SECRET

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 03/13/2007

To: Charlotte

Attn: SAC

CDC

Counterterrorism

Attn: ITOS 1, CONUS 2, Team 8

Inspection

Attn: IIS

From: Office of General Counsel

NSLB/CTLU 1

Contact: UC

Approved By: Thomas Julie

Drafted By: 3205

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

(U) Title: (S) INTELLIGENCE OVERSIGHT BOARD

IOB MATTER 2007

(U) Synopsis: (S) 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.

(U) Derived From: G-3

Declassify On: 02/07/2032

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

Details: (S)

(S) As a result of the investigation

07/07/2005

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

HEREIN IS UNCLASSIFIED EXCEPT

WHERE SHOWN OTHERWISE

After receiving the subpoena, [SA] went to ['] and met with ['] to serve 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.

(SS) [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 [SA] 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.

(SS) On or about 07/14/2005, JTTF Task Force Agent [TFA] does not recall the individual's name to whom the NSL was given. [TFA] 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 [^].

On 07/15/2005, the Raleigh RA received a copy of the Grand Jury subpoena [^] 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.
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

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INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER

CHARLOTTE DIVISION

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.

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