Patterns of Misconduct:

FBI Intelligence Violations from 2001 - 2008

A Report Prepared by the Electronic Frontier Foundation

January 2011

ELECTRONIC FRONTIER FOUNDATION

EXECUTIVE SUMMARY

In a review of nearly 2,500 pages of documents released by the Federal Bureau of Investigation as a result of litigation under the Freedom of Information Act, EFF uncovered alarming trends in the Bureau's intelligence investigation practices. The documents consist of reports made by the FBI to the Intelligence Oversight Board of violations committed during intelligence investigations from 2001 to 2008. The documents suggest that FBI intelligence investigations have compromised the civil liberties of American citizens far more frequently, and to a greater extent, than was previously assumed. In particular, EFF's analysis provides new insight into:

Number of Violations Committed by the FBI

- From 2001 to 2008, the FBI reported to the IOB approximately 800 violations of laws, Executive Orders, or other regulations governing intelligence investigations, although this number likely significantly under-represents the number of violations that actually occurred.

- From 2001 to 2008, the FBI investigated, at minimum, 7000 potential violations of laws, Executive Orders, or other regulations governing intelligence investigations.

- Based on the proportion of violations reported to the IOB and the FBI's own statements regarding the number of NSL violations that occurred, the actual number of possible violations that may have occurred in the nine years since 9/11 could approach tens of thousands of violations of law, Executive Order, or other regulations governing intelligence investigations.[1]

[1] This figure is an estimate based, first, on the fact that a significant number of FBI violations went unreported, both internally and to the IOB; second, this estimate assumes the sample of violations reported to the IOB and released to EFF is representative of all violations that occurred, including those that went unreported; third, the estimate assumes violations occurred at the same rate over time. In the reports released to EFF, roughly 33% were violations of the NSIG, 33% were NSL violations, and 20% were other violations (the remaining violations were too heavily redacted to categorize). The estimate is based on an extrapolation from the OIG's estimate that 6,400 NSL violations occurred from 2003-2006. In the absence

Substantial Delays in the Intelligence Oversight Process

- From 2001 to 2008, both FBI and IOB oversight of intelligence activities was delayed and likely ineffectual; on average, 2.5 years elapsed between a violation's occurrence and its eventual reporting to the IOB.

Type and Frequency of FBI Intelligence Violations

- From 2001 to 2008, of the nearly 800 violations reported to the IOB:
    - over one-third involved FBI violation of rules governing internal oversight of intelligence investigations.
    - nearly one-third involved FBI abuse, misuse, or careless use of the Bureau's National Security Letter authority.
    - almost one-fifth involved an FBI violation of the Constitution, the Foreign Intelligence Surveillance Act, or other laws governing criminal investigations or intelligence gathering activities.

- From 2001 to 2008, in nearly half of all NSL violations, third-parties to whom NSLs were issued — phone companies, internet service providers, financial institutions, and credit agencies —contributed in some way to the FBI's unauthorized receipt of personal information.

- From 2001 to 2008, the FBI engaged in a number of flagrant legal violations, including:
    - submitting false or inaccurate declarations to courts.
    - using improper evidence to obtain federal grand jury subpoenas.
    - accessing password protected documents without a warrant.

For further information on this report, contact Mark Rumold, mark@eff.org, or Jennifer Lynch, jen@eff.org.

---

of robust FBI auditing and thorough oversight, estimates such as these are the only reasonable method to approximate the scope of the FBI's investigatory misconduct.

TABLE OF CONTENTS

INTRODUCTION

EFF's analysis of recently disclosed documents provides new insights into the Federal Bureau of Investigation's unlawful surveillance of Americans during intelligence investigations conducted between 2001 and 2008.

In response to EFF FOIA requests issued in 2008 and 2009, the FBI released reports of violations made to the Intelligence Oversight Board (IOB) — an independent, civilian intelligence-monitoring board that reports to the President on the legality of foreign and domestic intelligence operations. The nearly 2,500 pages of documents EFF received include FBI reports to the IOB from 2001 to 2008. The reports catalog 768 specific violations arising from FBI monitoring of U.S. citizens, resident aliens, and non-residents.

Following a series of government investigations into FBI intelligence abuses, EFF submitted FOIA requests in an effort to obtain the FBI's IOB reports. In 2007, the Department of Justice, Office of Inspector General released a report documenting the FBI's abuse of its National Security Letter (NSL) authority:[2] the report found, in an audit of only 10% of national security investigations, that the FBI may have committed as many as 3000 NSL violations and had failed to report many of those violations to the IOB.[3] A 2008 OIG report confirmed and expanded the earlier report's findings and critically assessed the steps taken by the FBI to address the abuse of NSLs.[4]

Following the second OIG report in 2008, EFF submitted FOIA requests to eleven federal agencies and agency components requesting all reports of intelligence violations made to the IOB from 2001 to 2008. EFF submitted subsequent requests the following year for violations reported to the IOB from 2008 to 2009. In July 2009, after many agencies failed to respond to the request, EFF filed suit against eight defendants — including the CIA, NSA, Department of Defense, Department of Homeland Security, Department of

---

[2] DEPARTMENT OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, A REVIEW OF THE FEDERAL BUREAU OF INVESTIGATION'S USE OF NATIONAL SECURITY LETTERS (March 2007), *available at* http://www.justice.gov/oig/special/s0703b/final.pdf.

[3] *See* R. Jeffrey Smith, *FBI Violations May Number 3,000, Official Says*, WASH. POST., March 21, 2007, *available at* https://www.washingtonpost.com/wp-dyn/content/article/2007/03/20/AR2007032000921.html.

[4] DEPARTMENT OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, A REVIEW OF THE FBI'S USE OF NATIONAL SECURITY LETTERS: ASSESSMENT OF CORRECTIVE ACTIONS AND EXAMINATION OF NSL USAGE IN 2006 (March 2008), *available at* http://www.justice.gov/oig/special/s0803b/final.pdf. Even before the OIG's official acknowledgement of FBI investigative abuses, EFF, other civil liberties organizations, and members of the media had documented numerous instances of improper government intelligence activities in the years following 9/11. For example, in 2005, a FOIA request seeking information about violations related to 13 national security investigations revealed numerous instances of FBI misconduct stemming from the Bureau's newly expanded powers under the USA PATRIOT Act.

Justice, Office of the Director of National Intelligence, Department of Energy, and Department of State — demanding the agencies comply with the law and produce the requested documents. In December 2009, the Court ordered the agencies to begin processing EFF's request. In July 2010, two years after EFF's initial FOIA request, the FBI began its release of documents. Over three separate installments in July, August, and October 2010, the FBI released nearly 2,500 pages of documents related to reports of intelligence violations to the IOB.

The documents released to EFF constitute the most complete picture of post-9/11 FBI intelligence abuses available to the public. Among other findings, EFF's analysis of the documents shows that, from 2001 to 2008, significant delays occurred in the reporting of FBI violations to the IOB. The analysis also provides new insights into the type and frequency of violations committed by the Bureau. Most violations fell into one of three broad categories: first, FBI failure to comply with oversight guidelines; second, abuse of the FBI's authority to issue National Security Letters; and, third, the FBI's failure to carry out investigations within the bounds of the Constitution or other federal statutes governing intelligence-gathering. Finally, EFF's analysis concludes that the FBI may have committed as many as 40,000 violations in the 10 years since the attacks of 9/11.

THE INTELLIGENCE OVERSIGHT BOARD

The Intelligence Oversight Board "was created in 1976 by President Ford in response to recommendations made by the Rockefeller Commission calling for a Presidential-level body with specific oversight responsibilities for the legality and propriety of US intelligence activities."[5] The Commission's recommendations came in the wake of a series of congressional reports that revealed illegal and abusive intelligence activities targeting American and foreign citizens. These reports found that intelligence agencies had intercepted and read Americans' mail, performed surveillance on civil rights leaders and other dissidents, and had orchestrated assassination attempts on foreign leaders.

In light of the Commission's recommendation, President Ford established the IOB to provide an independent review of intelligence activities to better safeguard citizens' civil liberties against these types of abusive practices. The IOB consists of five civilian members, all with top-level security clearances, selected by the President to serve on the IOB from the larger intelligence-monitoring body, the President's Intelligence Advisory

[5] President's Intelligence Advisory Board and Intelligence Oversight Board, *PIAB History*, http://www.whitehouse.gov/administration/eop/piab/history.

Board (PIAB).[6] The IOB's mission is to "oversee the Intelligence Community's compliance with the Constitution and all applicable laws, Executive Orders, and Presidential Directives."[7] The IOB must then report to the President those violations the Board believes "may be unlawful or contrary to an Executive Order or presidential directive."[8] Since its creation, the vast majority of the IOB's reports and investigations have remained secret.

Intelligence Oversight Board

- Established in 1976 to oversee US Intelligence Activities
- Created in wake of Congressional reports of abusive practices such as reading Americans' mail, unwarranted surveillance on civil rights leaders, and assassination attempts on foreign leaders
- Role of IOB diminished in wake of 9/11 and many intelligence abuses went unchecked and unreported

Slight modifications to the IOB's authority and structure have occurred since its creation in 1976, but the IOB's oversight capacity remained largely unchanged for nearly 30 years. In the years following the attacks of 9/11, however, the Board's role within the intelligence community was diminished in several ways. First, from 2001 to 2003, President Bush failed to appoint advisers to serve on the IOB.[9] Even when advisers were appointed, however, the IOB continued to provide little real oversight: the IOB did not forward a single instance of intelligence misconduct to the Attorney General until 2006, despite having received notice of several hundred violations.[10] Further, in 2008, President Bush significantly weakened the IOB's oversight capacity by removing its ability to refer violations to the Attorney General for criminal investigation.[11] President Bush also removed the IOB's authority to oversee intelligence agency general counsel and eliminated the requirement for quarterly agency reporting to the IOB.[12]

EFF's analysis of FBI reports to the IOB confirms the perceived inefficacy of the IOB's oversight from 2001 to 2008. Significant delays between violations occurring and their eventual reporting rendered the IOB's oversight capacity entirely impotent. On average, nearly two-and-a-half years passed between the occurrence of an FBI intelligence

[6] *Id*.
[7] President's Intelligence Advisory Board and Intelligence Oversight Board, *About the PIAB*, http://www.whitehouse.gov/administration/eop/piab/about.
[8] *See, e.g.*, Exec. Order No. 13462 (Feb. 29, 2008), *available at* http://www.fas.org/irp/offdocs/eo/eo-13462.htm.
[9] John Solomon, *In Intelligence World, a Mute Watchdog*, WASH. POST, Jul. 15, 2007, *available at* https://www.washingtonpost.com/wp-dyn/content/article/2007/07/14/AR2007071400862.html.
[10] *Id*.
[11] Charlie Savage, *President Weakens Espionage Oversight*, BOS. GLOBE, Mar.14, 2008, *available at* http://www.boston.com/news/nation/washington/articles/2008/03/14/president_weakens_espionage_oversight/?page=full.
[12] *Id*.

violation and its eventual reporting to the IOB. When a violation was reported within the FBI internally, on average, six months still passed before the Bureau reported the violation to the IOB, despite the Bureau's requirement to report IOB violations on a quarterly basis. In light of these significant gaps between the occurrence of a violation and its eventual reporting to the IOB, it seems unlikely that the IOB diligently fulfilled its intelligence oversight responsibilities for most of the past decade.

After taking office, President Obama rolled back some of the Bush Administration's changes to the IOB's authority, but the function and effectiveness of the Board still remains in question. In an October 2009 executive order, President Obama largely reversed the changes made to the IOB's oversight authority, and nine appointments have been made to the larger President's Intelligence Advisory Board.[13] Nevertheless, the White House has not disclosed the composition or membership, if any, of the IOB, which continues to call into question the legitimacy of current intelligence oversight efforts.

FBI INTELLIGENCE VIOLATIONS REPORTED TO THE IOB

As noted above, in EFF's review of nearly 2,500 pages of documents released by the FBI, EFF uncovered alarming trends in the Bureau's intelligence investigation practices from 2001 to 2008. The documents suggest the FBI's intelligence investigations have compromised the civil liberties of American citizens far more frequently, and to a greater extent, than was previously assumed. Broadly, these documents show that the FBI most frequently committed three types of intelligence violations — violations of internal oversight guidelines for conducting investigations; violations stemming from the abuse of National Security Letters; and violations of the Fourth Amendment, Foreign Intelligence

Four Categories of FBI Intelligence Violations

1. Violations of internal oversight guidelines—*over 1/3 of all violations reported*
2. Violations of National Security Letter powers—*almost 1/3 of all violations reported*
3. Violations of the Constitution, FISA and other laws—*1/5 of all violations reported*
4. Remainder—Unclear from redactions

[13] Charlie Savage, *Obama Order Strengthens Spy Oversight*, N.Y. TIMES, Oct. 29, 2009, at A16, *available at* https://www.nytimes.com/2009/10/30/us/politics/30intel.html.

Surveillance Act (FISA), and other laws governing intelligence investigations. Also, based on statements made by government officials and the proportion of violations occurring in the released reports, EFF estimates the FBI may have committed as many as 40,000 intelligence investigation violations over the past ten years.

Violations of Internal Oversight Guidelines

The first category of violation occurring with the most frequency involved the FBI's failure to comply with internal oversight guidelines for conducting investigations. This type of violation ultimately resulted in investigations occurring without any meaningful oversight from either FBI Headquarters or the IOB. Of the reports filed with the IOB, violations of oversight guidelines accounted for over a third of all FBI violations.

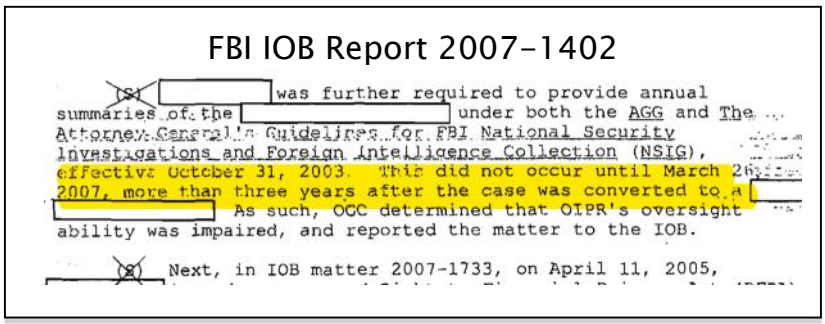
When the FBI fails to comply with its own internal guidelines there can be no meaningful oversight.

The Attorney General Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG)[14] set forth various reporting rules, investigative requirements, and classification regulations for FBI agents to follow when conducting intelligence investigations.[15] Originally issued in 1976 in the wake of the Church Committee's revelations of frequent and serious FBI violations of citizens' rights, the Guidelines task the Attorney General with ensuring that all government intelligence operations occur with sufficient oversight and within the bounds of the Constitution and other federal laws.[16] For example, the NSIG requires that, upon initiating a new intelligence investigation, an agent report the investigation to FBI Headquarters within a specified period. Other guidelines set requirements for annual reporting of investigations, for information sharing practices between agencies, and — depending on the stage of the investigation and the level of internal authorization — for the investigative techniques FBI agents may use. Broadly, the Guidelines are intended to protect American citizens' constitutional rights from intrusive and overreaching intelligence investigations.

In 2006, Department of Justice Inspector General Glenn Fine reported to Congress on FBI compliance with the Attorney General's Guidelines for Domestic Investigations, a

[14] A previous version of the NSIG, the Attorney General's Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Collection ("FCIG") is referenced in some of the earlier released documents. The NSIG replaced the FCIG in October 2003.
[15] A partially declassified version of the guidelines is available at http://www.fas.org/irp/agency/doj/fbi/nsiguidelines.pdf.
[16] *See* ELECTRONIC PRIVACY INFORMATION CENTER, THE ATTORNEY GENERAL'S GUIDELINES, *available at* http://epic.org/privacy/fbi/.

distinct set of guidelines from the NSIG governing FBI domestic investigations.[17] The OIG investigation revealed "significant non-compliance with the Guidelines."[18] EFF's analysis demonstrates that the FBI's non-compliance extends to the NSIG, as well: the FBI frequently violated its own internal oversight protocols for national security and intelligence investigations. These violations ranged from a failure to submit notification of the investigation of a US person to FBI Headquarters for three years,[19] to a failure to report a violation within 14 days of its discovery,[20] to continuing to investigate a US person when the authority to do so had expired.[21] In all cases involving violations of the NSIG, though, the FBI only reported to the IOB when it determined the agency's ability to supervise the investigation had been "*substantially* impaired."


FBI IOB Report 2007-1402

was further required to provide annual summaries of the [redacted] under both the AGG and The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG), effective October 31, 2003. This did not occur until March 26, 2007, more than three years after the case was converted to a [redacted]. As such, OGC determined that OIPR's oversight ability was impaired, and reported the matter to the IOB.

(S) Next, in IOB matter 2007-1733, on April 11, 2005,

In a 2005 *Washington Post* article, a senior FBI official dismissed the severity of this type of violation, noting that the "vast majority of the potential [violations] reported have to do with administrative timelines and time frames for renewing orders."[22] But these guidelines are much more than mere "administrative timelines:" the NSIG exists in order to prevent intelligence agencies from invoking "national security" to monitor citizens engaging in constitutionally protected activities — *exactly* the type of monitoring the FBI was engaging in at the time.[23]

Taken together, the FBI's disregard for its own internal oversight requirements and the Bureau's failure to timely report violations to the IOB undermined the safeguards

[17] The FBI operates under two separate sets of guidelines issued by the Attorney General: one for domestic investigations, one for national security and intelligence investigations. For a thorough treatment of the gradual expansion of the Attorney General's Domestic Guidelines, *see* EMILY BERMAN, BRENNAN CENTER FOR JUSTICE, DOMESTIC INTELLIGENCE: NEW POWERS, NEW RISKS (Jan. 2011), *available at* http://www.brennancenter.org/content/resource/domestic_intelligence_new_powers_new_risks/.

[18] *Oversight of the Federal Bureau of Investigation*: *Hearing Before the Sen. Comm. on the Judiciary* (May 2, 2006) (statement of Glenn A. Fine, Inspector General, U.S. Department of Justice), *available at* http://www.justice.gov/oig/testimony/0605.htm.

[19] FBI IOB Report 2007-1402, Appendix 1.

[20] FBI IOB Report 2001-46, Appendix 2.

[21] FBI IOB Report 2003-25, Appendix 3.

[22] Dan Eggen, *FBI Papers Indicate Intelligence Violations*, WASH. POST., Oct. 24, 2005, *available at* https://www.washingtonpost.com/wp-dyn/content/article/2005/10/23/AR2005102301352.html.

[23] *See, e.g.*, DEPARTMENT OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, A REVIEW OF THE FBI'S INVESTIGATIONS OF CERTAIN DOMESTIC ADVOCACY GROUPS (September 2010), *available at* http://www.justice.gov/oig/special/s1009r.pdf (describing FBI surveillance of various American advocacy groups from 2001 to 2006).

established to protect civil liberties violations from occurring—the precise object of both the NSIG and the IOB.

Abuse of National Security Letters

In the reports disclosed to EFF, the second type of violation occurring with the most frequency involved FBI abuse of National Security Letters. These violations accounted for almost one-third of all reported violations. National Security Letters, or NSLs, are secret administrative subpoenas used by the FBI to obtain records from third-parties without any judicial review.[24] While NSLs have existed since the late-1970s, the USA PATRIOT Act greatly expanded the intelligence community's authority to issue NSLs. During the course of a terrorism or counterintelligence investigation, NSLs can be used to obtain just three types of records: (1) subscriber and "toll billing information" from telephone companies and "electronic communications services;"[25] (2) financial records from banks and other financial institutions;[26] and (3) consumer identifying information and the identity of financial institutions from credit bureaus.[27]

The FBI issued nearly 200,000 NSL requests between 2003-2006.

The FBI's systemic abuse of NSLs has been well-documented — both by Justice Department investigations and through litigation and scrutiny of FBI practices by EFF. As noted above, in reports from 2007 and 2008, the Inspector General found that, between 2003 to 2006, the FBI may have committed as many as 6,400 violations of the FBI's NSL authority.[28] According to the 2008 Report, from 2003 to 2006, the FBI issued nearly 200,000 NSL requests; almost 60% of the 49,425 requests issued in 2006 were for investigations of U.S. citizens or legal aliens.[29]

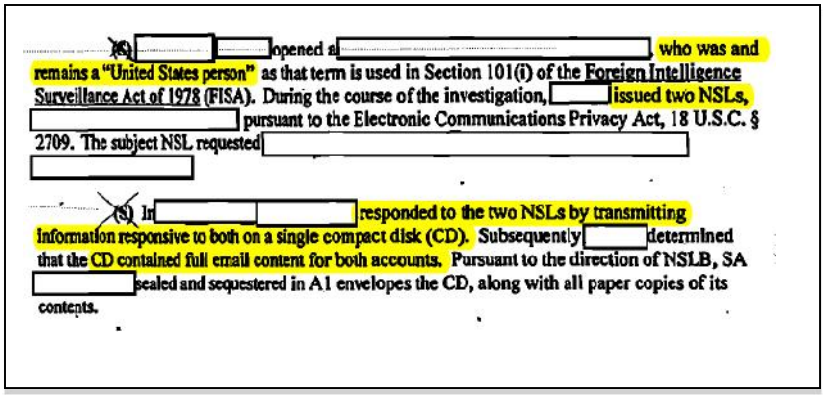
---

[24] *See* Electronic Frontier Foundation, *National Security Letters*, https://www.eff.org/issues/national-security-letters.
[25] 18 U.S.C. § 2709.
[26] 12 U.S.C. § 3414.
[27] FBI has the authority to issue three different, but related, NSLs to credit agencies — an NSL pursuant to 15U.S.C. § 1681(u)(a) for the names of financial institutions with which the subject has an account; an NSL pursuant to 15 U.S.C. 1681(u)(b) for consumer identifying information; and an NSL pursuant to 15 U.S.C. § 1681(v) for a full credit report. The FBI may only request a full credit report while investigating international terrorism cases.
[28] *See* Jason Ryan, *FBI Search Abuses Could Number Thousands*, ABC NEWS, Apr. 16, 2008, *available at* http://abcnews.go.com/TheLaw/DOJ/story?id=4661216&page=1.
[29] DEPARTMENT OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, A REVIEW OF THE FBI'S USE OF NATIONAL SECURITY LETTERS: ASSESSMENT OF CORRECTIVE ACTIONS AND EXAMINATION OF NSL USAGE IN 2006 (March 2008), *available at* http://www.justice.gov/oig/special/s0803b/final.pdf.

Earlier scrutiny of FBI practices by EFF also revealed abuses of the Bureau's NSL authority. Documents obtained in a response to a 2007 EFF FOIA request showed that the FBI issued an NSL to North Carolina State University to obtain educational records, in clear violation of the FBI's statutory authority.[30] EFF also filed a lawsuit challenging the legality of an NSL issued by the FBI to the Internet Archive. The government formally withdrew the NSL request in 2008.[31]

Analysis of the FBI's IOB reports released to EFF show that the Bureau committed violations involving NSLs for telephone and electronic communications records twice as often as it did for financial and credit records. While the FBI has publicly disclosed the *total* number of NSLs issued annually,[32] the Bureau has refused to release the frequency with which the three individual types of NSLs issued. However, if the rate at which the FBI's NSL violations occurred is an indicator of the frequency with which the three types of requests were issued, then, on average, the FBI likely issued approximately 25,000 NSL requests for telephone and electronic communications records, 12,500 requests for financial records, and 12,500 requests for credit information annually from 2003 to 2006.

Perhaps most startling, however, was the frequency with which companies receiving NSLs — phone companies, internet providers, banks, or credit bureaus — contributed to the FBI's NSL abuse. In over half of all NSL violations reviewed by EFF, the private entity receiving the NSL either provided more information than requested or turned over information without receiving a valid legal justification from the FBI. Companies were all too willing to comply with the FBI's requests, and — in many cases — the Bureau readily incorporated the over-produced information into its investigatory databases.


(S) opened a who was and remains a "United States person" as that term is used in Section 101(i) of the Foreign Intelligence Surveillance Act of 1978 (FISA). During the course of the investigation, issued two NSLs, pursuant to the Electronic Communications Privacy Act, 18 U.S.C. § 2709. The subject NSL requested

(S) In responded to the two NSLs by transmitting information responsive to both on a single compact disk (CD). Subsequently determined that the CD contained full email content for both accounts. Pursuant to the direction of NSLB, SA sealed and sequestered in A1 envelopes the CD, along with all paper copies of its contents.

For example, in a violation reported in 2006, the FBI requested email header information for two email addresses used by a U.S. person.[33] In response, the email service provider

[30] *See* Electronic Frontier Foundation, *Report on the Improper Use of an NSL to NC State University*, https://www.eff.org/issues/foia/report-nsl-ncstate.
[31] *See* Electronic Frontier Foundation, *Internet Archive v. Mukasey*, https://www.eff.org/cases/archive-v-mukasey.
[32] DEPARTMENT OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, A REVIEW OF THE FBI'S USE OF NATIONAL SECURITY LETTERS: ASSESSMENT OF CORRECTIVE ACTIONS AND EXAMINATION OF NSL USAGE IN 2006 (March 2008), *available at* http://www.justice.gov/oig/special/s0803b/final.pdf.
[33] FBI IOB Report 2006-246, Appendix 4.

returned two CDs containing the full content of all emails in the accounts. The FBI eventually (and properly) sequestered the CDs, notified the email provider of the overproduction, and re-issued an NSL for the originally requested header information; but, in response to the second NSL, the email provider *again* provided the FBI with the full content of all emails in the accounts.

Compounding the service providers' problematic over-disclosure, the scope of the FBI's authority to issue NSLs for electronic transactional records rests on unsettled and unclear legal grounds. The FBI's NSL authority under the Electronic Communications Privacy Act (ECPA) allows the government to issue NSLs to traditional telephone service providers for non-content subscriber information and toll billing records — essentially, the name, address, length of service, and local and long distance call records.[34] ECPA also provides the authority to issue NSLs for "electronic communications transactional records."[35] However, the exact scope of this remains unclear: according to the DOJ, "electronic communications transactional records" include "those categories of information parallel to . . . toll billing records for ordinary telephone service."[36] What, exactly, "those categories of information" constitute — possibly including, for example, email "header" information, IP addresses, URLs, or other information — remains unclear.

Third parties, such as financial institutions or ISPs, responded to NSLs that lacked any legal justification.

Third-parties not only willingly cooperated with FBI NSLs when the legal justification was unclear, however: they responded to NSLs without any legal justification at all. In one instance, when requesting financial records from a bank under the Right to Financial Privacy Act, the FBI used language and statutory citations from ECPA — a statute entirely unrelated to financial records — for its legal authority; nevertheless, the financial institution complied with the FBI's legally deficient request.[37] In another series of violations, the FBI improperly requested and received full credit reports on subjects of counterintelligence investigations.[38] The Fair Credit Reporting Act, the statute providing FBI authority to request credit information using an NSL, however, only provides that authority in terrorism investigations.[39] In other violations, the FBI failed to certify, as

[34] *See* 18 U.S.C. § 2709(a).
[35] *Id*.
[36] *See* Department of Justice, Office of Legal Counsel, Requests for Information under the Electronic Communications Privacy Act (November 2008) at 3 n. 3, *available at* http://www.fas.org/irp/agency/doj/olc/ecpa.pdf.
[37] FBI IOB Report 2007-718, Appendix 5.
[38] FBI IOB Report 2004-80, Appendix 6.
[39] *See* 15 U.S.C. § 1681(v).

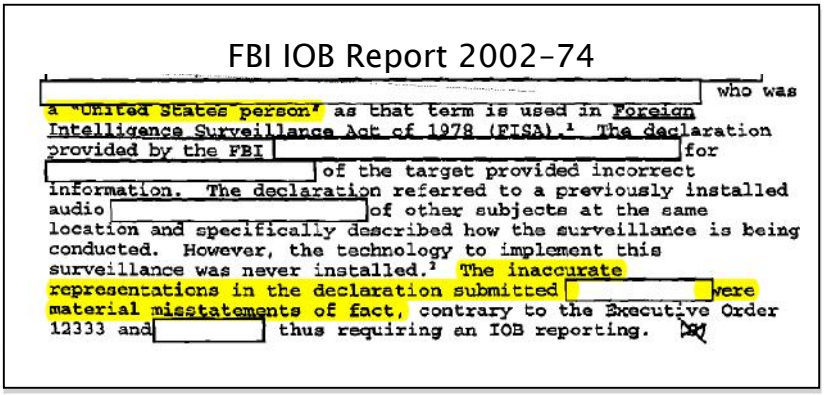
required by statute, that the NSL was relevant to a terrorism investigation and not being used to investigate constitutionally protected activities.[40] Again, despite the deficiency of the request, the third-party complied with the FBI's NSL.

The FBI's abuse of its NSL power has garnered much of the attention in the debate over the FBI's abusive intelligence practices. What has *not* received as much attention, however, is the unwillingness of companies and organizations to guard their clients' and users' sensitive, personal information in the face of these NSL requests — whether the request was legally justifiable or not. Undeniably, if the FBI had complied with the law, the vast majority of NSL violations would never have occurred. Nevertheless, many of the businesses and organizations with which Americans trust their most private information are not applying any scrutiny to unjustifiable requests from the FBI and are not responding to valid requests in a responsible manner.

Violations of the Constitution, FISA, and Other Legal Authorities

The third category of FBI intelligence violations reported to the IOB, accounting for almost 20% of all reports, are violations of the Constitution, the Foreign Intelligence Surveillance Act (FISA), and other federal laws governing criminal investigations and intelligence-gathering activities. The first two types of intelligence violations committed by the FBI — violations of the NSIG and NSL abuse — were readily susceptible to categorization: these violations occurred with great frequency, and the violations were often repetitive and largely similar. On the other hand, violations falling into the third category were, in general, unique, and often flagrant, violations of a variety of legal authorities.

Violations falling into this third category were consistently the most brazen and egregious violations. For example, in two separate incidents, the FBI reported to the IOB that its agents had made false statements in written declarations to courts.[41] Another reported violation involved the FBI's use of improper evidence to


FBI IOB Report 2002-74

[redacted] who was a "United States person" as that term is used in Foreign Intelligence Surveillance Act of 1978 (FISA).[1] The declaration provided by the FBI [redacted] for [redacted] of the target provided incorrect information. The declaration referred to a previously installed audio [redacted] of other subjects at the same location and specifically described how the surveillance is being conducted. However, the technology to implement this surveillance was never installed.[2] The inaccurate representations in the declaration submitted [redacted] were material misstatements of fact, contrary to the Executive Order 12333 and [redacted] thus requiring an IOB reporting.

[40] FBI IOB Report 2007-1209, Appendix 7.

obtain grand jury subpoenas.[42] Other violations involved FBI's use of a target's username and password to access and download account information[43] and a warrantless search of password-protected files.[44]

Of the reports reviewed by EFF, however, this type of violation was also generally the most redacted. One four-page report (on average, most reports are only one or two paragraphs) is almost entirely redacted, with the exception of one paragraph that notes the "scope of [the FBI agent's] alleged offenses" warranted reporting to the IOB: the three pages detailing the offenses, however, are almost entirely redacted.[45] Moreover, solely from the documents provided to EFF, it is evident that the FBI is withholding information on an inconsistent and arbitrary basis. For example, one IOB report, which details the issuance of NSLs without proper authority in the wake of the attacks on September 11th, was inadvertently included twice in the FBI's document release: one is nearly entirely redacted; the other, almost entirely free from redactions.[46] Numerous documents throughout the FBI's release provide similar evidence of the agency's inconsistent and arbitrary practice of redacting and withholding documents.[47]

While the reports documenting the FBI's abuse of the Constitution, FISA, and other intelligence laws are troubling, EFF's analysis is necessarily incomplete: it is impossible to know the severity of the FBI's legal violations until the Bureau stops concealing its most serious violations behind a wall of arbitrary secrecy.

TOTAL NUMBER OF VIOLATIONS FROM 2001 TO 2008

Both the frequency and type of violations revealed in the FBI's release to EFF are staggering. At a minimum, these documents already demonstrate the need for greater accountability and improved oversight mechanisms for American intelligence agencies. Yet, at the same time, the FBI continues to withhold critical information on the circumstances, rate of occurrence, and severity of these violations. And, if past experience is any guide, it is likely that the FBI is either withholding or failing to report many violations altogether.

---

[41] FBI IOB Report 2002-72, Appendix 8; FBI IOB Report 2002-74, Appendix 9.
[42] FBI IOB Report 2005-03, Appendix 10.
[43] FBI IOB Report 2007-1693, Appendix 11.
[44] FBI IOB Report 2006-224, Appendix 12.
[45] FBI IOB Report 2008-255, Appendix 13.
[46] FBI IOB Report 2001-69, Appendix 14.
[47] *See* Jennifer Lynch, *FBI Arbitrarily Covers up Evidence of Misconduct: Is this the Transparency Obama Promised?*, Electronic Frontier Foundation Deeplinks, *available at* https://www.eff.org/deeplinks/2010/12/fbi-arbitrarily-covers-evidence-misconduct.

In the absence of robust auditing and full disclosure from the Bureau, the only method for approximating the scope of the FBI's abusive intelligence practices is to extrapolate from information contained within these releases and public statements made by government officials. The IOB reports, themselves, provide some insight into the sheer number of FBI intelligence violations. In previous litigation, EFF fought the FBI to release the IOB matter numbers that accompany every IOB report. While not every IOB "matter" is ultimately reported to the IOB, the numbers provide some indication of the number of violations investigated by the FBI. Based on IOB matter numbers on the reports released to EFF, it is clear that, at minimum, the FBI investigated approximately 7,000 instances of alleged misconduct from 2001 to 2008.

The number of FBI intelligence violations since 9/11 could approach the tens of thousands.

The actual number of violations that occurred from 2001 to 2008, however, is likely much higher. The Inspector General has acknowledged that as many as 6,400 potential NSL violations may have occurred between 2003-2006;[46] if the proportion of violations released to EFF is representative of all FBI intelligence violations from 2001 to 2008, then the number of total violations during that span may have approached tens of thousands of possible violations of laws, Executive Orders, or regulations.[47]

CONCLUSION

From 2001 to 2008, the FBI frequently and flagrantly violated laws intended to check abusive intelligence investigations of American citizens. While many believed the era of abusive FBI practices would end with the Bush Administration, there is little evidence that President Obama has taken significant measures to change past FBI practices. Two years into his term, the President has not publicly disclosed any appointments to the IOB,

[46] *See* Jason Ryan, *FBI Search Abuses Could Number Thousands*, ABC NEWS, Apr. 16, 2008, *available at* http://abcnews.go.com/TheLaw/DOJ/story?id=4661216&page=1.

[47] This figure is an estimate based, first, on the fact that a significant number of FBI violations went unreported, both internally and to the IOB; second, this estimate assumes the sample of violations reported to the IOB and released to EFF is representative of all violations that occurred, including those that went unreported; third, the estimate assumes violations occurred at the same rate over time. In the reports released to EFF, roughly 33% were violations of the NSIG, 33% were NSL violations, and 20% were other violations (the remaining violations were too heavily redacted to categorize). The estimate is based on an extrapolation from the OIG's estimate that 6,400 NSL violations occurred from 2003-2006. In the absence of robust FBI auditing and thorough oversight, however, estimates are the only reasonable method to approximate the scope of the FBI's investigatory misconduct.

and his campaign promise of unprecedented transparency within the executive branch has gone largely unfulfilled — especially within the intelligence community.

Congress, however, has an opportunity to remedy these abuses: portions of the USA PATRIOT Act expire in late February, and a bill has already been introduced in the House of Representatives to reauthorize it. Instead of simply rubber-stamping the intelligence community's continuing abuse of American's civil liberties, Congress should seize this opportunity to investigate the practices of the FBI and other intelligence agencies, and to demand greater accountability, disclosure, and reporting from these agencies. Until then, the FBI's pattern of misconduct will continue.

For further information on this Report, contact Mark Rumold, mark@eff.org, or Jennifer Lynch, jen@eff.org.

Appendix:
IOB Reports

Appendix 1—IOB Report 2007-1402

U.S. Department of Justice

Federal Bureau of Investigation

~~SECRET~~

Office of the General Counsel — Washington, D.C. 20535

June 3, 2008

VIA SECURE FACSIMILE
AND U.S. MAIL

COPY

Homer S. Pointer, Counsel
Intelligence Oversight Board
Room 5020
New Executive Office Building
725 17th Street, N.W.
Washington, D.C. 20503
Secure Facsimile: [redacted] b2

Dear Mr. Pointer:

(U) This letter is in response to your request that the Federal Bureau of Investigation, Office of the General Counsel (OGC), clarify three of its recent reports to the Intelligence Oversight Board and the Office of the Director of National Intelligence. The three matters to which you seek clarification are: 2007-1402; 2007-1733; and 2007-2160.

(U) ~~(S)~~ In 2007-1402, the [redacted] Field Office opened a [redacted] of a United States person on [redacted] The [redacted] was extended on [redacted] and converted to a [redacted] on [redacted] No. notification of this investigation was provided to FBI Headquarters (FBIHQ) until [redacted] b2 b7E

(U) ~~(S)~~ [redacted] of the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations (AGG), effective March 8, 1999. However, once the investigation was b2 b7E

(U) Derived From : FBI NSISCG 20080301
Declassify On: 06/03/2018

~~SECRET~~

DECLASSIFIED BY 65179DMH/plj
ON 05-08-2010

Cardozo-IOB-11

~~SECRET~~

(U) (S) was further required to provide annual summaries of the under both the AGG and The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG), effective October 31, 2003. This did not occur until March 2007, more than three years after the case was converted to a As such, OGC determined that OIPR's oversight ability was impaired, and reported the matter to the IOB.

(U) (S) Next, in IOB matter 2007-1733, on April 11, 2005, issued an approved Right to Financial Privacy Act (RFPA) National Security Letter (NSL) to a financial institution for the subject's financial records from The financial institution returned financial records for the time period requested, plus additional records prior to analyzed the results and uploaded a summary to an FBI database. The data exceeding the scope of the NSL has since been sequestered and purged from the FBI database. was unaware of the need to report this matter as a potential IOB error until the Inspection Division (INSD) audit of March 2007.

(U) (S) By agreement with the Counsel to the IOB, third party errors in the collection of information pursuant to an NSL are not reportable unless the FBI has compounded the error. Here, analyzed and uploaded the overproduction into an FBI database, thus compounding the error. Accordingly, OGC reported this matter to the IOB.

(U) (S) OGC advised

(U) (S) Finally, in IOB matter 2007-2160, the Field Office reported that, on it opened a on a non-United States person. The expired on Following the expiration of the on

~~SECRET~~

2

Cardozo-IOB-12

Appendix 2—IOB Report 2001-46

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

DATE: 07-02-2010
CLASSIFIED BY 65179/DMH/plj/lcw
REASON: 1.4 (c)
DECLASSIFY ON: 07-02-2035

~~SECRET~~

INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER

[redacted] b2 b7E

IOB MATTER 2001-46 (U)

(S) Inquiry has determined that in conducting a [redacted] of [redacted] a United States person, the Federal Bureau of Investigation (FBI) failed to meet the initial reporting requirements prescribed in [redacted] of the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations (FCIG). In this regard, the [redacted] Division [redacted] opened a [redacted] of the subject on [redacted]. Thereafter, due to administrative error, the [redacted] -- failed to forward [redacted] initial 90-day letterhead memorandum (LHM) to the Office of Intelligence Policy and Review (OIPR), Department of Justice, as required by the FCIG. The error was not realized until [redacted] when [redacted] LHM was received by the [redacted] and forwarded to OIPR for review. The delayed submission clearly precluded meaningful oversight and review of [redacted] ongoing investigation by OIPR, which is contrary to the requirements of [redacted] of the FCIG. The [redacted] initial error was further compounded by the unit's failure to report the error for [redacted] following the discovery of the mistake. FBI regulations specify that potential IOB matters shall be reported with 14 days of discovery. [redacted]s handling of this case has been reported to the FBI's Office of Professional

(U) Responsibility. (S)

b1 b2 b6 b7C b7E

~~Classified by: 39645 NSA/OGC~~
~~Reason: 1.5(c)~~
~~Declassify on: X1~~

~~SECRET~~

APPROVED: Director, Deputy Director, Adm. Asst., Cntn. Inv., CJIS, Finance, Gen. Counsel, Info. Res., Inspection, Laboratory, National Sec., OPR, Personnel, Training, Off. of EEO Affairs, Off. of Public & Cong. Affs.

8-7-01

Hofmann-IOB-2234

Appendix 3—IOB Report 2003-25

~~SECRET~~

(U) (S) In IOB matter 2003-04, the FBI initiated a [redacted] on a non-United States person. The [redacted] Due to an administrative error, and after the [redacted] had expired, the FBI conducted an [redacted]

b2
b7E

(U) (S) Finally, in IOB matter 2003-25, the FBI initiated a [redacted] on a United States person. The [redacted] expired on [redacted] Due to administrative error, and after the expiration of the [redacted] the FBI interviewed the subject of the inquiry on [redacted] Upon realizing that the [redacted] had expired, the FBI extended the investigation.

b2
b7E

(U) (S) [redacted]

b2
b5
b7E

(U) Please do not hesitate to contact [redacted] or me if you have any questions regarding these or any other IOB matters.

b6
b7C

Sincerely,

Julie F. Thomas
Deputy General Counsel
National Security Law Branch

~~SECRET~~

3

Cardozo-IOB-16

Appendix 4—IOB Report 2006-246

DATE: 06-30-2010
CLASSIFIED BY 65179/DMH/PLJ/LCW
REASON: 1.4 (c)
DECLASSIFY ON: 06-30-2035

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

~~SECRET~~

INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER
[redacted] DIVISION
IOB MATTER 2006-246 (U)

b2
b7E

(U) ~~(S)~~ Th[redacted] Division reported this potential IOB matter involving unauthorized surveillance.

b2
b7E

(S) ~~(S)~~ [redacted] opened a [redacted], who was and remains a "United States person" as that term is used in Section 101(i) of the Foreign Intelligence Surveillance Act of 1978 (FISA). During the course of the investigation, [redacted] issued two NSLs, [redacted] pursuant to the Electronic Communications Privacy Act, 18 U.S.C. § 2709. The subject NSL requested [redacted]

b1
b2
b6
b7C
b7E

(U) ~~(S)~~ In [redacted] responded to the two NSLs by transmitting information responsive to both on a single compact disk (CD). Subsequently [redacted] determined that the CD contained full email content for both accounts. Pursuant to the direction of NSLB, SA [redacted] sealed and sequestered in A1 envelopes the CD, along with all paper copies of its contents.

b2
b7E

~~(S)~~ On [redacted] contacted [redacted] and advised regarding overproduction and requested verification of compliance with the limits of National Security Letters. In the interest of administrative purity, on [redacted] served [redacted] with another NSL, requesting [redacted]

(S) [redacted] On [redacted] transmitted a CD to the FBI [redacted] Office. Once again information responsive to multiple NSLs was included on the CD.

b2
b7E
b1
b6
b7C

(S) ~~(S)~~ On [redacted] after having the information separated by email account/NSL, [redacted] determined that once again [redacted] had provided full email content. Based upon advice of CDC [redacted] and NSLB SSA [redacted] and SA [redacted] took corrective action and ensured that the CDs, along with all paper copies of their contents, were sealed and sequestered in 1A envelopes.

b2
b6
b7C
b7E

(S) ~~(S)~~ Despite the fact that [redacted] limited the scope of the subject NSL to [redacted] provided content information concerning an e-mail account. Thus, the FBI unintentionally received that content information not contemplated by the NSL. Such viewing of [redacted] was not authorized under the Electronic Communications Privacy Act, Foreign Intelligence Surveillance Act and/or E.O. 12333. Under these circumstances, it is OGC's opinion that the error, although inadvertent, must be reported to IOB.

b2
b7E

(U) OGC has referred this matter to the FBI's Inspection Division for action deemed appropriate.

(U) ~~(S)~~ Derived From : G-3
Declassify On: X1

Hofmann-IOB-666

~~SECRET~~

Appendix 5—IOB Report 2007-718

~~SECRET~~

DECLASSIFIED BY 65179 UCLP/PLJ/JN
ON 07-01-2010

INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER
[redacted] FIELD OFFICE
IOB MATTER 2007-718

(U)

(S) The [redacted] Division reported on 02/23/2007 [redacted] a National Security Letter (NSL) was issued for financial records [redacted] under authority of the Electronic Communications Privacy Act rather than the Right to Financial Privacy Act. The NSL was approved in an EC which also cited the incorrect legal authority and did not articulate the facts supporting its issuance.

b2
b4
b7D
b7E

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

Hofmann-IOB-1072

~~SECRET~~

Appendix 6—IOB Report 2004-80

DECLASSIFIED BY 65179/DMH/PLJ/sdb
ON 06-30-2010

~~SECRET~~

INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER
IOB 2004-80 (U)

(U)

~~(S)~~ Investigation of this IOB matter has determined that the [redacted] Field Office obtained consumer credit reports from two credit reporting companies in connection with an authorized counterintelligence investigation using a National Security Letter (NSL) that referred to Title 15, United States Code, Section 1681v, when in fact that section only permits the use of NSLs to request credit reports for authorized counterterrorism cases. Title 15, United States Code, Section 1681u, allows the FBI to use an NSL to obtain certain information from credit reporting agencies in authorized counterintelligence cases, specifically, the names and addresses of financial institutions at which the subject of the investigation maintains an account. In order for the FBI to obtain a credit report in a counterintelligence case, it must apply for an ex parte court order under the terms of Title 18, United States Code, Section 1681u(c).

b2
b7E

(U)

~~(S)~~ The credit reports that were procured from credit reporting companies by citing 15 U.S.C. §1681v were not properly obtained. Although the error in statutory citation appears to have been inadvertent, and the [redacted] office immediately retrieved and sealed the credit reports once the error was discovered, this matter has been referred to the FBI's Office of Professional Responsibility for such action as may be appropriate.

b2
b7E

~~Derived from: G-3~~
~~Declassify on: X25-1~~

~~SECRET~~

Hofmann-IOB-301

Appendix 7—IOB Report 2007-1209

DECLASSIFIED BY 65179\DMH\sdb
ON 05-05-2010

~~SECRET//20180131~~

(U) INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER
[redacted] FIELD OFFICE
IOB MATTER 2007-1209-NSL (U)

b2
b7E

~~(S)~~ During an authorized [redacted] of a presumed U.S. person, [redacted] sent a National Security Letter (NSL) under the Electronic Communications Privacy Act (ECPA), 18 U.S.C. § 2709. The NSL requested subscriber information and transactional records from the service provider. [redacted] did not, however, include in the NSL a certification that the information sought was relevant to an authorized investigation to protect against international terrorism and that the investigation of a United States person is not conducted solely on the basis of activities protected by the First Amendment to the Constitution of the United States. Notwithstanding the lack of certification, the service provider produced materials in response to the NSL.

(U) This matter is being reported because the field office's NSL did not comply with the requirements imposed by ECPA to obtain subscriber information and transactional records. Specifically, the NSL did not include the appropriate certification. The field office was instructed to sequester the NSL results. The [redacted] has expired; therefore, the field office cannot issue a curative NSL at this time. The field office must contact the service provider and ask whether the NSL results should be returned or destroyed, with appropriate documentation to the file.

b2
b7E

(U)

~~(S) Derived From: G-3~~
~~Declassify On: 11/30/2017~~

~~SECRET//20180131~~

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

DATE: 07-02-2010
CLASSIFIED BY 65179/DMH/plj/lcw
REASON: 1.4 (c)
DECLASSIFY ON: 07-02-2035

~~SECRET~~

INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER
[redacted] DIVISION AND THE
[redacted] DIVISION,
FBI HEADQUARTERS
IOB MATTER 2002-72 (U)

b2
b7E

As reported by the [redacted],
FBI Headquarters, on [redacted]
[redacted]. On [redacted]
[redacted]. In each of the declarations that accompanied the Government's applications [redacted], the Government described events that took place on [redacted], and stated, in pertinent part, that "[redacted]" This was incorrect. In fact, [redacted]
[redacted] Additionally, a footnote in the Government's [redacted] declaration indicated that [redacted]
This, too, was incorrect. As stated above, [redacted]
[redacted]. These errors, detected on [redacted] were repeated in all three declarations. They were reported [redacted] on [redacted] and subsequently were briefed to [redacted]. They have also been reported to the FBI's Office of Professional Responsibility for action deemed appropriate.

b1
b2
b6
b7C
b7E

~~Derived from: G-3~~
~~Declassify on: X1~~

~~SECRET~~

APPROVED:

Director	Crim. Inv.	Inspection	Training
Deputy Director	CJIS	Laboratory	Off. of EEO
	Finance	National Sec.	Affairs
	Gen. Counsel	OPR	Off. of Public &
	Info. Res.	Personnel	Cong. Affs

Hofmann-IOB-2374

DATE: 06-29-2010
CLASSIFIED BY 65179 DMH/plj
REASON: 1.4 (c)
DECLASSIFY ON: 06-29-2035

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

~~SECRET~~

b2
b7E

INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER
[redacted] DIVISION AND
COUNTERTERRORISM DIVISION
2002-74 (U)

(S) Investigation of this IOB matter has determined that, on [redacted] the [redacted] Division obtained an order, [redacted] who was a "United States person" as that term is used in Foreign Intelligence Surveillance Act of 1978 (FISA).[1] The declaration provided by the FBI [redacted] for [redacted] of the target provided incorrect information. The declaration referred to a previously installed audio [redacted] of other subjects at the same location and specifically described how the surveillance is being conducted. However, the technology to implement this surveillance was never installed.[2] The inaccurate representations in the declaration submitted [redacted] were material misstatements of fact, contrary to the Executive Order 12333 and [redacted] thus requiring an IOB reporting.

b1
b2
b6
b7C
b7E

This matter has been referred to the FBI's Office of Professional Responsibility for action deemed appropriate. (U)

~~Derived from : G-3~~
~~Declassify on: X25-1~~

NSLB/CICU

~~SECRET~~ APPROVED:

Crim. Inv.	Inspection	Training	
CJIS	Laboratory	Off. of EEO Affairs	
Finance	National Sec.		
Director	Gen. Counsel	OPR	Off. of Public & Cong. Affs.
Deputy Director	Info. Res.	Personnel	

[1] (U) The FISA is codified at 50 U.S.C. 1801 et seq. A "United States person" is defined in Section 101(i) of the FISA as: "a citizen of the United States, [or] an alien lawfully admitted for permanent residence ... ."

[2] (U) The Office of Intelligence Policy and Review was timely notified of this error.

Hofmann-IOB-174

Appendix 10—IOB Report 2005-03

DATE: 06-30-2010
CLASSIFIED BY 65179/DMH/PLJ/sdb
REASON: 1.4 (c)
DECLASSIFY ON: 06-30-2035

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

~~SECRET~~

INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER
[redacted] FIELD OFFICE
IOB MATTER 2005-03 (U)

(S) Review of this IOB matter has determined that on [redacted] opened a [redacted] on U.S. persons, [redacted] provided [redacted] and other [redacted] sections information derived from surveillance that had been authorized pursuant to the [redacted] Electronic Communications (ECs) to [redacted] clearly instructed that [redacted] information provided could not be incorporated into any criminal affidavit, criminal court proceedings, subpoenas, or for other legal or judicial purposes. Despite the caveats to this effect contained in the ECs, the [redacted] Division sought and obtained Federal Grand Jury Subpoenas (seeking [redacted] based on [redacted] information. (S)

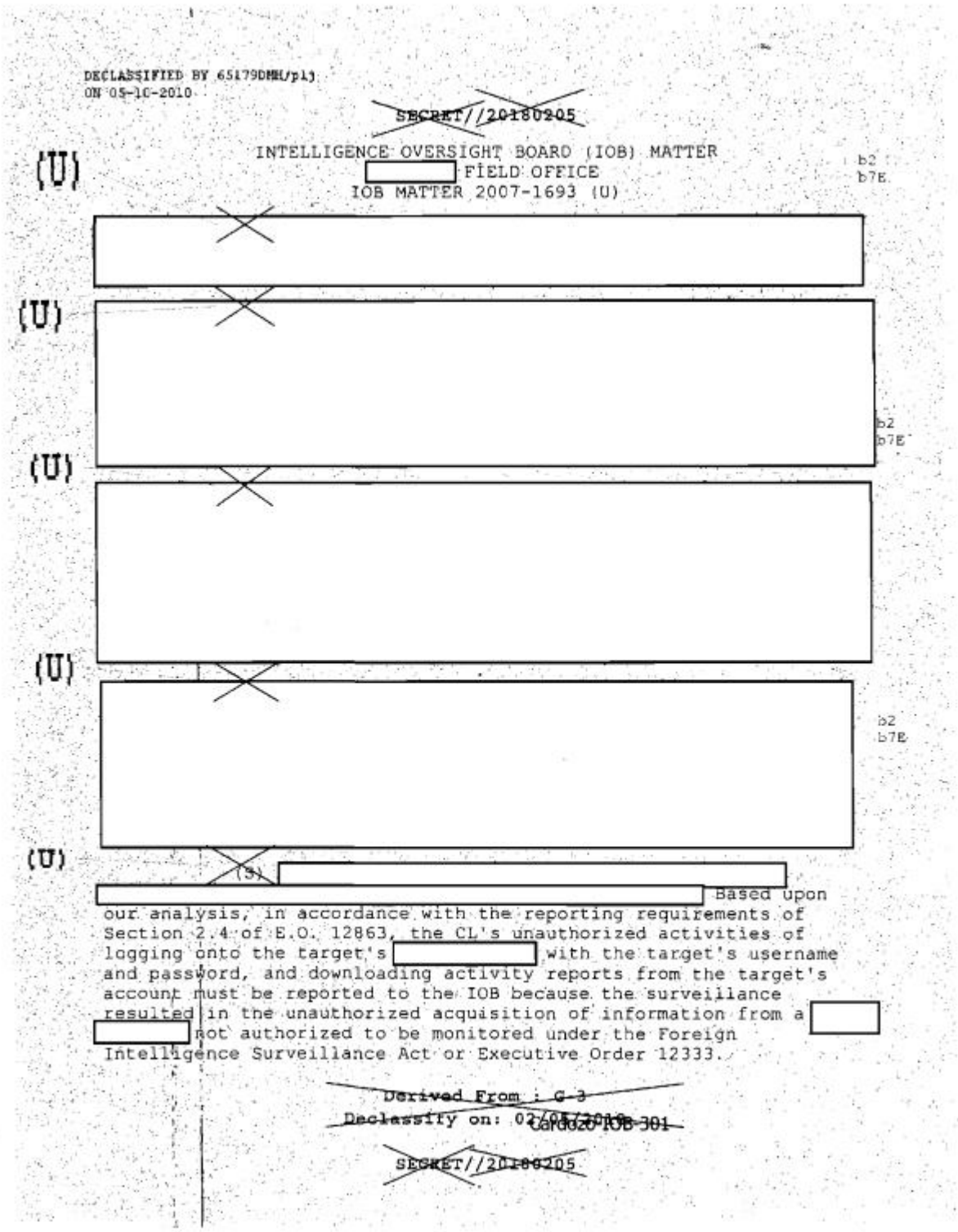
(U) To prevent future IOB violations, [redacted] stated that the squad supervisor would closely monitor Federal Grand Jury and National Security Letter requests, and instruct the case agent to review the web-based training regarding the handling of classified information. Additionally, [redacted] instructed the case agent to remove all information provided pursuant to the Federal Grand Jury Subpoena from the case file, seal it in an envelope, and secure it in the squad supervisor's safe. [redacted] Department of Justice (DOJ), for delivery to [redacted] and eventual destruction. (S)

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

~~(S)~~ ~~Derived From : G-3~~
~~Declassify On: X25-1~~

~~SECRET~~ Hofmann-IOB-432

Appendix 11—IOB Report 2007-1693



DECLASSIFIED BY 65179DMH/plj
ON 05-10-2010

~~SECRET//20180205~~

INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER
[redacted] FIELD OFFICE
IOB MATTER 2007-1693 (U)

b2
b7E

(U) [redacted]

(U) [redacted]

b2
b7E

(U) [redacted]

(U) [redacted]

b2
b7E

(U) (S) [redacted] Based upon our analysis, in accordance with the reporting requirements of Section 2.4 of E.O. 12863, the CL's unauthorized activities of logging onto the target's [redacted] with the target's username and password, and downloading activity reports from the target's account must be reported to the IOB because the surveillance resulted in the unauthorized acquisition of information from a [redacted] not authorized to be monitored under the Foreign Intelligence Surveillance Act or Executive Order 12333.

~~Derived From : G-3~~
~~Declassify on: 02/05/2018~~ Cardozo-IOB-301

~~SECRET//20180205~~

Appendix 12—IOB Report 2006-224

DATE: 06-30-2010
CLASSIFIED BY 65179/DMH/PLJ/LCW
REASON: 1.4 (c)
DECLASSIFY ON: 06-30-2035

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT [illegible] SHOWN OTHERWISE

~~SECRET~~/ORCON,NOFORN

INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER
[redacted] DIVISION
IOB MATTER 2006-224(U)

(U) ~~(S)~~ The [redacted] Division reported this potential IOB matter involving unauthorized surveillance. b2 b7E

(U) [redacted] b2 b7E

~~(S//OC/NF)~~ On December 5, 2005, SA [redacted] was presented with information

(S) regarding the [redacted] b2 b7E b1

[redacted] NSLB was promptly contacted.

(U) ~~(S//OC/NF)~~ Later on December 5, 2005, NSLB determined that the file could not be viewed without a court order because of the password protection. The file was sequestered, and all individuals receiving the file were told to sequester the information.

(U) ~~(S//OC/NF)~~ Emergency search authority was granted by the Attorney General on [redacted] for the FBI [redacted] b2 b7E

(U) While neither the subject of the investigation, nor the sender of the email are US-PERS, because the server where the file was located is in the US, Fourth Amendment protections apply. Applicable decisional law holds that the password-protected file should not have been viewed without a specifically tailored order. As a consequence of opening a password-protected file, the FBI improperly obtained electronic data. Thus, the surveillance was not authorized under the Foreign Intelligence Surveillance Act or E.O. 12333.

OGC has referred this matter to the FBI's Inspection Division for action deemed appropriate. (U)

(U) ~~(S)~~ Derived From : G-3
Declassify On: X1

Hofmann-IOB-675

~~SECRET~~/ORCON,NOFORN

Appendix 13—IOB Report 2008-255

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-06-2010 BY 65179/DMH/sdb

INTELLIGENCE OVERSIGHT BOARD MATTER
2008-255

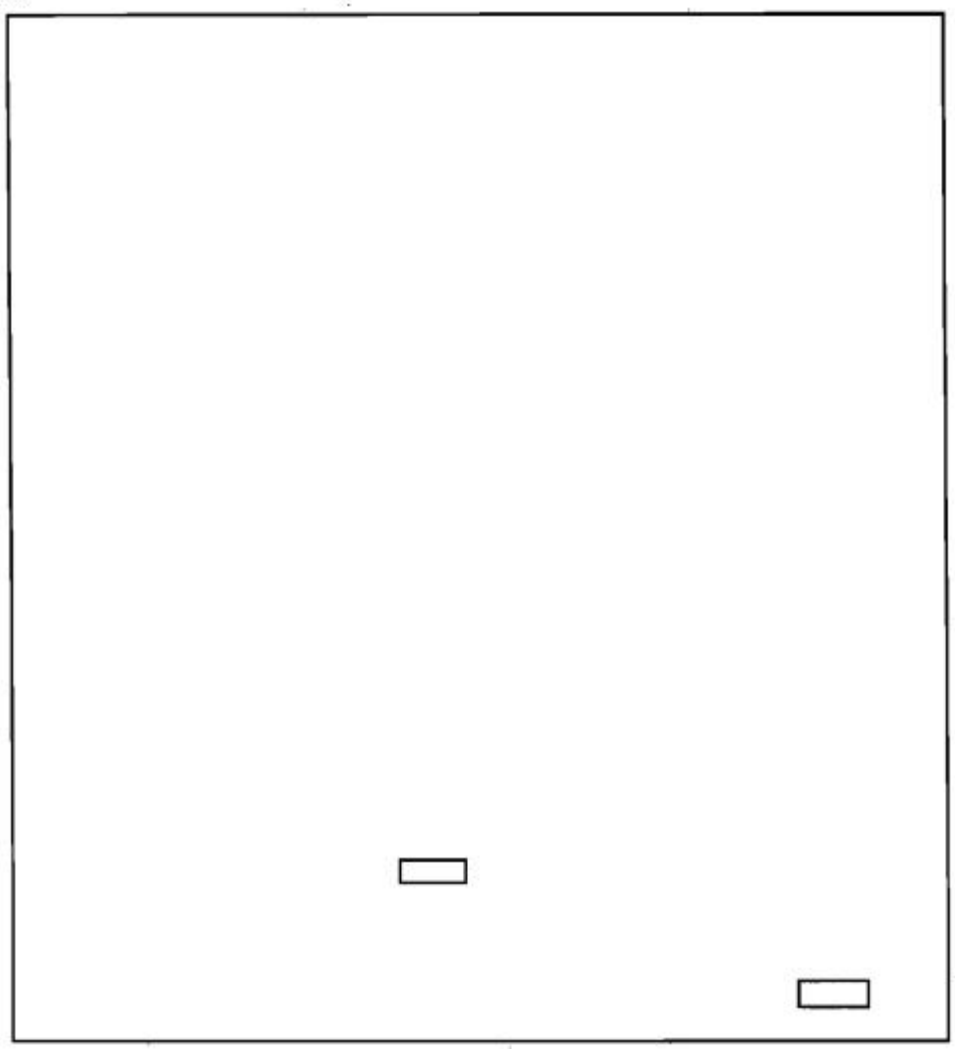
This adjudication relates to a series of alleged actions by FBI Special Agent [redacted] (SSA [redacted] which were the subject of a Department of Justice Office of the Inspector General (OIG) and FBI internal investigation. The alleged facts of this case have already been brought to the attention of the IOB. On or about April 10, 2008, OGC orally notified the Counsel to the Intelligence Oversight Board of the details of this incident, and memorialized that report in the form of a letter dated April 15, 2008. This memorandum provides greater details about the matter.

b6
b7C

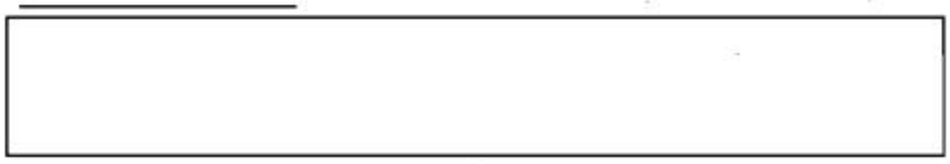
[redacted]

b2
b6
b7C
b7E

Cardozo-IOB-73



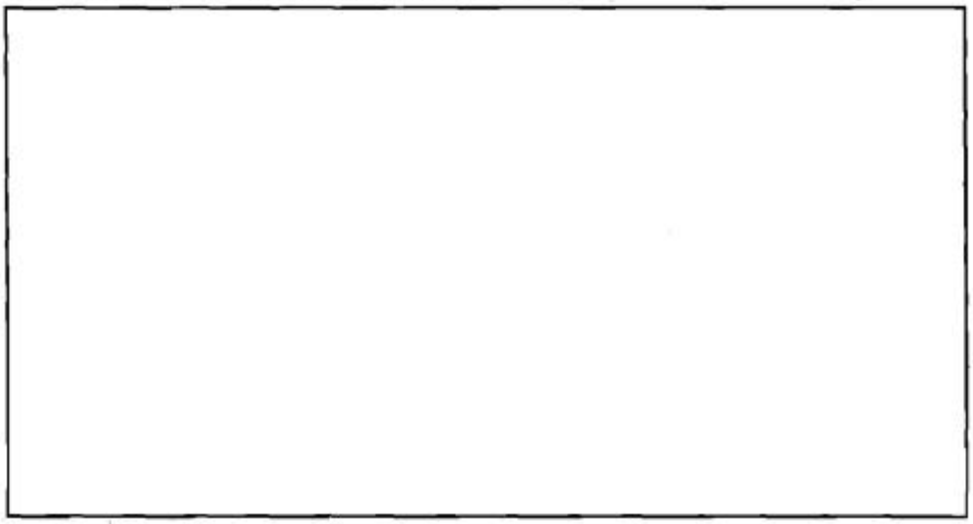
b2
b6
b7C
b7E



b2
b6
b7C
b7E

2 Cardozo-IOB-74

Lapses of internal FBI controls or FBI policies, without more, are generally not reportable to the IOB. In the instant case, however, OGC is reporting these FBI policy violations to the IOB based upon the scope of these alleged offenses and for the reasons described below.



b2
b6
b7C
b7E

[redacted]

b2
b6
b7C
b7E

Further, OGC concludes that these matters may constitute a violation of the Attorney General Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG), [redacted]

b2
b7E

[redacted]

Internal FBI review found while some of SSA [redacted] s

[redacted]

b2
b6
b7C
b7E

OGC does not believe any other provisions of the NSIG are implicated by SSA [redacted] s alleged misconduct.

b6
b7C

Accordingly, OGC concludes that SSA [redacted] s alleged misconduct is reportable to the IOB pursuant to Executive Order 13462, the July 17, 2008 Intelligence Board Reporting Criteria, and the April 17, 2007 memorandum authored by Stephen J. Hadley, Assistant to the President for National Security Affairs.

Appendix 14—IOB Report 2001-69

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

DATE: 07-02-2010
CLASSIFIED BY 65179/DMH/plj/lcw
REASON: 1.4 (c)
DECLASSIFY ON: 07-02-2035

~~SECRET~~

INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER
[redacted] DIVISION
IOB MATTER 2001-69 (U)

b2
b7E

The Federal Bureau of Investigation (FBI) has determined the [redacted] Division [redacted]

(S) [redacted]

(S) [redacted]

b1
b2
b4
b6
b7C
b7D
b7E

[redacted] as the legal authority to request the information. The letters were signed by the Acting Special Agent in Charge who, at that time, did not have legal authority to issue National Security Letters. This matter has been reported to the FBI's Office of Professional Responsibility for action deemed appropriate.

~~Classified by: 39645 NSA/OGC~~
Reason: ~~1.5(c)~~
~~Declassify on:~~

~~SECRET~~

APPROVED: Director, Deputy Director, Crim. Inv., Inspection, Training, C.I.S., Hofmann IOB-2303, Off. of EEO, Finance, Gen. Counsel, Info. Res., Off. of Public & Cong. Affs.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

~~SECRET~~

DATE: 07-01-2010
CLASSIFIED BY 65179 DMH/plj/lcw
REASON: 1.4 (c)
DECLASSIFY ON: 07-01-2035

INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER
[redacted] DIVISION
IOB MATTER 2001-69 (U)

b2
b7E

The Federal Bureau of Investigation (FBI) has determined the [redacted] Division obtained financial records pertaining to a suspected terrorist without proper authority. In this regard, in [redacted] in conjunction with an on-going (S) international terrorism investigation of [redacted] Division personnel prepared and issued requests for (S) hotel records pertaining to the subject and his companion, [redacted] and financial records pertaining to the subject. The latter request was sent by facsimile within hours of the attacks on the World Trade Center and the Pentagon to [redacted] requesting bank and credit card records. Although the letters prepared by [redacted] only "requested" information from the record-holders, those responsible for preparing the correspondence incorrectly styled them as National Security Letters (see 50 U.S.C. § 1851 and 12 U.S.C. § 3414) and recited the certification language [redacted] as the legal authority to request the information. The letters were signed by the Acting Special Agent in Charge who, at that time, did not have legal authority to issue National Security Letters. This matter has been reported to the FBI's Office of Professional Responsibility for action deemed appropriate.

b1
b2
b4
b6
b7C
b7D
b7E

~~Classified by: 23645, NSA/OGC~~
~~Reason: 1.5(c)~~
~~Declassify on: X1~~

~~SECRET~~

APPROVED: Crim. Inv. Inspection Training
CJIS Laboratory Off. of EEO
Finance Off. of Public &
Director Gen. Counsel Cong. Affs.
Deputy Director Info. Res.

Hofmann-IOB-1143