



March 31, 2011

Hon. Charles E. Grassley
135 Hart Senate Office Building
Washington, DC 20510

Re: Potential FBI Abuses of Expiring PATRIOT Act Authorities

Dear Sen. Grassley:

During yesterday's Judiciary Committee hearing on oversight of the Federal Bureau of Investigation, you asked FBI Director Mueller whether any of the three expiring provisions of the PATRIOT Act have been the subject of any findings of abuse. Mr. Mueller responded that he is not aware of any such findings.

I am writing to share with you documents that the Electronic Frontier Foundation has obtained as a result of pending Freedom of Information Act litigation; documents that seem to contradict Mr. Mueller's response to your question. Our FOIA request sought information from the Bureau concerning the expiring PATRIOT Act provisions, and specifically covered:

[A]ll records discussing or reflecting any instances in which the use of the authorities granted in the three provisions were deemed to be possibly unlawful or contrary to Executive order or Presidential directive, including but not limited to matters that were considered for referral to the Intelligence Oversight Board ["IOB"].

In response, the Bureau released several internal documents relating to potential reports to the IOB. Although these documents are heavily redacted, and it is thus difficult to ascertain the substance of these potential "IOB matters," the FBI deemed them to be responsive to our FOIA request for information concerning the expiring PATRIOT Act provisions. Further, some of the redacted records indicate that they relate to "roving authority" and "over collection of FISA derived information." It thus seems clear that these documents are relevant to the question you raised with Mr. Mueller and, indeed, they suggest that there *have* been instances in which potential abuses of the expiring provisions were flagged within the Bureau.

Given the FBI's unwillingness to make public the attached documents in anything other than heavily-redacted form, and because these records appear to raise questions concerning the accuracy of Mr. Mueller's response to your query, I urge you to pursue

Hon. Charles E. Grassley
March 31, 2011
Page two

this issue with the Bureau and ascertain whether there have, in fact, been instances in which the expiring PATRIOT Act provisions have been abused or improperly applied.

Please feel free to have your staff contact me at 202-797-9009 if EFF can provide additional information or otherwise be of assistance.

Sincerely

A handwritten signature in blue ink that reads "David L. Sobel". The signature is written in a cursive, flowing style.

David L. Sobel
Senior Counsel

cc: Hon. Patrick J. Leahy

attachments

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

DATE: 07-13-2010
CLASSIFIED BY 65179 DMH/STP/KM
REASON: 1.4 (c,d)
DECLASSIFY ON: 07-13-2035
10-CV-00755

(Rev. 05-01-2008)

~~SECRET~~//ORCON/NOFORN

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 08/05/2009

To: General Counsel

Attn: NSLB

b6 -1
b7C -1

Cyber

Attn: SSA [redacted]

TFU2

b2 -2
b7E -2

From: [redacted]

CY-1

Contact: [redacted]

Approved By: [redacted]

Colgan Mark P
Chamberlain Robert W

b6 -1
b7C -1

Drafted By: [redacted]

b1

~~(S)~~ **Case ID #:** ~~(S)~~ [redacted]

(Pending)

~~(S)~~ **Title:** [redacted]

b1
b2 -3

~~(U)~~ **Synopsis:** ~~(S)~~ REPORT OF POTENTIAL IOB MATTER

~~Derived From:~~ FBI NSISCG-20080301
~~Declassify On:~~ 20340805

~~(U)~~ **Full Investigation Initiated:** 11/24/2008

~~(S)~~



b1
b2 -2,3
b7D -2
b7E -1

~~SECRET~~//ORCON/NOFORN

~~SECRET~~ // ORCON / NOFORN

b2 -2
b7E -1

(S) To: General Counsel From: [redacted]
Re: (S) [redacted] 08/05/2009

b1

(S)

[redacted]

b1
b2 -2
b7D -2
b7E -1

(U) 1. Full Initiated: 11/24/2009

(U) 2. Case Agent: SA [redacted]

b6 -1
b7C -1

(U) 3. Supervisor: SSA [redacted]

(S)

[redacted]

b1

(S)

(S) 5. Possible IOB error: [redacted]

(U) 6. Description of the error:

(S)

[redacted]

b1
b4
b7D -2

b4
b6 -2
b7C -2
b7D -2

[redacted]

on [redacted] at approximately [redacted]

b2 -2
b7E -1

(U)

[redacted]

b1
b2 -2
b7D -2
b7E -1

~~SECRET~~ // ORCON / NOFORN

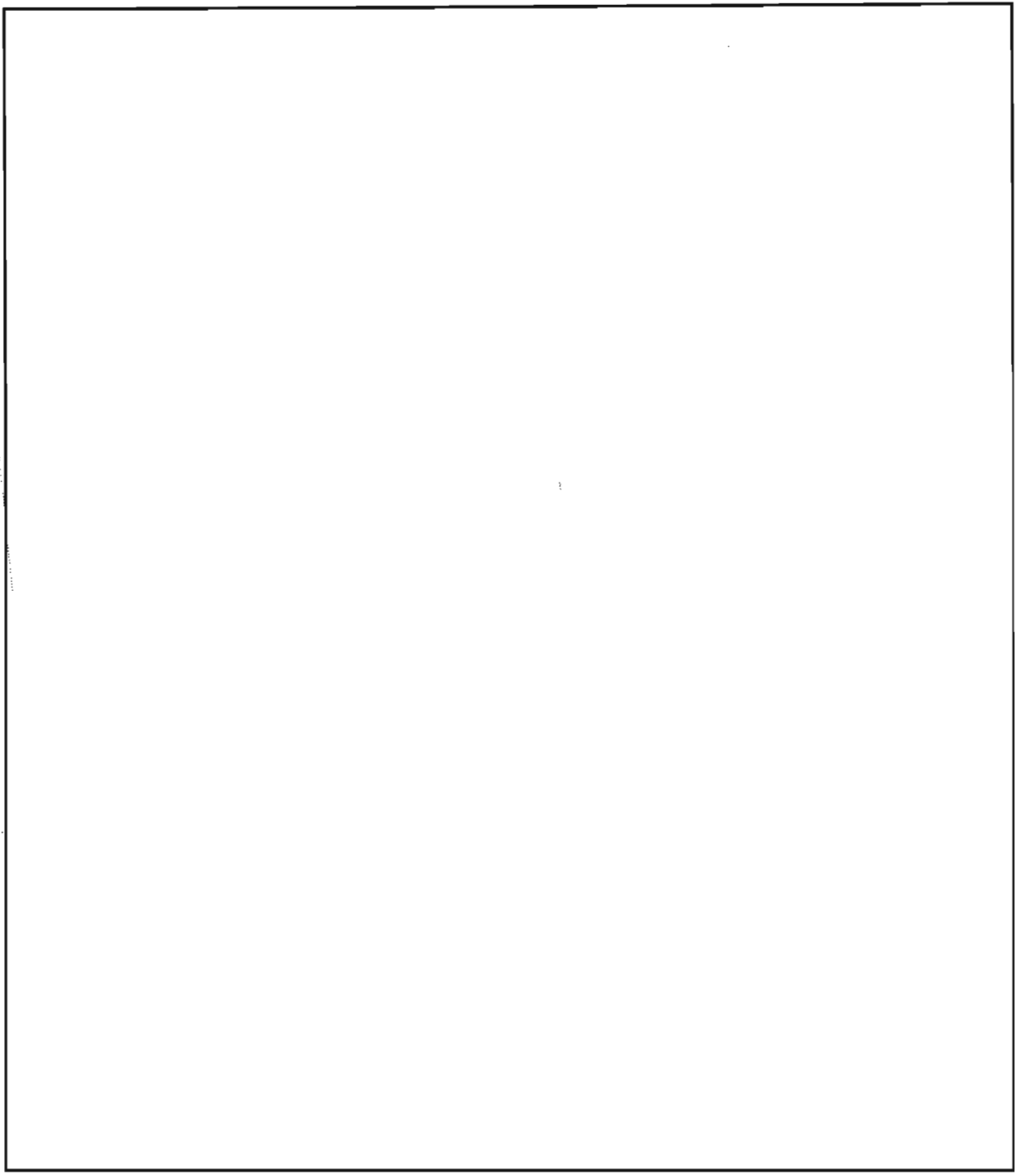
~~SECRET~~//ORCON/NOFORN

b2 -2
b7E -1

(S) To: General Counsel From: [redacted]
Re: (S) [redacted] 08/05/2009

b1

(S)



b1
b2 -2
b6 -1,4
b7C -1,4
b7D -2
b7E -1

~~SECRET~~//ORCON/NOFORN

~~SECRET~~//ORCON//NOFORN

b2 -2
b7E -1

(S) To: General Counsel From: [redacted]
Re: ~~(S)~~ [redacted] 08/05/2009

b1

(S)

[redacted]

b1
b6 -1
b7C -1
b7D -2

In addition, a co-case agent will verify final packages.

~~SECRET~~//ORCON//NOFORN

~~SECRET~~

ALL INFORMATION CONTAINED
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WHERE SHOWN OTHERWISE

CLASSIFIED BY 65179 DMH/STP/KM
REASON: 1.4 (c)
DECLASSIFY ON: 07-13-2035
10-CV-00755

[redacted] (OGC) (FBI)

From: [redacted] (OGC) (FBI)
Sent: Friday, April 17, 2009 2:45 PM
To: [redacted] (CTD) (FBI); [redacted] (OGC) (FBI); [redacted]
[redacted] (OGC) (FBI)
Subject: RE: IOB database--Roving Authority b6 -1
b7C -1

~~SECRET~~
RECORD 415-HQ

(S) Great. Just as a quick follow-up with respect to the [redacted] cases:

(S) [redacted] overproduction in response to an NSL. b1
Status: No opinion yet by OGC/NSLB, but after reviewing it, it will almost definitely not be reported to the IOB, and in fact, is no longer considered a matter that must be reported to OGC/NSLB as a potential IOB matter. However, this type of NSL overproduction must be reported to OGC/NSLB for tracking purposes. b6 -3
b7C -3

(S) [redacted] b1
Status: Opinion dated 02/09/2006, 278-HQ-C1229736-VIO serial 1168, reported to the IOB. b6 -3
b7C -3

(S) [redacted]
Status: Opinion dated 09/21/2007, 278-HQ-C1229736-VIO serial 4735, not reported to the IOB.

From: [redacted] (CTD) (FBI)
Sent: Friday, April 17, 2009 2:07 PM
To: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Cc: [redacted] (OGC) (FBI); SIEGEL, STEVEN N. (OGC) (FBI)
Subject: RE: IOB database--Roving Authority b6 -1
b7C -1

~~SECRET~~
RECORD 415-HQ

This is exactly what I was looking for. Thank you very much for putting this together.

[redacted]

From: [redacted] (OGC) (FBI)
Sent: Friday, April 17, 2009 1:56 PM
To: [redacted] (CTD) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Cc: [redacted] (OGC) (FBI); SIEGEL, STEVEN N. (OGC) (FBI)
Subject: IOB database--Roving Authority b6 -1
b7C -1

~~SECRET~~
RECORD 415-HQ

[redacted]

[redacted] and [redacted] searched ACS (Case Identification Number 278-HQ-C1229736-VIO where reports of potential IOB matters and OGC/NSLB's IOB decisions are located) and all of the IOB databases. Based upon their search, the following information was found:

- 1. Potential IOB Matter 2005-160 [redacted] b1
[redacted] b6 -1,3
b7C -1,3

~~SECRET~~

~~SECRET~~

(S) [Redacted]

Report of potential IOB, 278-HQ-C1229736-VIO, serial 848;
IOB Opinion, 278-HQ-C1229736-VIO serial 1068

b1
b6 -3
b7C -3

(S)

[Redacted]

b1
b2 -2
b7E -1

(S)

2. Potential IOB Matter 2008-1178

Report of potential IOB, 278-HQ-C1229736-VIO, serial 7089
IOB Opinion: no opinion by OGC/NSLB yet

b1

(S)

[Redacted]

b1
b2 -2
b4
b7D -1
b7E -1

(S)

[Redacted] (overproduction in response to an NSL).

(S)

[Redacted]

b1
b6 -3
b7C -3

(S)

[Redacted]

Please let me know if there is any other information that you need.

[Redacted]

b6 -1
b7C -1

From: [Redacted] (CTD) (FBI)
Sent: Friday, April 17, 2009 10:34 AM
To: [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI)
Subject: IOB database

b6 -1
b7C -1

~~SECRET~~
RECORD 415-HQ

Hello,

(S)

[Redacted] suggested I contact you as I am working on a tasking due today to determine if there have been any IOB violations of [Redacted] cases. These cases had roving wiretap authority and the Director's office wants to know if any IOB violations have been associated with the cases in using it. The cases are:

b1

(S)

[Redacted]

Case is currently in [Redacted] but the authority was used when the case was in [Redacted]

b1
b6 -1,3
b7C -1,

Patriot Act-549

b2 -2
b7E -1

~~SECRET~~

~~SECRET~~

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CLASSIFIED BY 65179 DMH/STP/KM
REASON: 1.4 (c)
DECLASSIFY ON: 07-13-2035
10-CV-00755

[redacted] (OGC) (FBI)

From: [redacted] (OGC) (FBI)
Sent: Monday, September 21, 2009 1:56 PM
To: [redacted] (OGC) (FBI); SIEGEL, STEVEN N. (OGC) (FBI); [redacted] (OGC) (FBI)
Cc: [redacted] (OGC) (FBI)
Subject: RE: Roving Authority Issue
Attachments: 278-HQ-C1229736-VIO-8121[1].EC.WPD

b6 -1
b7C -1

~~SECRET~~
~~RECORD 415-HQ~~

b2 -2
b7E -1

Attached is the only EC from [redacted] that hit in both ACS and Sentinel searches from 4/17-present. The IOB number assigned is: IOB # 1668 and assigned to [redacted]



278-HQ-C1229736-VIO-8121[1].EC...

b2 -1
b6 -1
b7C -1

[redacted]
Management & Program Analyst
OGC/NSLBP&TU
[redacted]

This communication contains privileged and confidential attorney work product/attorney client information.

From: [redacted] (OGC) (FBI)
Sent: Monday, September 21, 2009 1:29 PM
To: SIEGEL, STEVEN N. (OGC) (FBI); [redacted] (OGC) (FBI)
Cc: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Subject: Roving Authority Issue
Importance: High

b6 -1
b7C -1

~~SECRET~~
~~RECORD 415-HQ~~

Steve,

Valerie asked if we were aware of an instance where we used roving FISA authority and erroneously "roved" onto a facility that was NOT being used by our target.

[redacted] and [redacted] had looked into this issue in April 2009. As you can see by the email chain below, there were NO reports where we erroneously "roved" onto a facility that was not the target.

[redacted] is checking now to determine whether we had any reports from April 2009 to present.

b6 -1
b7C -1

Patriot Act-758

~~SECRET~~

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CLASSIFIED BY 65179 DMH/STP/KM REASON: 1.4 (c) DECLASSIFY ON: 07-13-2035

(Rev. 05-01-2008)

~~SECRET~~//NOFORN

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 04/22/2009

b6 -1
b7C -1

To: General Counsel

Attn: AGC [redacted]
NSLB, Room [redacted]

b2 -2
b7E -1

From: [redacted]

CDC1
Contact: [redacted]

b2 -1
b6 -1
b7C -1

Approved By: [redacted]

Drafted By: [redacted]

b2 -2
b7A
b7E -1

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

(U) [redacted] (Pending)

(U) Title: ~~(S)~~ REPORTING OF POTENTIAL IOB VIOLATION;
OVER COLLECTION OF FISA DERIVED INFORMATION

Synopsis: To report a potential Intelligence Oversight Board (PIOB) matter relative to the over collection of FISA derived information.

~~Derived From : G-1
Declassify On: 04/22/2034~~

(U) Reference: ~~(S)~~ 278-HQ-C1229736-VIO Serial 5693 and serial 3726.

b2 -2
b7E -1

Details: ~~(S//NF)~~ This EC advises OGC/NSLB of a PIOB violation involving the over collection of FISA derived information pursuant to an FBI [redacted] Division, [redacted] Resident Agency (RA)

b1
b6 -3
b7C -3

(S) [redacted]
The [redacted] RA case agent assigned to this investigation is SA [redacted] and the SSA is [redacted]

b2 -2
b7E -1


(S) [redacted]

b6 -1
b7C -1
b1
b6 -3
b7C -3

~~SECRET~~//NOFORN

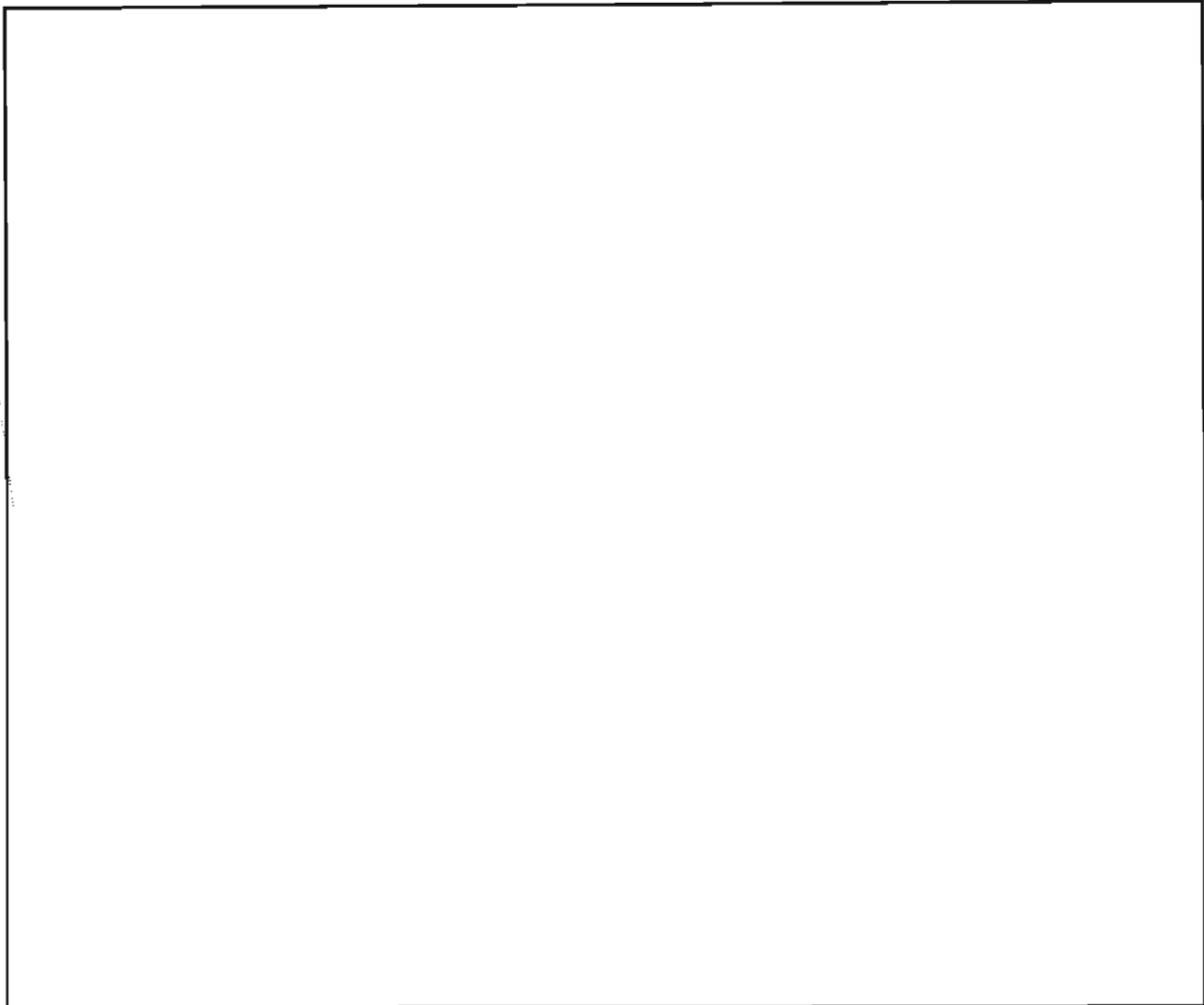
~~SECRET~~//NOFORN

b2 -2
b7E -1

To: General Counsel From: 
Re: ~~(S)~~ 278-HQ-C1229736-VIO, 04/22/2009

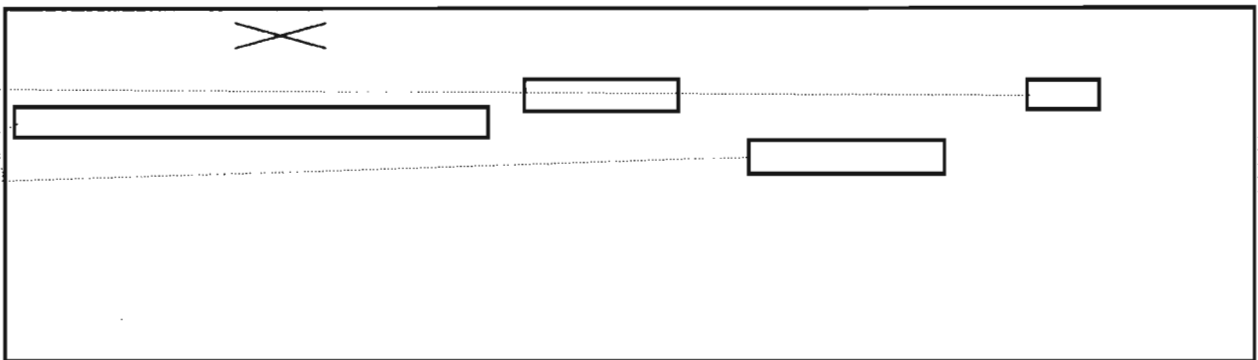
(U)

(S)



b1
b2 -2
b6 -3,4
b7C -3,4
b7D -1
b7E -1

(S)



(S)

(S)

(S)

b1
b2 -2
b6 -3,4
b7C -3,4
b7E -1

~~SECRET~~//NOFORN

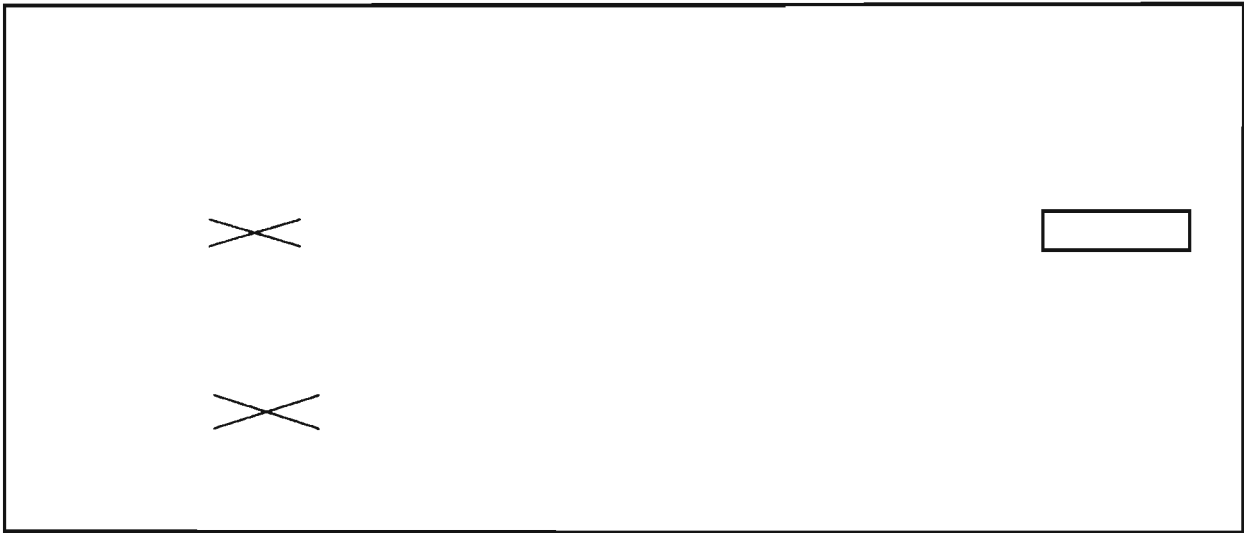
~~SECRET//NOFORN~~

b2 -2
b7E -1

To: General Counsel From:

(U) Re: ~~(S)~~ 278-HQ-C1229736-VIO, 04/22/2009

(S)



b1
b2 -2
b6 -3
b7C -3
b7E -1

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

b2 -2
b7E -1

To: General Counsel From:
(U) Re: ~~(S)~~ 278-HQ-C1229736-VIO, 04/22/2009

LEAD(s):

Set Lead 1: (Action)

GENERAL COUNSEL

AT WASHINGTON, DC

(U) ~~(S)~~ To report a potential Intelligence Oversight Board (PIOB) matter relative to the over collection of FISA-related information.

◆◆

~~SECRET//NOFORN~~