

July 06, 2004

BY COURIER

General Brent Scowcroft (USAF Retired)
Chairman
Intelligence Oversight Board
New Executive Office Building
Washington, D.C.

Dear General Scowcroft:

NSL VIO-36711

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Enclosed for your information is a self-explanatory enclosure, entitled "Intelligence Oversight Board (IOB) Matter, CONUS I, International Terrorism Operations Section, Federal Bureau of Investigation Headquarters (FBI HQ), 2004 [redacted]

This enclosure sets forth details of investigative activity which the FBI has determined was conducted contrary to the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations and/or laws, Executive Orders, or Presidential Directives which govern FBI foreign counterintelligence and international terrorism investigations. (U)

Enclosure

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1 - Mr. Pistole

1 - [redacted]

1 - 278-HQ-C1229736-VIO -504

UNCLASSIFIED WHEN
DETACHED FROM
CLASSIFIED ENCLOSURE

DECLASSIFIED BY 65179dmh/ksr/lmf
ON 01-07-2008

~~Derived from : G-3~~
~~Declassify on: X1 25~~

SECRET

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General Brent Scowcroft (USAF Retired)

Should you or any member of your staff require additional information concerning this matter, an oral briefing will be arranged for you at your convenience. (U)

Sincerely,

John F. Curran
Deputy ~~NSL~~ ~~WFO-36712~~ Counsel

1 - The Honorable John D. Ashcroft
Attorney General
U.S. Department of Justice
Room 5111

APPROVED: _____

Adm. Serv. _____	Gen. Counsel _____	National Sec. _____
CJIS _____	Info. Pers. _____	OEEOA _____
Crim. Inv. _____	Inspection _____	OPCA _____
Director _____	Interror _____	Inv. Serv. _____
Deputy Director _____	Finance _____	Laboratory _____
		Training _____

JFC

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INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER
CONUS I, INTERNATIONAL TERRORISM OPERATIONS SECTION
FEDERAL BUREAU OF INVESTIGATION HEADQUARTERS (FBIHQ)

2004 [] (U)

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(S)

Investigation of this IOB matter has determined that,

[Redacted]

[Redacted] On
October 3, 2003, [Redacted] issued a National Security Letter
to the internet service provider named [Redacted] requesting the
name, address, length of service, and electronic communication
transactional records for a website. The National Security
Letter did not request email content. [Redacted] inadvertently
provided email content information in its response (CDROM), which
is not authorized under Title 18, United States Code, Section
2709 or Executive Order 12333. [Redacted] discovered the
problem, and immediately took steps to ~~Section 6713~~ the unauthorized
data collection to prevent its use or further dissemination. [Redacted]

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[Redacted] extracted the information which was authorized by the
National Security Letter and then sealed the CDROM for delivery
to the Office of Intelligence Policy and Review for appropriate
action. In accordance with the reporting requirements of Section
2.4 of Executive Order 12863, the error must be reported to the
IOB. ~~(S)~~

(U)

APPROVED:	Adm. Serv. _____	Gen. Counsel _____	National Sec. _____
	CIS _____	Info. Res. _____	OEE/OA _____
	Crim. Inv. _____	Inspection _____	ORCA _____
	Director _____	Int. Sec. _____	ORR _____
Deputy Director _____	Finance _____	Laboratory _____	_____

Derived from: G-3
Declassify on: X1

~~SECRET~~

DATE: 01-07-2008
CLASSIFIED BY 65179dnh/esr/lmf
REASON: 1.4 (C)
DECLASSIFY ON: 01-07-2033

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

~~SECRET~~

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 06/11/04

To: Counterterrorism

Attn: AD

[Redacted]

Attn: SAC
CDC

From: General Counsel

National Security Law Branch/Room 7947

Contact: [Redacted] 202-324-[Redacted]

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Approved By: Curran John F. *JFC*

[Redacted]

Drafted By: [Redacted] NSL VIO 36714
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(U)

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

(U)

Title: ~~(S)~~ INTELLIGENCE OVERSIGHT BOARD
MATTER 2004-[Redacted] b2

(U)

Synopsis: ~~(S)~~ It is the opinion of the Office of the General Counsel (OGC) that this matter must be reported to the Intelligence Oversight Board (IOB). OGC will prepare and deliver the required correspondence to the IOB. Our analysis follows.

(U)

References: (1) ~~(S)~~ 278-HQ-C1229736-VIO Serial 419
(2) ~~(S)~~ 288B-[Redacted] 132986 Serial 257

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Administrative: (U) This communication contains one or more footnotes. To read the footnotes, download and print the document in WordPerfect 8.0.

(U) ~~(S)~~

~~Derived From : G-3~~
~~Declassify On: X1-25~~ (U)

~~SECRET~~

(U) To: Director's Office From: General Counsel
Re: ~~(S)~~ 278-HQ-C1229736-VIO, 06/11/04

Details: (S) [redacted]

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[redacted]

[redacted] On October 3, 2003, [redacted] issued a National Security Letter (NSL) to [redacted] requesting the following:

Name, address, length of service, and electronic communication transactional records, to include existing transaction/activity logs and all e-mail header information (not to include message content and/or subject fields), for domain [redacted] (Emphasis added).

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[redacted]

~~(S)~~ The NSL also contained the following warning to

This National Security Letter does not request, and you should not provide, information pursuant to this request that should disclose the content of any electronic communications as defined in Title 18, United States Code, Section 2510(8).

(U)

~~(S)~~ The [redacted] Division delivered the NSL to [redacted] and subsequently forwarded [redacted] response (1 CDROM) to [redacted] on February 11, 2004. Upon review, [redacted] discovered that [redacted] response appeared to go beyond the NSL request by including content [redacted] extracted, and saved to a separate CDROM, [redacted] the NSL authorized. [redacted] then sealed the original CDROM and forwarded it to the Cyber Division at FBI Headquarters for delivery to the Office of Intelligence Policy and Review.

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(U) Section 2.4 of Executive Order (E.O.) 12863, dated 09/13/1993, mandates that Inspectors General and General Counsel of the Intelligence Community components (in the FBI, the Assistant Director, INSD, and the General Counsel, OGC, respectively) report to the IOB all information "concerning

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(U) To: Director's Office From: General Counsel
Re: ~~(S)~~ 278-HQ-C1229736-VIO, 06/11/04

intelligence activities that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive." This language was adopted verbatim from E.O. 12334, dated 12/04/1981, when the IOB was known as the President's Intelligence Oversight Board.

(U) Title 18, United States Code, Section 2709, provides the mechanism for obtaining counterintelligence access to telephone toll and transactional records. It states in relevant part that a "wire or electronic communication service provider shall comply with a request for subscriber information and ... electronic communication transactional records in its custody or possession made by the Director of the Federal Bureau of Investigation." The production of email content by the service provider is not authorized under the statute.

(U) ~~(S)~~ In this instance, as a result of the errors by the communications carrier, it appears the FBI unintentionally obtained email content. Thus, the information was not authorized under Title 18, United States Code, Section 2709. Although San Francisco took the appropriate steps to sequester the unauthorized information to prevent its use or further dissemination, in accordance with the reporting requirements of Section 2.4 of E.O. 12863, the matter must be reported to the IOB. OGC will prepare the correspondence required to report this matter to the IOB. NSL VIO-36716

~~SECRET~~

(U) To: Director's Office From: General Counsel
Re: ~~(S)~~ 278-HQ-C1229736-VIO, 06/11/04

LEAD (s)

Set Lead 1: (Action)

CYBER DIVISION

AT WASHINGTON, DC

(U) If it has not already been accomplished, coordinate with the [redacted] Division, to ensure that all information related to the unauthorized production is collected, sequestered, sealed and delivered to FBIHQ for submission to the Office of Intelligence Policy and Review, Department of Justice.

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Set Lead 2: (Action)

[redacted]

NSL VIO-36717

(U) Coordinate with FBIHQ, to ensure that all information related to the unauthorized production is collected, sequestered, sealed and delivered to FBIHQ for submission to the Office of Intelligence Policy and Review, Department of Justice.

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- 1 - Mr. Curran
- 1 - [redacted]
- 1 - IOB Library

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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 06/30/2004

To: Director's Office
Counterterrorism

Attn: OPR
UC, CONUS III
SAC; CDC
SAC; CDC

[Redacted]

From: General Counsel
National Security Law Branch
Counterterrorism Law Unit I/Room 7975

Contact: [Redacted] (202) 324-[Redacted]

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Approved By: Curran John F. [Signature]

[Redacted]

NSL VIO-36718

Drafted By:

Case ID #: ~~(S)~~ 278-HQ-C1229736-VIO (Pending) ⁵⁰²

Title: ~~(S)~~ INTELLIGENCE OVERSIGHT BOARD
b2 MATTER 2004 [Redacted]

Synopsis: ~~(S)~~ It is the opinion of the Office of the General Counsel (OGC) that the above referenced matter does not need to be reported to the Intelligence Oversight Board (IOB). Our analysis follows.

~~(U)~~ ~~(S)~~ ~~Derived From : FBI SCG G-1, October 1, 1997~~
~~Declassify On: June 29, 2029~~

References: ~~(S)~~ 278-HQ-C1229736-VIO Serial 401

Details: (S) [Redacted]

[Redacted]

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Due to administrative backlog and the

~~SECRET~~

(U) To: Director's Office From: General Counsel
Re: ~~(S)~~ 278-HQ-C1229736-VIO, 06/30/2004

subsequent [redacted] captioned matter was not administratively closed [redacted]

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(U) ~~(S)~~ On 11/07/2003, [redacted] set a routine lead to the [redacted] Division [redacted] to serve a National Security Letter (NSL) in this case. [redacted] City served the NSL to the telephone provider [redacted] on 11/14/2003, but [redacted] did not provide the requested telephone records to [redacted] until 02/27/2004, [redacted] administrative closure [redacted] of this investigation.

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(U) ~~(S)~~ On 03/03/2004, [redacted] notified [redacted] that they had received the telephone toll records requested by [redacted] NSL, but a check of ACS revealed that [redacted] had closed the investigation. [redacted] subsequently forwarded the collected telephone records to [redacted]. Without reviewing the telephone records, [redacted] sealed the telephone records in an envelope and archived the sealed envelope within the closed investigation file.

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(U) ~~(S)~~ Section 2-56 of the National Foreign Intelligence Program Manual (NFIPM) requires OGC to determine whether the facts related above are required to be reported to the IOB. For the reasons discussed below, this matter need not be reported to the IOB.

(U) Section 2.4 of Executive Order (E.O.) 12863, dated September 13, 1993, mandates that Inspectors General and General Counsels of the Intelligence Community components (in the FBI, the Assistant Director, Inspection Division, and the General Counsel, OGC, respectively) report to the IOB "concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive". This language was adopted verbatim from E.O. 12334, dated December 4, 1981, when the IOB was known as the President's Intelligence Oversight Board (PIOB). By longstanding agreement between the FBI and the IOB (and its predecessor, the PIOB), this language has been interpreted to mandate the reporting of any violation of a provision of the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign

(U) To: Director's Office From: General Counsel
Re: ~~(S)~~ 278-HQ-C1229736-VIO, 06/30/2004

Counterintelligence Investigations (FCIG),¹ or other guidelines or regulations approved by the Attorney General in accordance with E.O. 12333, dated December 4, 1981, if such provision was designed in full or in part to ensure the protection of the individual rights of U.S. persons. Violations of provisions that are essentially administrative in nature need not be reported to the IOB. The FBI is required, however, to maintain records of such administrative violations so that the Counsel to the IOB may review them upon request.

(U) ~~(S)~~ [redacted] of The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIC)

[redacted]
[redacted] Pursuant to this authority, on 11/07/2003, [redacted] lawfully issued a NSL for [redacted] that requested telephone records in this case, NSL VIO 36720, on 11/14/2003, [redacted] properly served the NSL on [redacted] subsequent failure to cancel this lead at the time they closed the case was an administrative error that did not affect the lawfulness of the previously served NSL. [redacted] properly sealed and archived the telephone records received from the NSL because the case was no longer open at the time of their receipt.

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(U) ~~(S)~~ The late receipt of the telephone records in this case constitutes an administrative error, not a substantive violation of law or regulation designed to protect the individual rights of U.S. persons. As discussed above, under longstanding agreement between the FBI and the IOB, administrative errors are not reportable to the IOB. [redacted] slow response in this case did not affect the lawfulness of the NSL. [redacted] has already sealed and archived the records in question. Additionally, none of these records were reviewed or used by [redacted] in its investigation. Under these circumstances, it is OGC's opinion that the late receipt of these telephone records by [redacted] on [redacted] behalf is not an error that must be reported to the IOB.

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(U) ~~(S)~~ The FCIG was superseded on October 31, 2003, by the Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG).

~~SECRET~~

(U) To: Director's Office From: General Counsel
Re: ~~(S)~~ 278-HQ-C1229736-VIO, 06/30/2004

(U) A copy of our opinion should be retained in the Counterterrorism Division control file for review by Counsel to the IOB, if requested.

NSL VIO-36721

~~SECRET~~

~~SECRET~~

(U) To: Director's Office From: General Counsel
Re: ~~(S)~~ 278-HQ-C1229736-VIO, 06/30/2004

LEAD (s)

Set Lead 1: (Action)

DIRECTOR'S OFFICE

AT OPR, FO, DC

(U) For action deemed appropriate.

Set Lead 2: (Action)

COUNTERTERRORISM

AT WASHINGTON, DC

NSL VIO-36722

(U) Read and clear.

Set Lead 3: (Action)

[Redacted]

AT [Redacted]

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(U) Read and clear.

Set Lead 4: (Action)

[Redacted]

AT [Redacted]

(U) Read and clear.

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1 - Mr. Curran

1 - [Redacted]
1 - [Redacted]

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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 12/01/2004

To: Director's Office
Counterterrorism

Attn: OPR
AD
SAC
CDC

[Redacted]

b2 **From:** General Counsel
b7E National Security Law Branch/Room 7975

b6 **Contact:** [Redacted]

b7C **Approved By:** Thomas Julie F. *OGC 12/16/04*

Drafted By: [Redacted]

(U) **Case ID #:** (S) 278-HQ-C1229736-VIO-*NSA* VIO-36723 (Pending)

b2 **Title:** (U) POTENTIAL INTELLIGENCE OVERSIGHT BOARD
(IOB) MATTER 2004-[Redacted]

(U) **Synopsis:** (S) It is the opinion of the Office of the General Counsel (OGC) that this matter should not be reported to the Intelligence Oversight Board (IOB). With respect to these matters, a record of this decision should be maintained in the investigative control file for review by the Counsel to the IOB.

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

Details: (S) [Redacted]

[Redacted]

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b7E [Redacted] Due to administrative backlog
b6 [Redacted] captioned matter
b7C was not administratively closed in ACS until [Redacted]

~~SECRET~~

To: Director's Office From: General Counsel
Re: (U) ~~(S)~~ 278-HQ-C1229736-VIO-410, 12/01/2004

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(U) ~~(S)~~ On 11/07/2003, [redacted] set a routine lead to the [redacted] Division [redacted] to serve a National Security Letter (NSL) in this case. [redacted] served the NSL to the telephone provider [redacted] on 11/14/2003, but [redacted] did not provide the requested telephone records to [redacted] until 02/27/2004, after the [redacted] administrative closure [redacted] of this investigation.

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(U) ~~(S)~~ On 03/03/2004, [redacted] notified [redacted] that they had received the telephone toll records requested by [redacted] NSL, but a check of ACS revealed that [redacted] had closed the investigation. [redacted] subsequently forwarded the collected telephone records to [redacted] Without reviewing the telephone records, [redacted] sealed the telephone records in an envelope and archived the sealed envelope within the closed investigation file.

NSL VIO-36724

(U) ~~(S)~~ Section 2-56 of the National Foreign Intelligence Program Manual (NFIPM) requires OGC to determine whether the facts related above are required to be reported to the IOB. For the reasons discussed below, this matter need not be reported to the IOB.

(U) Section 2.4 of Executive Order (E.O.) 12863, dated September 13, 1993, mandates that Inspectors General and General Counsels of the Intelligence Community components (in the FBI, the Assistant Director, Inspection Division, and the General Counsel, OGC, respectively) report to the IOB "concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive". This language was adopted verbatim from E.O. 12334, dated December 4, 1981, when the IOB was known as the President's Intelligence Oversight Board (PIOB). By longstanding agreement between the FBI and the IOB (and its predecessor, the PIOB), this language has been interpreted to mandate the reporting of any violation of a provision of the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations (FCIG),¹ or other guidelines or regulations

(U) ~~(S)~~ The FCIG was superseded on October 31, 2003, by the Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG).

~~SECRET~~

To: Director's Office From: General Counsel
Re: (U) ~~(S)~~ 278-HQ-C1229736-VIO-410, 12/01/2004

approved by the Attorney General in accordance with E.O. 12333, dated December 4, 1981, if such provision was designed in full or in part to ensure the protection of the individual rights of U.S. persons. Violations of provisions that are essentially administrative in nature need not be reported to the IOB. The FBI is required, however, to maintain records of such administrative violations so that the Counsel to the IOB may review them upon request.

(U) ~~(S)~~ [redacted] of The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG)

[redacted] Pursuant to this authority, on 11/07/2003, [redacted] lawfully issued a NSL for [redacted] that requested telephone records in this case. On 11/14/2003, [redacted] properly served the NSL on [redacted] [redacted] subsequent failure to cancel this lead at the time they closed the case was an administrative error that did not affect the lawfulness of the previously served NSL. [redacted] properly sealed and archived the telephone records received from the NSL because the case was no longer open at the time of their receipt.

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(U) ~~(S)~~ The late receipt of the telephone records in this case constitutes an administrative error, not a substantive violation of law or regulation designed to protect the individual rights of U.S. persons. As discussed above, under longstanding agreement between the FBI and the IOB, administrative errors are not reportable to the IOB. [redacted] slow response in this case did not affect the lawfulness of the NSL. [redacted] has already sealed and archived the records in question. Additionally, none of these records were reviewed or used by [redacted] in its investigation. Under these circumstances, it is OGC's opinion that the late receipt of these telephone records by [redacted] on [redacted] behalf is not an error that must be reported to the IOB.

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(U) A copy of our opinion should be retained in the Counterterrorism Division control file for review by Counsel to the IOB, if requested.

~~SECRET~~

~~SECRET~~

To: Director's Office From: General Counsel
Re: (U) ~~(S)~~ 278-HQ-C1229736-VIO-410, 12/01/2004

LEAD (s)

Set Lead 1: (Action)

DIRECTOR'S OFFICE

AT OPR, FO, DC

(U) For action deemed appropriate.

Set Lead 2: (Action)

COUNTERTERRORISM

AT WASHINGTON, DC

(U) Read and clear. ^{NSL VIO-36726}

Set Lead 3: (Action)

[Redacted]

AT

[Redacted]

(U) Read and clear.

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Set Lead 4: (Action)

[Redacted]

AT

[Redacted]

(U) Read and clear.

1 - Ms. Thomas
b6 1 - [Redacted]
b7C 1 - [Redacted]

~~SECRET~~

~~SECRET~~

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 03/27/2006

To: Inspection
✓General Counsel

Attn: IIS
Attn: NSLB

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From: [Redacted]
Chief Division Counsel

Contact: [Redacted]

Approved By: [Redacted]

Drafted By: [Redacted]

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Case ID #: (S) [Redacted] [Redacted]
(S) 278-HQ-CI229736 (Pend) NSLVIO 36727

Title: (S) POSSIBLE INTELLIGENCE OVERSIGHT BOARD MATTER, (IOB)
b6 SA [Redacted]
b7C SSA [Redacted]

(U) **Synopsis:** (S) NSL directed at incorrect telephone number.

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

(S) (U) [Redacted]

b1 **Details:** (S) [Redacted]

b7A [Redacted]

b2 (S) [Redacted]

b7E [Redacted]

(S) (S) On 02/09/2006, case agent forwarded an email asking the Investigative Support Specialist (ISS) to create a National Security Letter (NSL) for telephone numbers [Redacted] and [Redacted] associated with the subject of this investigation. On 02/13/2006, the ISS created NSLs for the two referenced telephone numbers, however, due to an administrative oversight telephone number [Redacted] was erroneously transcribed from the case agent's 02/09/2006 email as [Redacted]. The NSL with the erroneous telephone number was forwarded to [Redacted].

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~~SECRET~~

~~SECRET~~

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b7A To: Inspection From: [redacted]
b2 Re: (S) [redacted] 03/27/2006
b7E

(U) ~~(S)~~ On 03/23/2006, case agent received the toll records results on a CD. On 03/24/2006 case agent opened the toll record results on his computer and immediately noticed the discrepancy in the telephone number. The case agent immediately notified his supervisor and put the original CD in a CD box which was then sealed and submitted to the custody of the Chief Division Counsel.

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b7E (U) ~~(S)~~ Nothing from the original NSL was uploaded. No personal or identifying information on the incorrect telephone number was uploaded into ACS from the NSL return. Additionally, No ACS checks, [redacted] data base checks were done on any information from the NSL return. Also, no [redacted] checks were done on the information.

~~(S)~~ A copy of the original NSL as well as the resultant information is being maintained in the Chief Division Counsel's safe. **NSL VIO-36728**

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b7E (U) ~~(S)~~ As nothing from the NSL has been reviewed, A/SAC [redacted] recommends no administrative action be taken in this matter.

~~SECRET~~

~~SECRET~~

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To: Inspection From: [redacted]
Re: (S) [redacted], 03/27/2006

LEAD(s) :

Set Lead 1: (Info)

INSPECTION

AT WASHINGTON, DC

(U) Read and clear.

Set Lead 2: (Info)

GENERAL COUNSEL

AT WASHINGTON, DC

(U) Read and clear.

NSL VIO-36729

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~~SECRET~~

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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 04/18/2006

To: [Redacted]

Attn: CDC [Redacted]
SSA [Redacted]
SA [Redacted]

b2
b7E Counterintelligence
b6
b7C Inspection

Attn: CD-2A, UC [Redacted]

Attn: IIS, CRS [Redacted]

From: Office of the General Counsel
NSLB/CILU/Room 7947

Contact: AGC [Redacted] 202-324-[Redacted]

Approved By: Thomas Julie F. [Signature]

NSL VIO-36730

Drafted By: [Redacted]

1346

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

(U) b2 **Title:** ~~(S)~~ INTELLIGENCE OVERSIGHT BOARD
MATTER 2006-[Redacted]

(U) **Synopsis:** ~~(S)~~ It is the opinion of the Office of the General Counsel (OGC) that this matter must be reported to the Intelligence Oversight Board (IOB). OGC will prepare and deliver the necessary correspondence to the IOB.

b1 (U) ~~Derived From: G-3~~
b7A ~~Declassify On: X1~~

b2 **Reference:** (S) [Redacted]
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(U) **Details:** ~~(S)~~ By electronic communication (EC) dated 03/27/2006, the [Redacted] Field Office [Redacted] requested that OGC review the facts of the captioned matter and determine whether it warrants

~~SECRET~~

DATE: 01-07-2008
CLASSIFIED BY 65179dmh/kar/lmf
REASON: 1.4 (C)
DECLASSIFY ON: 01-07-2033

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

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b7E To: [redacted] From: Office of the General Counsel
Re: 278-HQ-C1229736-VIO, 04/18/2006

reporting to the IOB.² In our opinion, it does. Our analysis follows.

b1 [redacted]
b7A (S) [redacted]
b2 [redacted]
b7E [redacted] as that term is used in Section 101(i) of the Foreign Intelligence Surveillance Act of 1978 (FISA).²

(U) ~~(S)~~ On 02/09/2006, during the course of the investigation, a case agent forwarded an email to an investigative support specialist (ISS) asking the ISS to create National Security Letters (NSL) for two telephone numbers that were associated with the subject of the investigation. On 02/13/2006, the ISS created NSLs for the two telephone numbers. Due to an inadvertent error, however, one of the telephone numbers was erroneously transcribed.³ The NSL with the erroneous telephone number was forwarded to [redacted]

NSL VIO-36731

(U) ~~(S)~~ On 03/23/2006, the case agent received the toll records on a CD. On 03/24/2006, the case agent opened the toll records and immediately noticed the discrepancy in the telephone number. The case agent promptly notified his supervisor and placed the original CD in a CD box. The CD box was sealed and submitted to the custody of the Chief Division Counsel.

(U) ~~(S)~~ Nothing from the original NSL was uploaded. Specifically, no personal or identifying information on the incorrect telephone number was uploaded into ACS from the NSL return. Further, no ACS checks [redacted] data base checks were performed on any information from the NSL return.

(U) ~~(S)~~ EC from [redacted] to OCG dated 03/27/2006 and titled "Possible Intelligence Oversight Board Matter, (IOB) SA [redacted] SSA [redacted]"

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b7C ² (U) A "United States person" (USP) is defined in Section 101(i) of FISA (codified at 50 U.S.C. § 1801 et seq.) as "a citizen of the United States [or] an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Naturalization Act)"

³ (U) In order to avoid any further dissemination of this incorrect telephone number, the number is not being listed in this document.

~~SECRET~~

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b7E To: [redacted] From: Office of the General Counsel
Re: 278-HQ-C1229736-VIO, 04/18/2006

b2

b7E Finally, no [redacted] checks were conducted on the information.

(U) ~~(S)~~ A copy of the original NSL and the information received are being maintained by the Chief Division Counsel in his safe.

(U) Section 2.4 of Executive Order (EO) 12863, dated 09/13/1993, mandates that Inspectors General and General Counsel of the Intelligence Community components (in the FBI, the Assistant Director, INSD, and 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 was adopted verbatim from EO 12334, dated 12/04/1981, when the IOB was known as the President's Intelligence Oversight Board (PIOB).

(U) By longstanding agreement between the FBI and the IOB (and its predecessor, the PIOB), 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), or other guidelines or regulations approved by the Attorney General in accordance with EO 12333, dated 12/04/1981, if such provision was designed in full or in part to ensure the protection of the individual rights of U.S. persons. Violations of provisions that are essentially administrative in nature need not be reported to the IOB. The FBI is required, however, to maintain records of such administrative violations so that the Counsel to the IOB may review them upon request.

NSL VIO-36732

(U) ~~(S)~~ NSLs are administrative subpoenas that allow the FBI to obtain three types of information: (1) telephone and email communication records from telephone companies and internet service providers (Electronic Communications Privacy Act (ECPA)) (18 U.S.C. § 2709); (2) financial institution records (Right to Financial Privacy Act) (12 U.S.C. § 3414(a)(5)(A)); and (3) credit bureau information (Fair Credit Reporting Act) (15 U.S.C. § 1681u (a), (b)). ECPA, 18 U.S.C. § 2709, provides that the FBI may seek toll billing information from telephone carriers that is relevant to an authorized national security investigation. Section V.12., Investigative Techniques, of the NSIG provides that NSLs may be issued in conformity with statutory requirements, including 18 U.S.C. § 2709.

(U) ~~(S)~~ In this situation, the information obtained by the FBI was not relevant to an authorized national security investigation. Due to the incorrect number stated in the NSL, the FBI received telephone toll billing records pertaining to a telephone number that was neither under investigation nor related to an investigation.

~~SECRET~~

~~SECRET~~

b2 To: [redacted] From: Office of the General Counsel
b7E Re: 278-HQ-C1229736-VIO, 04/18/2006

Therefore, the information was improperly collected, although unintentionally so, in violation of the NSIG and ECPA.

(U) ~~(S)~~ It should be noted that [redacted] response in receiving the erroneous information was commendable. Upon receiving the incorrect toll records, the case agent immediately noticed the discrepancy, notified his supervisor, and placed the original CD in a CD box. Proper procedures were then undertaken by sealing the CD box and submitting the box to the Chief Division Counsel's custody. No personal or identifying information on the incorrect telephone number was uploaded into ACS from the NSL return. Further, no ACS checks, [redacted] data base checks were performed on any information from the NSL return. Finally, no [redacted] [redacted] checks were conducted on the information.

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b7E

(U) Here, the target's rights were not violated because he was not the subject of the improperly collected information. It is unknown whether the erroneous information received pertained to a United States Person, inasmuch as there has been no review of the information. Nonetheless, based upon the fact that information which may be about a USP was improperly, although inadvertently, collected, and in accordance with the reporting requirements of Section 2.4 of Executive Order 12863, OGC will prepare a cover letter and a memorandum to report this matter to the IOB.

NSL VIO-36733

~~SECRET~~

~~SECRET~~

b2 To: [redacted] From: Office of the General Counsel
b7E Re: 278-HQ-C1229736-VIO, 04/18/2006

LEAD(s) :

Set Lead 1: (Action)

INSPECTION

AT WASHINGTON, DC

(U) For action deemed appropriate.

Set Lead 2: (Info)

COUNTERINTELLIGENCE

AT WASHINGTON, DC

(U) For information.

NSL VIO-36734

Set Lead 3: (Action)

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b7E

[redacted]
AT [redacted]

(U) The CDC should continue to retain custody of the improperly received information. This information should continue to remain sealed and sequestered in the CDC's safe until further direction from OGC.

b6
b7C

cc: Ms. Thomas
[redacted]
IOB Library

◆◆

~~SECRET~~

May 2, 2006
BY COURIER

Mr. Stephen Friedman
Chairman
Intelligence Oversight Board
Room 50209
New Executive Office Building
725 17th Street, Northwest
Washington, D.C.

NSL VIO-36735

Dear Mr. Friedman:

b2

Enclosed for your information is a self-explanatory memorandum entitled "Intelligence Oversight Board Matter 2006 [redacted]" (U)

The memorandum sets forth details of investigative activity which the FBI has determined was conducted contrary to the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations and/or laws, Executive Orders, or Presidential Directives which govern FBI foreign counterintelligence and international terrorism investigations. This matter has also been referred to our Internal Investigations Section, Inspection Division, for a determination of whether any administrative action is warranted. (U)

Enclosure

① - 278-HQ-C1229736-VIO - 1347

~~UNCLASSIFIED WHEN
DETACHED FROM
CLASSIFIED ENCLOSURE~~

~~Derived From: G-3
Declassify On: X1~~

- Dep. Dir. _____
- Chief of Staff _____
- Off. of Gen. Counsel _____
- Asst. Dir.:
- Crim. Inv. _____
- CJIS _____
- Finance _____
- Info. Res. _____
- Insp. _____
- Lab. _____
- National Sec. _____
- Personnel _____
- Training _____
- Off. of EEOA _____
- Off. of Public & Cong. Affs. _____
- Director's Office _____

DECLASSIFIED BY 65179dmh/ksc/ljaef
ON 01-02-2008

~~SECRET~~

MAIL ROOM

FBI/DOJ

~~SECRET~~

Mr. Stephen Friedman

Should you or any member of your staff require additional information concerning this matter, an oral briefing will be arranged for you at your convenience. (U)

Sincerely,

Julie F. Thomas
Deputy General Counsel

1 - The Honorable Alberto R. Gonzales
Attorney General
U.S. Department of Justice
Room 5111

NSL VIO-36736

1 - Mr. James Baker
Counsel, Office of Intelligence Policy and Review
U.S. Department of Justice
Room 6150

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

~~SECRET~~

~~SECRET~~

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INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER
[redacted] FIELD OFFICE
IOB MATTER 2006-[redacted] (U)

(S)

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b7A
b2
b7E
b4
b7D

[redacted]

[redacted] On February 2, 2006,
[redacted] an FBI case agent
forwarded an email to an FBI investigative support specialist
(ISS) asking the ISS to create National Security Letters (NSL)
for two telephone numbers that were associated with the subject
of the investigation. On February 13, 2006, the ISS created NSLs
for the two telephone numbers. Due to an inadvertent error,
however, one of the telephone numbers was erroneously
transcribed. The NSL with the erroneous telephone number was
forwarded to [redacted]

(U)

NSL VIO-36737

~~(S)~~ Due to the incorrect number stated in the NSL, the
FBI received telephone toll billing records pertaining to a
telephone number that was neither under investigation nor related
to an investigation. The error was discovered upon receipt of
the information, and the records were neither reviewed nor used
for any investigative purpose. Despite the inadvertent nature of
the mistake, the fact remains that information was improperly
collected on a telephone number unrelated to an investigation.
The overcollection was a violation of Section V.12. of The
Attorney General's Guidelines for FBI National Security
Investigations and Foreign Intelligence Collection.¹ Thus, the
matter is being reported to the IOB.

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

~~SECRET~~

(U) ~~(S)~~ Section V.12. authorizes use of National Security
Letters in conformity with 18 U.S.C. § 2709 (relating to
subscriber information, toll billing records, and electronic
communication transactional records). The statute requires that
information sought is relevant to an authorized national security
investigation.

~~SECRET~~

DATE: 01-02-2008
CLASSIFIED BY 65179dmh/rsr/lmf
REASON: 1.4 (C)
DECLASSIFY ON: 01-02-2033

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

FEDERAL BUREAU OF INVESTIGATION
FOIPA
DELETED PAGE INFORMATION SHEET

No Duplication Fees are charged for Deleted Page Information Sheet(s).

Total Deleted Page(s) ~ 367

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