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NSL matter.txt

MessageFrom: [redacted] (CTD) (FBI)
Sent: Thursday, May 27, 2004 2:35 PM
To: MUELLER, ROBERT S. III (DO) (FBI); PISTOLE, JOHN S. (DO) (FBI); KALISCH, ELENI
P. (OCA) (ERT); Cannoni, Valerie E. (OGC) (ERT)
Cc: [redacted] (CTD) (ERT); [redacted] (CTD) (ERT); [redacted]
[redacted] (OGC) (ERT); [redacted] (FBI); [redacted] (FBI)
Subject: [redacted] NSL matter

DATE: 07-19-2007
CLASSIFIED BY 65179dmh/ksr/maj
REASON: 1.4 (e/d)
DECLASSIFY ON: 07-19-2032

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This summary was put together by OS [redacted] with input from OGC and [redacted]

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CONUS-1 TTOS-1, CTD b7C
202-324 [redacted] b2

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On February 10, 2004, [redacted] Field Office delivered a National Security
Letter (NSL) to [redacted]
[redacted] on behalf of the [redacted] Field Office, with
regards to [redacted]

[redacted]

On April 6, 2004, the ACLU, on behalf of itself and a John Doe plaintiff,
filed a lawsuit against the Attorney General, the FBI, the Director, and FBI Senior
Counsel Marion E. Bowman in the United States District Court for the Southern
District of New York. The lawsuit includes a facial challenge to the
constitutionality of a National Security Letter (NSL) statute, 18 U.S.C. § 2709.
The case was filed under seal and large portions remain under seal. Because large
portions of the case are under seal, very little information can be disclosed
publicly about it.

The lawsuit includes a facial challenge to the constitutionality of 18
U.S.C. 2709. The plaintiffs allege that the statute violates the First, Fourth and
Fifth Amendments to the Constitution. The plaintiffs allege that the NSL statute is
unconstitutional because it is vague, prohibits a recipient of an NSL from
disclosing its receipt of the NSL, does not provide a mechanism for challenging the
validity of an NSL, does not require the FBI to demonstrate a compelling need for
the information sought by the NSL, and does not provide notice to the individuals
whose information is sought. The Government disputes these claims, and intends to
vigorously defend the lawsuit and constitutionality of the statute.

The plaintiffs filed a motion for summary judgment on 5/17/04. Under the
current briefing schedule, the Government will be filing a cross-motion for summary
judgment on 6/7/04. Several organizations have filed amicus briefs in favor of
plaintiffs' motion for summary judgment. The amici include the Electronic Frontier

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Foundation and the American Library Association.

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[redacted] has never met [redacted] in person.

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~~DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97, Foreign
Counterintelligence Investigations
DECLASSIFY ON: 20290527
SECRET~~

ACLU LAWSUIT re National Security Letters.txt

MessageFrom: CHANDLER, CASSANDRA M. (Div00) (FBI)
Sent: Thursday, May 13, 2004 5:46 PM
To: All SAC Employees Listing; All AD'S Employees Listing
Cc: GEBHARDT, BRUCE J. (Div00) (FBI); LOWERY, W WILSON JR (Div00) (FBI); BAGINSKI, MAUREEN A. (Div00) (FBI); PISTOLE, JOHN S. (Div00) (FBI); WAINSTEIN, KENNETH L. (Div00) (FBI)
Subject: ACLU LAWSUIT re National Security Letters

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Let me apology first if I already sent this. Today is one of those days.

The ACLU's lawsuit over the FBI's use of National Security Letters [under the Patriot Act] was reported today in the Washington Post and New York Times. For your use in response to local inquiries regarding the matter, please find enclosed Questions and Answers on the subject. Thank you.

On a related matter, hope you'll take a look at SAC Chip Burrus' Op-ed in the Salt Lake newspaper on the Patriot Act. WELL DONE, Chip!!! Chip's latest to the local paper is the most recent of three similar Op-eds.

Thanks everyone for all of your efforts in getting the word out. I will be in Louisiana tomorrow afternoon through next week Monday. I can be reached via Blackberry [redacted] fbi.gov] or cellular number (202) [redacted].
Thanks again. Cassi

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Bad News!.txt

MessageFrom: Caproni, Valerie E. (OGC) (FBI)

Sent: Wednesday, September 29, 2004 12:40 PM

To: Curran, John F. (OGC) (OGA); MUELLER, ROBERT S. III (DO) (FBI); BOWMAN, MARION

E. (OGC) (FBI); [REDACTED] (DO) (OGA)

Cc: GULYASSY, ANNE M. (OGC) (FBI)

Subject: Bad News!

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NON-RECORD

Judge Marrero in SDNY has just held that the NSL statute (18 USC 2709) is unconstitutional under the 4th and 1st amendments. The opinion is long (120 pages) and is coming.

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NATIONAL SECURITY LETTERS

Issue: The ACLU filed a suit under seal on April 6 challenging the FBI's authority to issue National Security Letters. The ACLU charges that Section 505 of the USA PATRIOT Act violates the First and Fourth Amendments because it does not include adequate safeguards on the FBI's authority to force disclosure of sensitive and constitutionally protected information. The ACLU's suit was unsealed and they issued a press release on April 28.

On April 29, the *Washington Post*'s Dan Eggen reported on the suit with particular attention to the "gag" rule that delayed disclosure of the suit's existence:

'The lawsuit was filed April 6 in U.S. District Court in Manhattan, but the case was kept under seal to avoid violating secrecy rules contained in the USA Patriot Act, the ACLU said. The group was allowed to release a redacted version of the lawsuit after weeks of negotiations with the government.' In a statement ACLU associate legal director Ann Beeson said, 'It is remarkable that a gag provision in the Patriot Act kept the public in the dark about the mere fact that a constitutional challenge had been filed in court. ...President Bush can talk about extending the life of the Patriot Act, but the ACLU is still gagged from discussing details of our challenge to it.'

"The ACLU alleges that a section of the act is unconstitutional because it allows the FBI to request financial records and other documents from businesses without a warrant or judicial approval. The group also says such requests, known as 'national security letters,' are being used much more broadly than they were before the Patriot Act."

Q&As:

How did the Patriot Act expand the FBI's authority to issue National Security Letters?

1. Section 505 of the Patriot Act changed the legal standard for issuance of a National Security Letter to "relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities"(provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment of the Constitution of the United States.) Prior to the Patriot Act the legal standard required a showing that the person to whom the information pertains, is a foreign power or an agent of a foreign power.
2. The bill also authorized delegation of authority to sign National Security Letters to the SAC level.

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The ACLU alleges that the FBI can now use National Security Letters to obtain information about “anyone at all.” Is this true?

1. National Security Letters are tools available for use in investigations conducted under the Attorney General Guidelines for FBI National Security Investigations and Foreign Intelligence Collection. These guidelines provide that a National Security Letter can only be issued during the course of a full counterterrorism or foreign counterintelligence investigation opened under the standards set forth in the guidelines. Thus, an NSL cannot be used unless the FBI first meets the standard for opening an investigation and second, meets the standard for the use of an NSL. NSLs cannot be used in criminal investigations unrelated to international terrorism or clandestine intelligence activities. In addition, in FBI field offices, NSLs must be approved by the Chief Divisional Counsel, and NSLs initiated at FBI Headquarters must be approved by an FBI Headquarters attorney.
2. Executive Order 12333 and the AG Guidelines require that the FBI accomplish its investigations through the “least intrusive” means. The greater availability of National Security Letters does not mean that they are or should be used in every case.

Is this authority subject to any sort of oversight?

3. Yes. Semiannually, the Attorney General is required to “fully inform” Congress about the use of National Security Letters.
4. Although past reports contained only statistical information, future reports must contain details about the process for approving National Security Letters, their scope, and compliance issues.
5. In addition, because the expended authority provided by the Patriot Act is scheduled the sunset, Congress will closely monitor our use of the power.

Who is authorized to certify National Security Letters?

1. Only the most senior FBI officials have this authority.
2. Pursuant to an EC of 11/9/01, the following are authorized: Deputy Director, Assistant Directors and all Deputy Assistant Directors of the Counterterrorism Division; the General Counsel and the Deputy General Counsel for National Security Affairs, the ADICs and SACs of NY, WFO, and LA, and the SACs of all other field divisions.

10-27-2006	Email from [redacted]	email to change narratives on website with respect to NSLs.
10-31-2006	Email to CDCs from [redacted]	Reiterating importance of including the following in NSL ECS: whether subject is USP or non-USP; and what kind of NSL is being issued. These details are important for Congressional reporting requirements.
11-16-2006	EC: All Divisions	Provides revised procedures on IOBs. Details potential IOBs involving NSLs and set forth procedures on sequestering overcollected material.
12-7-2006	Email to CDCs from [redacted]	OGC believes [redacted]
12-8-2006	Email to CDCs from [redacted] on behalf of DGC Julie Thomas	[redacted]
1-3-2007	EC: FOs, CTD, CD, Cyber	NSL-derived information should be reviewed before being uploaded.
2-23-2007	EC: FOs, CTD, CD, Cyber	Provided guidance requiring NSL authorizing ECs to cite the investigative case file to which the request information relates.
3-1-2007	EC: All Divisions	Provided guidance on the appropriate use of 18 USC 2702 emergency disclosure provision. Required use of "exigent letters" to cease.
3-5-2007	Email to all CDCs from [redacted]	Informed CDCs of update to NSL website reflecting change to narrative on reporting requirements.
3-5-2007	EC: FOs, CTD, CD, Cyber	1681v NSLs cannot be obtained for counterintelligence investigations. EC required a review of NSLs to determine whether full credit reports were obtained through NSLs for counterintelligence investigations.
3-9-2007	EC: All Divisions from RMD	Interim guidance on the retention of NSLs.

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From: National Security Law Policy and Training Unit

Date: 26 July 2005

Re: **NATIONAL SECURITY LETTERS**

National Security letters are administrative requests that allows the FBI to obtain certain limited types of information without court intervention:

1) Under the **Electronic Communications Privacy Act, 18 U.S.C. § 2709**, the FBI can obtain telephone and email communication records from telephone companies and internet service providers.

2) Under the **Right to Financial Privacy Act, 12 U.S.C. § 3414(a)(5)(A)**, the FBI can obtain the records of financial institutions (which is very broadly defined).

3) Under the **Fair Credit Reporting Act, 15 U.S.C. §§ 1681u(a) and (b)**, the FBI can obtain a list of financial institutions with which the subject has a relationship and consumer identifying information from a credit reporting company.

4) Under the **Fair Credit Reporting Act, 15 U.S.C. § 1681v**, the FBI can obtain a full credit report in a counterterrorism case. This provision was created by the 2001 USA Patriot Act.

The standard for issuing an NSL is **relevance** to an authorized investigation to protect against international terrorism or clandestine intelligence activities provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the First Amendment of the Constitution of the United States. (The standard for getting a full credit report is slightly different to reflect that it applies only to international terrorism investigations.)

Statute	Type of NSL	Reporting Requirement
Electronic Communications Privacy Act 18 U.S.C. §2709(e)	<ul style="list-style-type: none"> •Telephone Subscriber or Electronic Subscriber information (limited to name, address, and length of service). •Telephone local and long distance toll billing records. •Electronic Communication Transactional Records (e.g. transaction/activity logs and e-mail header information). 	Semiannual Reporting
Right to Financial Privacy Act 12 U.S.C. § 3414(a)(5)	<ul style="list-style-type: none"> •Financial Records 	Semiannual Reporting
Fair Credit Reporting Act 15 U.S.C. § 1681u(a) & (b)	<ul style="list-style-type: none"> •Consumer identifying Information. • Identity of Financial Institution. 	Semiannual Reporting
Fair Credit Report Act 15 U.S.C. § 1681v	<ul style="list-style-type: none"> •Full credit reports from credit bureau. 	No reporting requirement under the Fair Credit Reporting Act.

RE Bad News!.txt

MessageFrom: Caproni, Valerie E. (OGC) (FBI)
Sent: Wednesday, September 29, 2004 6:18 PM
To: BALD, GARY M. (CTD) (FBI); CHANDLER, CASSANDRA M. (OPA) (FBI); KALISCH, ELENI P. (OCA) (FBI); PISTOLE, JOHN S. (DO) (FBI); MUELLER, ROBERT S. III (DO) (FBI); BOWMAN, MARION E. (OGC) (FBI); BAGINSKI, MAUREEN A. (DO) (FBI)
Subject: RE: Bad News!

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I just got a call from [redacted] There is a meeting tomorrow. Spike had drafted some language that would fix the [redacted] going to [redacted] (I can't recall exactly how we were [redacted] I haven't read the decision yet, so I am not sure what the Fourth Amendment cure would be [redacted]

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there is a meeting tomorrow, time not yet set, with DOJ to discuss.

-----Original Message-----

From: BALD, GARY M. (CTD) (FBI)
Sent: Wednesday, September 29, 2004 6:04 PM
To: Caproni, Valerie E. (OGC) (FBI); CHANDLER, CASSANDRA M. (OPA) (FBI); KALISCH, ELENI P. (OCA) (FBI); PISTOLE, JOHN S. (DO) (FBI)
Subject: RE: Bad News!

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-----Original Message-----

From: Caproni, Valerie E. (OGC) (FBI)
Sent: Wednesday, September 29, 2004 12:49 PM
To: CHANDLER, CASSANDRA M. (OPA) (FBI); KALISCH, ELENI P. (OCA) (FBI); PISTOLE, JOHN S. (DO) (FBI); BALD, GARY M. (CTD) (FBI)
Subject: FW: Bad News!

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Further info: the decision has been stayed for 90 days or until an appeal is filed. I have no doubt that we will appeal.

-----Original Message-----

From: Caproni, Valerie E. (OGC) (FBI)
Sent: Wednesday, September 29, 2004 12:40 PM
To: Curran, John F. (OGC) (OGA); MUELLER, ROBERT S. III (DO) (FBI); BOWMAN, MARION E. (OGC) (FBI); [redacted] (DO) (OGA)
Cc: GULYASSY, ANNE M. (OGC) (FBI)
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RE Bad News!.txt

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