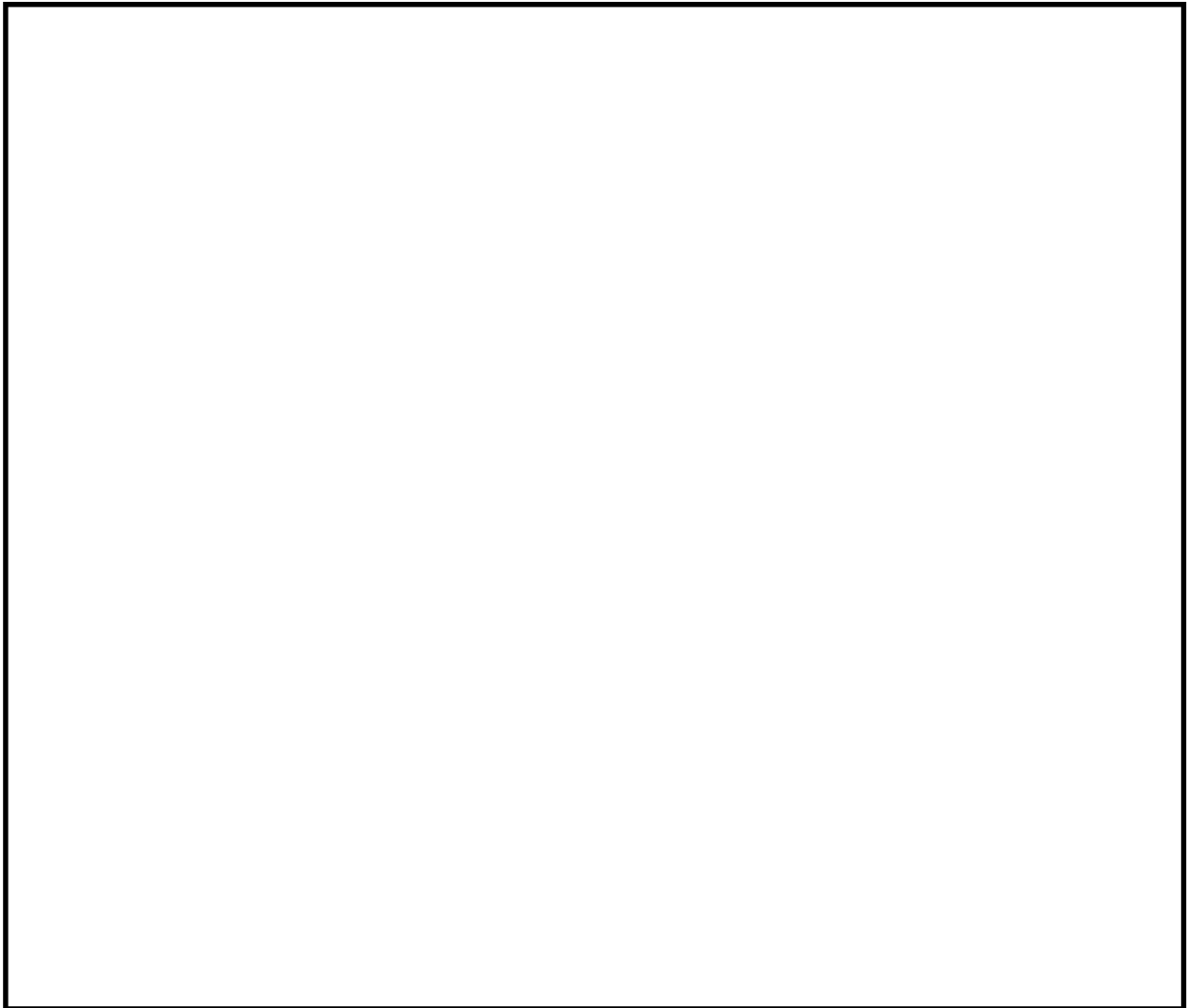
Sincerely,

A handwritten signature in cursive script, appearing to read "R. Weich".

Ronald Weich  
Assistant Attorney General

Enclosure

cc: The Honorable Jeff Sessions  
Ranking Member



**9. The FBI's internal review on Fort Hood called for "strengthened training addressing legal restrictions which govern the retention and dissemination of information." Press reports indicate that the Joint Terrorism Task Force that examined Major Hasan's case prior to the attack at Fort Hood shared information on Hasan with DOD personnel. Is that accurate? Did the FBI find that there were any legal barriers to sharing information about Major Hasan that was in its possession with the Department of Defense?**

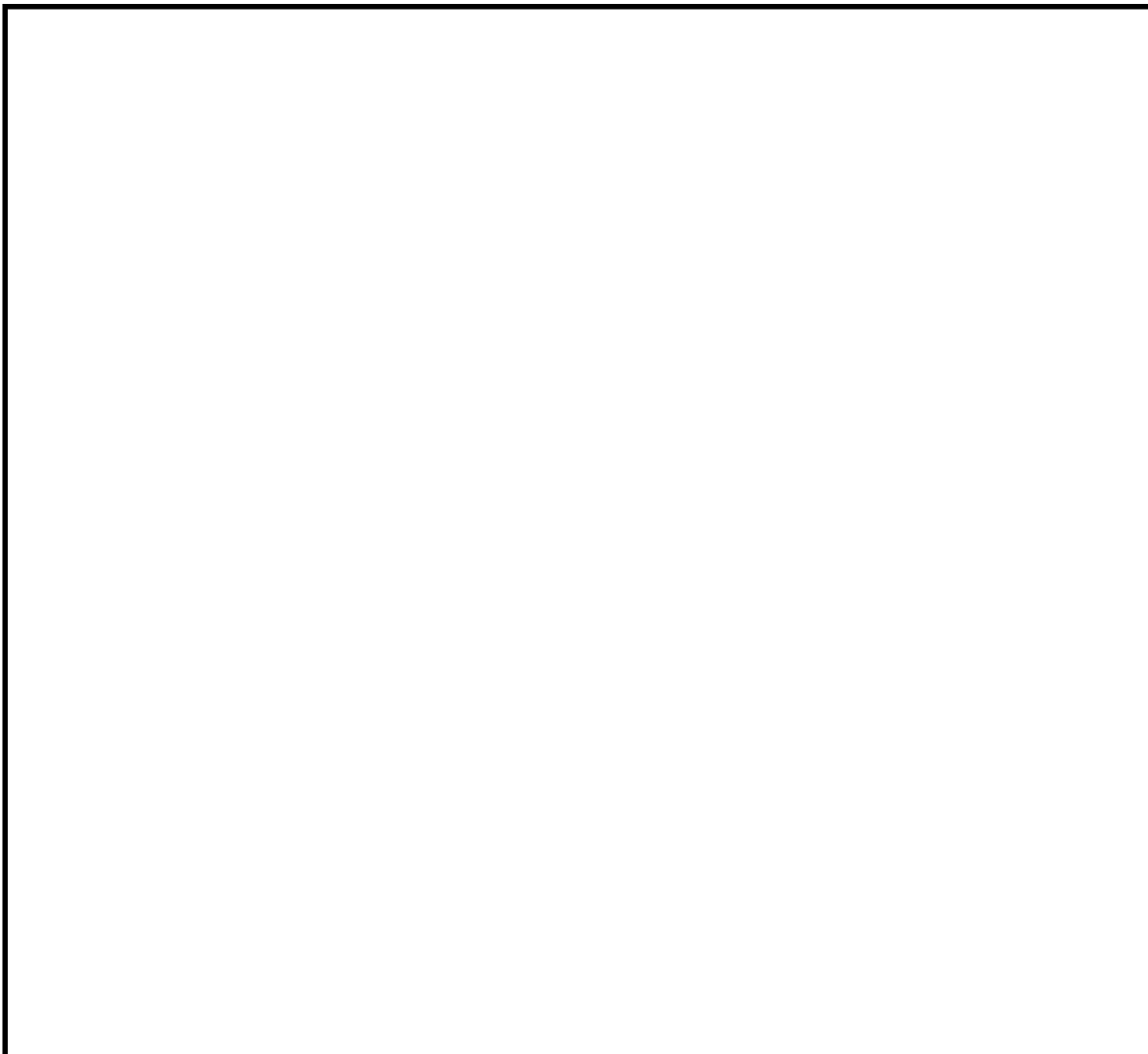
**Response:**

There are legal restrictions on the FBI's ability to share sensitive information, including those imposed by the Foreign Intelligence Surveillance Act (FISA), Attorney General's Guidelines, and Executive Order 12333, and those that apply to the dissemination of classified information. Generally, information about U.S. persons from sensitive sources cannot be disclosed unless certain legal thresholds

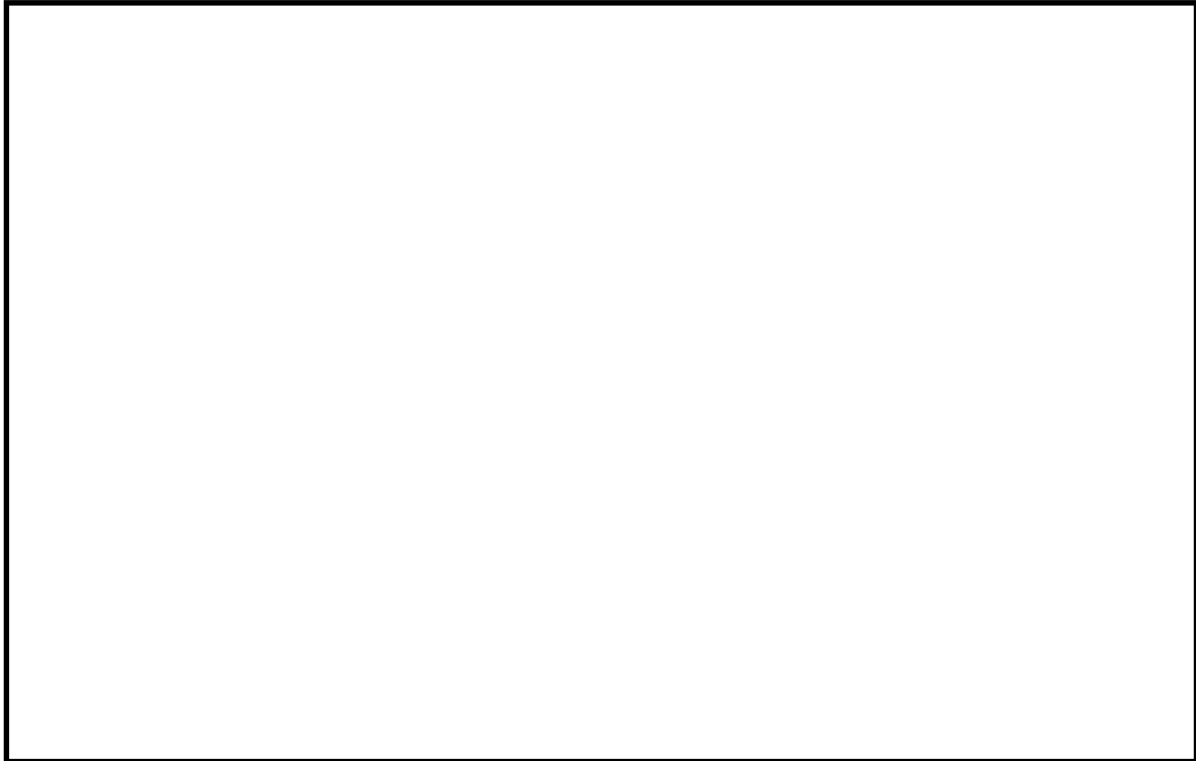
are met. Nonetheless, under the Memorandum of Understanding governing DoD participation on FBI-led JTTFs, DoD detailees to the JTTFs may share information outside of the JTTFs with permission from an FBI supervisor.

DoD agents assigned to a JTTF took part in evaluating certain information regarding Major Hasan that came to the FBI's attention prior to the shootings. Because they believed the information was explainable by Major Hasan's academic research and because there was no derogatory information in the personnel files they reviewed, they determined, in consultation with an FBI JTTF supervisor, that Major Hasan was not involved in terrorist activity or planning. Based on that judgment, a decision was made not to contact Major Hasan's superiors in the Army.

Outside the Scope



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**Questions Posed by Senator Hatch**

**13. There are three expiring provisions of the PATRIOT Act. In previous testimony before this committee, you have heralded these provisions as critical investigative tools that the FBI needs to detect and thwart terror plots. For example, the three separate terror plots in Illinois, Texas and New York detected by the FBI last September. In December, Congress only temporarily reauthorized these provisions without any modifications. I have some concerns that any modifications to these investigative tools would “water them down” and unnecessarily increase the investigative burden on the FBI before these tools may be used.**

**a. Can you tell me if you would support a full reauthorization of these provisions without any modifications?**

**Response:**

The FBI continues to support the reauthorization of the USA PATRIOT Act’s expiring provisions, which concern roving wiretaps, Section 215 business record orders, and the “lone wolf” provision. The Attorney General and Director of National Intelligence have previously advised the Congress that S. 1692, the USA PATRIOT Act Sunset Extension Act, as reported by the Senate Judiciary Committee, strikes the right balance by both reauthorizing these essential national

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security tools and enhancing statutory protections for civil liberties and privacy in the exercise of these and related authorities. Since the bill was reported, a number of specific changes have been negotiated with the sponsors of the bill for inclusion in the final version of this legislation. Among these are several provisions derived from the bills reported by the House Judiciary Committee and introduced by House Permanent Select Committee on Intelligence Chairman Silvestre Reyes in November.

The FBI has been authorized to use the roving wiretap authority many times and we have found that it increases efficiency in critical investigations. This authority affords us an important intelligence gathering tool in a small, but significant, subset of electronic surveillance orders issued under FISA. Roving wiretap authority is particularly critical for effective surveillance of investigative subjects who have received training in countersurveillance methods.

Section 215 orders for business records play an important role in national security investigations as well. This authority allows us to obtain records in national security investigations that cannot be obtained through the use of National Security Letters. In practice, this tool is typically no more intrusive than a grand jury subpoena in a criminal case. Unlike most criminal cases, though, the operational secrecy requirements of most intelligence investigations require the secrecy afforded by this FISA authority. There will continue to be instances in which FBI agents must obtain information that does not fall within the scope of National Security Letter authorities and is needed in an operating environment that precludes the use of less secure criminal investigative authorities.

Finally, although the “lone wolf” provision has never been used, it is an important investigative option that must remain available. This provision gives the FBI the flexibility to obtain FISA warrants and orders in the rare circumstances in which a non-U.S. person engages in terrorist activities, but his or her nexus to a known terrorist group is unknown.

**b. Can you confirm if any of these expiring provisions were used by the FBI in the investigation of these plots?**

**Response:**

As discussed previously, the FBI continues to support the renewal of the three expiring provisions. Outside the Scope

Additional information responsive to this inquiry is classified and is, therefore, provided separately.



FEDERAL BUREAU OF INVESTIGATION  
FOIPA  
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