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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 11/09/2005

To: [Redacted]

Attn: SA [Redacted]

Counterintelligence
Inspection

Attn: SSA [Redacted]
Attn: IIS [Redacted]

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

Contact: [Redacted] 202-324 [Redacted]

Approved By: Thomas Julie F. [Redacted] *11/15/05*

Drafted By: [Redacted] *11/14/05*

Case ID #: (U) 278-HQ-C1229736-VIO-1045 (Pending)

DATE: 08-17-2007
CLASSIFIED BY: 55179 DMH/KSR/JE
REASON: 1.4 (c)
DECLASSIFY ON: 08-17-2032

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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

(U) Title: ~~(S)~~ INTELLIGENCE OVERSIGHT BOARD MATTER
2005 [Redacted] b2

(U) Synopsis: ~~(S)~~ It is the opinion of the Office of the General
Counsel (OGC) that this matter need not be reported to the
Intelligence Oversight Board (IOB). A copy of this opinion
should be retained in the control file for review by Counsel to
the IOB.

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

Reference: (U) 278-HQ-C122973 VIO Serial 973

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

(U) Details: ~~(S)~~ The referenced electronic communication (EC) from
the [Redacted] Division [Redacted], dated 09/12/2005, requested
that OGC review the facts of the captioned matter and determine
whether it warrants reporting to the IOB. In our opinion, it
does not. Our analysis follows.

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(S) [Redacted]

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To: [redacted] From: Office of the General Counsel b2
Re: (U) 278-HQ-C1229736-VIO, 11/09/2005 b7E

(S) [redacted] Pursuant to Section 11.C.4 of the Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG), [redacted] needed approval from FBI Headquarters (FBIHQ) to [redacted] (S) [redacted] On 03/29/2005, the case agent drafted an EC requesting the [redacted] The EC explicitly stated "Electronic communication uploaded into ACS only. No hard copy to follow."

(S) The EC was actually uploaded into ACS on 04/08/2005, seven days after the [redacted] However, CD-2C, the substantive unit at FBIHQ responsible for the case, did not receive a hard copy of the request, and it, therefore, went unaddressed. On 08/08/2005, the case agent assigned to the case after the [redacted] was requested determined that FBIHQ had failed to respond to the lead set by [redacted] regarding the [redacted] request. This case agent, therefore, contacted FBIHQ and was [redacted]

(S) On 12/30/2004, months before the [redacted] [redacted] sent an National Security Letter (NSL) to [redacted] requesting toll records. [redacted] did not provide [redacted] with the NSL results until 05/05/2005, approximately one month after the [redacted] The NSL results contained no toll records only billing information, because of the target's specific service plan. Because there was no reportable information, there was no analysis and nothing further was done with the NSL results.

(S) Other than the receipt of the billing information from [redacted] took no other action on this case from the [redacted]

¹⁾ A "United States person" is defined in Section 101(i) of the Foreign Intelligence Surveillance Act (FISA), 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)" See also Section I.C to the Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG) (2003).

~~SECRET~~

To: [redacted] From: Office of the General Counsel
Re: (U) 278-HQ-C1229736-VIO, 11/09/2005

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(U) Section 2.4 of Executive Order (E.O.) 12863, dated 09/13/1993, mandates that Inspectors General and General Counsels of the Intelligence Community components (in the FBI, the Assistant Director, INSD, 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." 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 National Security Investigations and Foreign Intelligence Collection (NSIG) or other guidelines or regulations approved by the Attorney General in accordance with E.O. 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.

(S) In this instance, as a consequence of a delayed response on the part of a communications carrier, [redacted] received the results of an NSL after the [redacted]. However, [redacted] took no affirmative steps to analyze the information or use it to [redacted]

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[redacted] AS SOON AS [redacted] realized that its request for a [redacted] was not addressed by Headquarters, [redacted] took all necessary steps to get the [redacted]. Thus, we perceive no error reportable to the IOB.

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To: [redacted] From: Office of the General Counsel
Re: (U) 278-HQ-C1229736-VIO, 11/09/2005

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LEAD(s):

Set Lead 1: (Info)

[redacted]

AT

[redacted]

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(U) Read and clear.

Set Lead 2: (Info)

COUNTERINTELLIGENCE

AT WASHINGTON, DC

(U) Read and clear.

Set Lead 3: (Info)

INSPECTION

AT WASHINGTON, DC

(U) Read and clear.

CC: Ms. Thomas

[redacted]

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IOB Library

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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 09/12/2005

To: General Counsel ✓

Attn: National Security Law Branch
Room 7975

Counterintelligence

Attn: CD-2C Unit
SSA [redacted]

From: [redacted]

Contact: SA [redacted]

Approved By: [redacted]

DATE: 08-17-2007
CLASSIFIED BY: 65179 DMH/KSR/AB
REASON: 1.4 (c)
DECLASSIFY ON: 08-17-2032

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Drafted By: [redacted]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

(U) Case ID #: ~~(S)~~ 278-HQ-C1229736-VIO-973

(U) Title: ~~(S)~~ INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER

(U) Synopsis: ~~(S)~~ Possible IOB error for non-compliance with a
requirement of the Attorney General.

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

Details:

(S) 1. [redacted]

(S) 2. [redacted]

(U) ~~(S)~~ 3. Possible IOB Error:

(U) ~~(S)~~ [redacted]

(S)

~~SECRET~~

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NSL VIO-24364

2555PR 01,962

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To: General Counsel From: [redacted]
(U) Re: ~~(S)~~ 278-HQ-C1229736-VIO, 09/12/2005

(U) ~~(S)~~ 4. Description of IOB Error (including any reporting delays).

(S)

[redacted] 03/29/2005, Special Agent (SA) [redacted] captioned case agent, drafted a [redacted] request and forwarded it to FBIHQ. The EC stated, "Electronic Communication uploaded into ACS only. No hard copy to follow." Due to a pending TDY assignment to FBIHQ, on 05/18/2005, SA [redacted] requested captioned investigation be reassigned. On 05/26/2005, captioned matter was reassigned to writer. In July 2005, writer received results of a National Security Letter (NSL). NSL was drafted 12/30/2004 and forwarded to [redacted] did not provide NSL results to FBI until 05/05/2005. The NSL results contained no toll records, only billing information. [redacted] informed writer that captioned subject maintained a basic service plan and as such, carrier was not responsible for maintaining toll records for telephone line. Other than the receipt of the billing information from [redacted] took no other action in this matter after the [redacted] as noted above. On 08/08/2005, while attempting to verify [redacted] date for a communication for the file, writer determined FBIHQ had never responded to the lead set by [redacted] in [redacted] extension request dated [redacted]. Writer contacted FBIHQ and was granted a verbal extension. On 08/31/2005, FBIHQ informed writer of potential Intelligence Oversight Board (IOB) violation due to an "investigation action conducted while the case was not open."

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(S) While [redacted] is reporting this as a possible IOB, [redacted] questions whether the receipt of such records after the PI's expiration, based on a lawful, authorized request, constitutes investigation. Moreover, [redacted] again calls attention to its earlier attempt to secure a more timely extension.

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NSL VIO-24365

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To: General Counsel From: [REDACTED]
(U) Re: ~~(S)~~ 278-HQ-C1229736-VIO, 09/12/2005

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LEAD(s):

Set Lead 1: (Action)

GENERAL COUNSEL

AT WASHINGTON, DC

(U) For action deemed appropriate.

Set Lead 2: (Info)

COUNTERINTELLIGENCE

AT WASHINGTON, DC

(U) For information only.

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NSL VIO-24366

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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 11/09/2005

To: [Redacted]
Counterintelligence
Inspection

Attn: SA [Redacted]
CDC
Attn: SSA [Redacted] CD-2C
Attn: IIS [Redacted]

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

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

Approved By: Thomas Julie F. [Redacted]

DATE: 08-17-2007
CLASSIFIED BY: 65179 DMH/KSR/JB
REASON: 1.4 (c)
DECLASSIFY ON: 08-17-2032

Drafted By: [Redacted]

Case ID #: (U) 278-HQ-C1229735-VIO (Pending)

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

(U) Title: ~~(S)~~ INTELLIGENCE OVERSIGHT BOARD MATTER
2005-[Redacted] b2

(U) Synopsis: ~~(S)~~ It is the opinion of the Office of the General Counsel (OGC) that this matter need not be reported to the Intelligence Oversight Board (IOB). A copy of this opinion should be retained in the control file for review by Counsel to the IOB.

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

Reference: (U) 278-HQ-C1229735-VIO Serial 973

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

(U) Details: ~~(S)~~ The referenced electronic communication (EC) from the [Redacted] Division [Redacted] dated 09/12/2005, requested that OGC review the facts of the captioned matter and determine whether it warrants reporting to the IOB. In our opinion, it does not. Our analysis follows.

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(S) [Redacted]

~~SECRET~~

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~~SECRET~~

To: [redacted] From: Office of the General Counsel
Re: (U) 278-HQ-C1229736-VIO, 11/09/2005

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(S)

[redacted]

Pursuant to Section 11.C.4 of the Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG),

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[redacted] needed approval from FBI Headquarters (FBIHQ) to [redacted]

[redacted] On 03/23/2005, the case agent drafted an EC requesting the [redacted]. The EC explicitly stated "Electronic communication uploaded into ACS only. No hard copy to follow."

(S) The EC was actually uploaded into ACS on 04/08/2005, seven days after the [redacted]. However, CD-2C, the substantive unit at FBIHQ responsible for the case, did not receive a hard copy of the request, and it, therefore, went unaddressed. On 08/08/2005, the case agent assigned to the case after the [redacted] was requested determined that FBIHQ had failed to respond to the lead set by [redacted] regarding the [redacted] request. This case agent, therefore, contacted FBIHQ and was [redacted]

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[redacted]

(S) On 12/30/2004, months before the [redacted] [redacted] sent an National Security Letter (NSL) to [redacted] requesting toll records. [redacted] did not provide [redacted] with the NSL results until 05/05/2005, approximately one month after the [redacted]. The NSL results contained no toll records only billing information, because of the target's specific service plan. Because there was no reportable information, there was no analysis and nothing further was done with the NSL results.

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(S) Other than the receipt of the billing information from [redacted] took no other action on this case from the [redacted]

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[redacted]

A "United States person" as defined in Section 101(i) of the Foreign Intelligence Surveillance Act (FISA), 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)." See also Section I.C fo the Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG) (2003).

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~~SECRET~~

To: [redacted] From: Office of the General Counsel b2
Re: (U) 278-HQ-C1229736-VIO, 11/09/2005 b7E

(U) Section 2.4 of Executive Order (E.O.) 12863, dated 09/13/1993, mandates that Inspectors General and General Counsels of the Intelligence Community components (in the FBI; the Assistant Director, INSD, 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." 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 National Security Investigations and Foreign Intelligence Collection (NSIG) or other guidelines or regulations approved by the Attorney General in accordance with E.O. 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.

(S) In this instance, as a consequence of a delayed response on the part of a communications carrier [redacted] received the results of an NSL after the [redacted]. However, [redacted] took no affirmative steps to analyze the information or use it to [redacted]

[redacted]
[redacted] As soon as [redacted] realized that its request for a [redacted] was not addressed by Headquarters, [redacted] took all necessary steps to get the [redacted] thus, we perceive no error reportable to the IOB.

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~~SECRET~~

~~SECRET~~

To: [redacted] From: Office of the General Counsel
Re: (U) 278-HQ-C1229736-VIO, 11/09/2005

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LEAD(s):

Set Lead 1: (Info)

[redacted]

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AT

[redacted]

(U) Read and clear.

Set Lead 2: (Info)

COUNTERINTELLIGENCE

AT WASHINGTON, DC

(U) Read and clear.

Set Lead 3: (Info)

INSPECTION

AT WASHINGTON, DC

(U) Read and clear.

CC: Ms. Thomas

[redacted]

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IOB Library

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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 03/07/2006

To: [Redacted]

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

Counterintelligence
Inspection

Attn: CD-3A
Attn: IIS

From: Office of the General Counsel

NSLB/CILU/Room 7947

Contact: AGC [Redacted]

202-324 [Redacted]

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Approved By: Thomas Julie F. [Signature]

DATE: 08-17-2007

CLASSIFIED BY 65179 DMH/KSR/JB

REASON: 1.4 (c)

DECLASSIFY ON: 08-17-2032

Drafted By: [Redacted]

(U) Case ID #: ~~(S)~~ 278-HQ-C1229736-VIO-1242 (Pending)

(S) [Redacted]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

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(U) 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.

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

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(U) Reference: ~~(S)~~ 278-HQ-C1229736-VIO Serial 1201

(S) [Redacted]

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

(U) Details: ~~(S)~~ The referenced electronic communication (EC) from
the [Redacted] Division [Redacted], dated 02/16/2006,
requested that OGC review the facts of the captioned matter and
determine whether it warrants reporting to the IOB. In our
opinion, it does. Our analysis follows.

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~~SECRET~~

To: [redacted] From: Office of the General Counsel
(U) Re: ~~(S)~~ 278-HQ-C1229736-VIO, 03/07/2006

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(S) [redacted]

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(U) ~~(S)~~ On 01/16/2006, the case agent directed the investigative support specialist (ISS) to draft a National Security Letter (NSL) requesting information regarding the subject phone number. The EC had the subject telephone number as [redacted] however, due to an administrative oversight, the (S) [redacted] NSL sent to the telephone company had the telephone number as [redacted]. The case agent's telephone extension in [redacted] is [redacted].

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(U) ~~(S)~~ On 02/10/2006, the case agent opened the NSL results and noticed the discrepancy in the telephone number. The case agent immediately notified his supervisor and put the original results in a sealed envelope for sequestration with the Chief Division Counsel (CDC). Nothing from the original NSL was uploaded into ACS nor were any searches or database checks run on any information from the NSL results.

(U) Section 2.4 of Executive Order (E.O.) 12863, dated 09/13/1993, mandates that Inspectors General and General Counsels of the Intelligence Community components (in the FBI, the Assistant Director, INSD, 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." 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 National Security Investigations and Foreign Intelligence Collection (NSIG) or other guidelines or

¹ A "United States person" is defined in Section 101(i) of the Foreign Intelligence Surveillance Act (FISA), 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)" See also Section I.C fo the Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG) (2003).

~~SECRET~~

To: [redacted] From: Office of the General Counsel
(U) Re: ~~(S)~~ 278-HQ-C1229736-VIO, 03/07/2006

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regulations approved by the Attorney General in accordance with E.O. 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.

(S) As set forth in Section V.12 of the Attorney General's Guidelines, use of NSLs in conformity with 18 U.S.C. 2709 is authorized when records of electronic communications are sought as part of a Preliminary or Full Investigation. 18 U.S.C. 2709 authorizes the FBI to seek relevant records from a wire or electronic communication service provider when those records "are relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities." Here, issuance of an NSL which requested records for telephone number [redacted] was neither authorized by law, nor was it authorized by the Attorney General's Guidelines, since telephone number [redacted] is not relevant to a counterintelligence investigation.

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(U) ~~(S)~~ Due to inadvertent typographical error, [redacted] received NSL results on a telephone number that was not associated with the subject of an authorized investigation. Upon realizing the error, the case agent immediately notified his supervisor and took the proper steps to sequester the information. Nothing from the original NSL results was uploaded into the FBI computer systems, nor was any investigative action taken based on the NSL results. However, due to the fact that there was an unauthorized collection of presumed U.S. person information, we must report this to the IOB.

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To: [redacted] From: Office of the General Counsel b2
(U) Re: ~~(S)~~ 278-HQ-C1229736-VIO, 03/07/2006 b7E

LEAD(s):

Set Lead 1: (Info)

[redacted]

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AT [redacted]

(U) Read and clear.

Set Lead 2: (Info)

COUNTERINTELLIGENCE

AT WASHINGTON, DC

(U) Read and clear.

Set Lead 3: (Info)

INSPECTION

AT WASHINGTON, DC

(U) Read and clear.

CC: Ms. Thomas

[redacted]

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IOB Library

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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 08-17-2007 BY 65179 DMH/KSR/JE

March 8, 2006

Mr. Stephen Friedman, Chairman
Intelligence Oversight Board
New Executive Office Building - Room 5020
Washington, D.C. 20503

Dear Mr. Friedman:

This letter forwards for your information a self-explanatory enclosure entitled "Intelligence Oversight Board (IOB), [redacted] Division, IOB Matter 2006-[redacted]" (U)

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

Enclosure

1 - 278-HQ-C1229736-VIO-1243

UNCLASSIFIED WHEN
DETACHED FROM
CLASSIFIED ENCLOSURE

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 _____

MAIL ROOM

NSL VIO-24375

FBI/DOJ

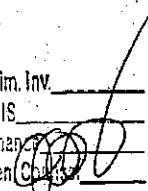
~~SECRET~~

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)

Very truly yours,

Julie F. Thomas
Deputy General Counsel

- 1 - The Honorable Alberto R. Gonzales
Attorney General
U.S. Department of Justice
Room 5111
- 2 - Mr. James A. 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
Finan.	National Sec.	Affairs
Director	OPR	Off. of Public &
Deputy Director	Personnel	Cong. Affs.

~~SECRET~~

~~SECRET~~

INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER

[redacted] DIVISION
IOB MATTER 2006 [redacted] (U)

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(U) ~~(S)~~ The [redacted] Division [redacted] of the Federal Bureau of Investigation (FBI) reported a potential IOB involving a National Security Letter (NSL) requested by [redacted] which, through a transcription error, sought information about a telephone number belonging to a person who was not the subject of an FBI national security investigation.

(S) The US person who is the subject of the [redacted] On 01/16/2006, the case agent directed the investigative support specialist (ISS) to draft an NSL requesting information regarding the subject phone number. The request had the subject telephone number as [redacted] however, due to an administrative oversight, the NSL sent to the telephone company had the telephone number as [redacted] The case agent's telephone extension in [redacted] is [redacted].

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(U) ~~(S)~~ On 02/10/2006, the case agent opened the NSL results and noticed the discrepancy in the telephone number. The case agent immediately notified his supervisor and put the original results in a sealed envelope for sequestration with the Chief Division Counsel (CDC). Nothing from the original NSL results was uploaded into the FBI computer systems, nor was any investigative action taken based on the NSL results.

(U) Due to inadvertent typographical error, [redacted] received NSL results on a telephone number that was not associated with the subject of an authorized investigation. However, due to the fact that there was an unauthorized collection of presumed U.S. person information, the error is a reportable matter under Section 2.4 of Executive Order 12863.

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DATE: 08-17-2007
CLASSIFIED BY 65179 DMH/KSR/JS
REASON: 1.4 (c)
DECLASSIFY ON: 08-17-2032

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

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

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

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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 02/16/2006

To: Inspection
General Counsel

Attn: IIS
Attn: NSLB

DATE: 08-17-2007
CLASSIFIED BY: 65179 DMH/KSR/JB
REASON: 1.4 (c)
DECLASSIFY ON: 08-17-2032

From: [Redacted]
Chief Division Counsel
Contact: [Redacted]

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Approved By: [Redacted]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

Drafted By: [Redacted]

Case ID #: (S) [Redacted] 278-HQ-C1229736-VIO (Pending) -1201

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(U) Title: ~~(S)~~ POSSIBLE INTELLIGENCE OVERSIGHT BOARD MATTER, (IOB)
SA [Redacted], CASE AGENT;
SSA [Redacted]

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

(U) ~~Derived From: G-3
Declassify On: X-1~~

(S) [Redacted]

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Details: (S) [Redacted]

(U) ~~(S)~~ During the week of 01/16/2006, case agent asked the Investigative Support Specialist (ISS) to create a National Security Letter (NSL) for telephone number information.

(S) [Redacted]

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The subject telephone number was incorrectly transcribed from the ECPA EC request to the ECPA NSL request. The ECPA EC had subject telephone number as [Redacted] however, due to an administrative oversight the ECPA NSL directed at [Redacted] had a

~~SECRET~~

~~SECRET~~

To: Inspection From: [redacted]
Re: (S) [redacted]

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(S) telephone number of [redacted] Case agent's [redacted] telephone extension is [redacted] (S) [redacted]

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(U) ~~(S)~~ During the week of February 6, 2006, the case agent received the NSL response. On February 10, 2006, the case agent opened the results and immediately noticed the discrepancy in the telephone number. The case agent immediately notified his supervisor and put the original in a sealed envelope and submitted it to the Chief Division Counsel. Nothing from the original NSL was uploaded.

(U) ~~(S)~~ No personal or identifying information on the incorrect telephone number was uploaded into ACS from the NSL return. [redacted]

[redacted]

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

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

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~~SECRET~~

To: Inspection From: [REDACTED]
Re: (S) [REDACTED]

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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.

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~~SECRET~~

~~SECRET~~

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 12/19/2006

To: [Redacted]

Attn: SA [Redacted]
SSA [Redacted]

Inspection

Attn: IIS [Redacted]
CRS [Redacted]

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

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

Approved By: Thomas Julie A [Signature]

DATE: 08-17-2007
CLASSIFIED BY 65179 DMH/KSR/JB
REASON: 1.4 (c)
DECLASSIFY ON: 08-17-2032

Drafted By: [Redacted]

1980

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

Title: (U) INTELLIGENCE OVERSIGHT BOARD
MATTER 2006-[Redacted]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

(U) Synopsis: ~~(S)~~ It is the opinion of the Office of the General Counsel (OGC) that this matter need not be reported to the Intelligence Oversight Board (IOB). A copy of this opinion should be retained in the control file for review by the Counsel to the IOB.

(U) ~~(S)~~ ~~Derived From: Multiple Sources~~
~~Declassify On: MR~~

Reference: (U) 278-HQ-C1229736-VIO Serial 1469

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

(U) Details: ~~(S)~~ The referenced electronic communication (EC) from the [Redacted] Division [Redacted], dated 06/27/2006, requested that OGC review the facts of the captioned matter and determine whether it warrants reporting to the IOB. In our opinion, it does not. Our analysis follows.

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~~SECRET~~

To: [redacted] From: Office of the General Counsel
Re: (U) 278-HQ-C1229736-VIO, 12/19/2006

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(S) On 03/01/2006, [redacted] prepared a National Security Letter (NSL #1) for the subscriber, toll, and billing records for a telephone number believed to belong to the subject of a [redacted] [redacted] This NSL was prepared in accordance with the USA PATRIOT ACT of 2001 and contained the appropriate non-disclosure warning. NSL #1 was transmitted to another field office for service.

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(U) ~~(S)~~ On 03/09/2006, after NSL #1 had been sent to the other field office for service but before it was served, the President signed the USA PATRIOT Improvement and Reauthorization Act of 2005 (USA PATRIOT IRA) which, among other things, changed the non-disclosure procedures for NSLs.

(U) ~~(S)~~ After learning of the change in the law, on 03/13/2006, [redacted] contacted the other field office and told them not to serve NSL #1. [redacted] prepared a new NSL (NSL #2) for the same information. NSL #2 included the non-disclosure procedures set forth in the USA PATRIOT IRA. NSL #2 was transmitted to the other field office for service.

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(U) ~~(S)~~ On 03/21/2006, the other field office mistakenly served NSL #1. NSL #2 was served on 03/28/2006.

(U) ~~(S)~~ On 05/24/2006, the telecommunications provider responded to NSL #1 by providing subscriber information. The provider noted that it had received NSL #2 for the same telephone number and indicated that it would provide toll and billing records in its response to NSL #2.

(U) ~~(S)~~ [redacted] sequestered the information provided in response to NSL #1 upon receipt on 06/20/2006.

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(U) Section 2.4 of Executive Order (E.O.) 12863, dated 09/13/1993, mandates that Inspectors General and General Counsels of the Intelligence Community (in the FBI, the Assistant Director, INSD, 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 has been interpreted to mandate the reporting of any violation of a provision of the Attorney General Guidelines for National Security Investigations and Foreign Intelligence Collection (NSIG) or other guidelines or regulations approved by the Attorney General in accordance with E.O. 12333, dated 12/04/1981, if such provision was designed in full or in part to

~~SECRET~~

~~SECRET~~

To: [redacted] From: Office of the General Counsel b2
Re: (U) 278-HQ-C1229736-VIO, 12/19/2006 b7E

ensure the protection of the individual rights. Violations of provisions that are merely 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) Under the Electronic Communications Privacy Act (ECPA), the FBI may seek telephone and email communication records from telephone companies and internet service providers. 18 U.S.C. § 2709. Moreover, under the NSIG, NSLs are an authorized technique and may be issued in conformity with statutory requirements during a preliminary or full investigation. NSIG, V.12.

(U) ~~(S)~~ Here, during an authorized investigation,¹ the FBI properly served two (2) NSLs on a telecommunications provider. Due to a change in the USA PATRIOT Act, the non-disclosure provisions of these two NSLs were different. However, the language of the non-disclosure provisions does not effect the legality of the NSL. Both NSL #1 and NSL #2 were properly and legally served under an authorized investigation. Therefore, the FBI has not violated the law and is permitted to keep and use the information provided in response to both of these NSLs.

(U) ~~(S)~~ Based upon these facts, in accordance with the reporting requirements of Section 2.4 of EO 12863, it is our opinion that this error is not reportable to the IOB.

(S)

[redacted]

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~~SECRET~~

~~SECRET~~

To: [redacted] From: Office of the General Counsel
Re: (U) 278-HQ-C1229736-VIO, 12/19/2006

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LEAD(s):

Set Lead 1: (Info)

[redacted]

AT

[redacted]

b2
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(U) Read and clear.

Set Lead 2: (Action)

INSPECTION

AT WASHINGTON, DC

(U) INSD should retain a record of the report of the potential IOB matter, as well as a copy of the OGC opinion concluding that IOB notification is not required, for three years for possible review by the Counsel to the IOB.

CC: Ms. Thomas

[redacted]

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IOB Library

♦♦

~~SECRET~~

~~SECRET//20310627~~

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 06/27/2006

To: Inspection
General Counsel

Attn: IIS, Room 11861
Attn: NSLB, Room 7975

From: [Redacted]

CI-1

Contact: SA [Redacted]

b2
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Approved By: [Redacted]

Drafted By: [Redacted]

DATE: 08-17-2007
CLASSIFIED BY 65179 DMH/KSP/JE
REASON: 1.4 (c)
DECLASSIFY ON: 08-17-2032

(U) Case ID #: ~~(S)~~ 278-HQ-C1229736-VIO *1469*

Title: (U) SA [Redacted]
SSA [Redacted]
INTELLIGENCE OVERSIGHT BOARD (IOB) ERROR

(U) Synopsis: ~~(S)~~ To report possible IOB error.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

(U) ~~(S)~~ ~~Derived From : G-3~~
~~Declassify On: 06/27/2031~~

Details:

(S) 1. [Redacted]

(S) 2. [Redacted]

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(U) ~~(S)~~ 3. Possible IOB Error:

(S) [Redacted]

(U) ~~(S)~~ 4. Description of IOB Error (including any reporting delays).

(U) ~~(S)~~ On 03/01/2006, [Redacted] prepared a National Security Letter (NSL #1) directed to a large telecommunications company requesting subscriber, toll and billing records for a telephone number believed to belong to above listed individual. NSL #1 was prepared according to the then-current PATRIOT Act provisions, and contained the then-current non-disclosure warning. NSL #1 was approved and transmitted to another field office for service.

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~~SECRET//20310627~~

NSL VIO-24397

178k20L962

To: Inspection From: [redacted]

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(U) Re: ~~(S)~~ 278-HQ-C1229736-VIO, 06/27/2006

(U) ~~(S)~~ On or about 03/13/2006, and after the transmittal of NSL #1 to the other field office, but before it was served, the PATRIOT Act was revised, changing, among other things, the law regarding the non-disclosure procedures for NSLs. On 03/13/2006, [redacted] telephonically notified the other field office not to serve NSL #1, and a new NSL (NSL #2) complying with the revised Act with a new non-disclosure provision was prepared for the same information. NSL #2 was approved and transmitted to the other field office for service.

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(U) ~~(S)~~ On 03/21/2006, the other field office mistakenly served NSL #1 on the telecommunications provider. NSL #2 was served on 03/28/2006. On 05/24/2006, the telecommunications provider responded to NSL #1, providing subscriber information on the telephone number, but noted that it had received NSL #2 for the same telephone number, and indicated that it would provide toll and billing records in its response to NSL #2.

(U) ~~(S)~~ [redacted] became aware of the issue upon receiving the information regarding the response to NSL #1 on 06/20/2006. The response to NSL #1 has been sequestered.

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(U) To: Inspection From: [redacted] b2
Re: ~~(S)~~ 278-HQ-C1229736-VIO, 06/27/2006 b7E

LEAD(s):

Set Lead 1: (Action)

INSPECTION

AT WASHINGTON, DC

(U) For action deemed appropriate.

Set Lead 2: (Action)

GENERAL COUNSEL

AT WASHINGTON, DC

(U) For action deemed appropriate.

◆◆

FEDERAL BUREAU OF INVESTIGATION

Precedence: IMMEDIATE

Date: 3/16/2006

To: All Field Offices

Attn: ADIC;

SAC;

CDC;

FCI/IT Supervisors

AD Hulon;

DADs;

Section Chiefs

Acting AD Bereznay;

DADs;

Section Chiefs

AD Reigel

DADs

Section Chiefs

Counterterrorism

Counterintelligence

Cyber

From: General Counsel

National Security Law Branch, LX-1 Room 3S100

Contact: [Redacted]

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Approved By: Caproni Valerie E

Thomas Julie F

[Redacted]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 08-17-2007 BY 65179 DMH/KSR/JS

Drafted By:

pik

Case ID #: 319X-HQ-A1487720-OGC

Title: LEGAL ADVICE AND OPINIONS;
NATIONAL SECURITY LETTERS
IMPROPER COLLECTION

Synopsis: Provides guidance as to the procedures that should be filed in the event that the issuance of a National Security Letters (NSLs) results in the improper collection of information.

Details:

BACKGROUND:

The FBI issues NSLs pursuant to the Fair Credit Reporting Act, 15 U.S.C. §§ 1681u and 1681v, the Electronic Communications Privacy Act, 18 U.S.C. § 2709, and the Right to Financial Privacy Act, 12 U.S.C. § 3414.

On occasion, an NSL requests information to which the FBI is not entitled. The cause is most often a mistake in the information that is presented by the FBI to the recipient, by way of a mistake in the writing of the telephone number or financial

To: All Field Offices

From: General Counsel

Re: 319X-HQ-A1487720-OGC

3/16/2006

account number. It may also be because the information presented to the recipient was stale and not sufficiently verified in a timely manner prior to issuance of the NSL. Whatever its miscue, the FBI occasionally obtains information in response to an NSL ("NSL return information") that is not relevant to an authorized national security investigation, as required by the NSL statutes.

It also may happen that the FBI receives information to which it is not entitled because of a mistake by the recipient in providing the NSL return information. The mistake may take the form of NSL return information concerning a telephone number, account number, or subject which is different from that which was the subject of the request.

To date, there has not been a consistent policy as to how to handle situations in which the FBI obtains NSL information to which it is not entitled (hereinafter "improper collections") under the operative statute. Some field offices have returned the information to the recipient, some have destroyed the information, some have sealed the information and held onto it, and some have sealed the information and transmitted it to OIPR.

PURPOSE OF NEW PROCEDURES

Through this EC, the Office of The General Counsel, National Security Law Branch (OGC/NSLB) will attempt to define a consistent policy as to how these matters should be handled.

First, it should be noted that all of the above-described methods of handling improper collections are legal. There are no constraints imposed by the law as to how this information should be handled, except for the obvious fact that the information should not be used or disseminated.

Second, the procedures that we are adopting are designed for two purposes. One is to assure that the improperly collected material is not subject to being searched or retrieved or in any other way used or disseminated by the FBI. That would mean that the material is not searchable or retrievable or in any way available for use or dissemination unless the material is in a form which makes it clear that it was not properly obtained. The second purpose is to assure that there is a record of what occurred.¹

¹ While complete destruction of all documents might seem to be the best way in which to overcome the improper collection problem, in that it rids all systems of any indication that the information ever existed, it also leaves no

To: All Field Offices

From: General Counsel

Re: 319X-HQ-A1487720-OGC

3/16/2006

PROCEDURES TO BE FOLLOWED RE: IMPROPER COLLECTION

The following procedures should be adopted in the event that the FBI obtains material pursuant to an NSL that is not relevant to a national security investigation.

1) The improperly collected material should be sealed immediately upon discovery.

2) The improperly collected material should be sealed and returned to the office of the Chief Division Counsel (CDC). It is the responsibility of the CDC to dispose of the material. The CDC should return the material to the NSL recipient with a cover letter explaining why the material is being returned. If the recipient was at fault, the letter should make that clear so that the recipient can avoid the problem in the future.

3) If the problem arose from information mistakenly used in the NSL, the documents that were generated in issuing the NSL, including the approving EC and the NSL itself,² should not be uploaded into any database. If uploaded, they should be permanently charged out of the database. None of the documents created prior to the discovery of the error should be searchable or retrievable, or in any way available for use or dissemination, if they contain the information that was mistakenly used in the NSL.

4) The NSL return information -- e.g., toll records, email records, subscriber information, financial records, credit report information, credit reports - should not be input into any database. If input, the information should be deleted from those databases. None of the return information should be searchable or retrievable, or in any way available for use or dissemination.

5) There must be a document generated that explains the circumstance of the improper collection. Regardless of whether the improper collection arose from an FBI error or recipient error or a combination of the two, the documentation should take the form of an EC reporting a possible IOB violations. That

record of what happened and raises suspicions that will generally be far worse than what actually happened.

²In addition, there may be an EC generated by the field office which received the information and transmitted it to the requesting office, and that EC may contain the mistaken telephone number, email account, financial account number, subscriber information, toll records, financial records, and/or credit information. That EC must also be permanently charged out of any database.

To: All Field Offices

From: General Counsel

Re: 319X-HQ-A1487720-OGC

3/16/2006

document should explain the circumstances of the improper collection, the disposition of the improperly collected material, as well as the steps taken to assure that the improper material is not searchable or retrievable or in any way available for use or dissemination by the FBI. This document may contain the telephone number or account number mistakenly used in the NSL, since that document will serve as a record of the improper collection. If this document is uploaded into a database, a search using the mistaken information as the search term will only reveal the mistaken information in the context of this document, which will set forth the fact that the information was mistakenly used in the NSL. So persons who access the information will be on notice not to use the information but there will be a record of the improper collection.

If the CDC concludes that the improper collection was not due to any negligence, fault, mistake, etc. of the FBI, and OGC concurs, then OGC will decline to report the matter to the IOB. Per an agreement with the IOB, a record of (non-FISA)NSL-related improper collections not the fault of the FBI will be maintained by OGC in the form of the EC reporting a possible violation and an OGC declination. Obviously, if there was some malfeasance by the FBI, then the matter will be reported to the IOB.

There is not necessarily a bright line test as to whether there was any fault at issue that caused an improper collection or to whom to attribute such fault. For instance, the information in the NSL may be somewhat dated - there is no defined test as to how near in time to issuance of an NSL that the information contained therein should have been checked or rechecked. Thus, if NSL return information comes back on an account that, as it turns out, no longer belongs to the target, there may be some question as to whether the FBI was at fault. In such questionable situations, OGC will look at all the circumstances to determine whether to report the collection to the IOB. On the other hand, if information is received through an NSL that does not belong to the presumed account holder but the FBI took all possible steps to assure that the information was accurate and updated, the collection should be reported as a possible IOB but OGC will likely decline to report it.

There are situations in which the FBI may receive more information than it requested in its NSL but which receipt need not be reported as a possible IOB violation. For instance, an NSL recipient may deem it more efficient, in terms of manpower devoted to producing the information, to provide information over a longer period of time than requested. Or an NSL recipient may deem it more efficient to provide information about the requested

To: All Field Offices

From: General Counsel

Re: 319X-HQ-A1487720-OGC

3/16/2006

account and related accounts than to segregate information about the one requested account. In those situations, if the case agent is able to assert the relevance of the additional information, he or she should send an NSL to the recipient to cover the additional information. If the case agent is unable to assert the relevance, the additional material should be returned to the provider with a cover letter of explanation. However, an EC reporting a possible IOB violation is not necessary.

USE OF NAMES OF PERSONS IN EC

Lastly, in an EC reporting a possible IOB violation it is not necessary to name the involved persons in the title of the document. Further, if the CDC concludes that there was no error by the FBI, there is no need to name the involved persons in the document. If OGC disagrees with the CDC, it may ask for the additional information. But if it concurs, there will be no need for the persons to be named at all.

CONCLUSION

Any questions regarding this communication may be directed to Assistant General Counsel [redacted] at [redacted]

at

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To: All Field Offices

From: General Counsel

Re: 319X-HQ-A1487720-OGC

3/16/2006

LEAD(s):

Set Lead 1: (Adm)

ALL RECEIVING OFFICES

Distribute to all supervisory personnel involved in the investigation of international terrorism, counterintelligence, and cyber cases.

1 - Ms. Caproni

1 - Ms. Thomas

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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 05/03/2005

To: Director's Office
Counterintelligence

Attn: OPR
Attn: AD
Attn: SAC/CI
CDC

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From: General Counsel
Counterintelligence Law Unit/Room 7947
Contact: [Redacted]

Approved By: Thomas Julie F [Redacted]

DATE: 08-17-2007
CLASSIFIED BY 65179 DMH/KSP/JS
REASON: 1.4 (c)
DECLASSIFY ON: 08-17-2032

Drafted By: [Redacted]

Case ID #: (U) 278-HO-CI229736-VIO (Pending)
(S) [Redacted]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

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

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(U) Synopsis: ~~(S)~~ The Office of the General Counsel (OGC) considers that this matter must be reported to the Intelligence Oversight Board (IOB) and to the Office of Professional Responsibility (OPR). A summary of the facts and an analysis of the situation follows.

Details: (S) [Redacted]

[Large Redacted Block]

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

~~SECRET~~

To: Director's Office From: General Counsel
Re: (U) 278-HQ-C1229736-VIO, 05/03/2005

(U) ~~(S)~~ On 07/06/04 the inadvertently obtained material was segregated and forwarded to FBIHQ for sequestration. At no time was any further investigative action taken with respect to the information received pertaining to the [redacted]. No written summaries or communications were made.

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(U) ~~(S)~~ The foregoing information was obtained from ECs drafted by SA [redacted] on 7/06/04 (see 278-HQ-C1229736, serial 535).

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(U) Pursuant to the Electronic Communications Privacy Act (ECPA), 18 U.S.C. §§ 2709, the FBI can issue National Security Letters (NSLs) for: (1) telephone subscriber information (limited to name, address, and length of service); (2) telephone local and long distance toll billing records; and (3) electronic communication transactional records.

(S) Under the authority of Executive Order 12333, dated December 4, 1981, and pursuant to Title 18, United States Code (U.S.C.), Section 2709 the FBI intended to request the telephone and long distance toll billing records of a non-USPER, the subject of a [redacted]. When the NSL was drafted, however, a typographical error resulted in the requesting of information derived from a number belonging to the [redacted].

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(U) Section 2.4 of Executive Order 12863 (September 13, 1993, 58 F.R. 48441) requires Inspectors General and General Counsel of the Intelligence Community, including the FBI, to 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 has been interpreted to mandate the reporting of any violation of law or pertinent Attorney General guidelines that are specifically intended to ensure the protection of the individual rights of U.S. persons.

(U) ~~(S)~~ In this case, the inadvertent issuance of an NSL requesting billing information for a phone number utilized by [redacted] constitutes a reportable violation. Consequently, OGC will prepare a cover letter and memorandum to report this matter to the IOB. That correspondence

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~~SECRET~~

~~SECRET~~

To: Director's Office From: General Counsel
Re: (U) 278-HQ-C1229736-VIO, 05/03/2005

will also inform the IOB that this matter will be referred to
FBI's Office of Professional Responsibility.

LEAD(s) :

Set Lead 1: (Action)

INSPECTION

AT WASHINGTON, DC

(U) For action deemed appropriate.

Set Lead 2: (Info)

COUNTERINTELLIGENCE

AT WASHINGTON, DC

(U) Please read and clear.

Set Lead 3: (Action)

[Redacted]

AT [Redacted]

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(U) For action deemed appropriate.

CC: Ms. Thomas

[Redacted]

IOB Library

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~~SECRET~~

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 12/2/2005

To: [Redacted]

Attn: CDC [Redacted]

Counterintelligence

Attn: CD-4B

Inspection

Attn: Inspection Division

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From: General Counsel

National Security Law Branch/CILU/ HQ room 7975

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

Approved By: Thomas Julie F. [Redacted] 12/6/05

DATE: 08-17-2007
CLASSIFIED BY 65179 DMH/KSR/TE
REASON: 1.4 (c)
DECLASSIFY ON: 08-17-2032

Drafted By: [Redacted]

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(U) **Case ID #:** ~~(S)~~ 278-HQ-C1229736-VIO (Pending) ¹⁰⁸¹
(S) [Redacted]

(U) **Title:** ~~(S)~~ POSSIBLE INTELLIGENCE OVERSIGHT BOARD MATTER (IOB)

(U) **Synopsis:** ~~(S)~~ It is the opinion of the Office of General Counsel (OGC) that the above referenced matter must be reported to the IOB and to the FBI's Inspection Division. OGC will prepare and deliver the required correspondence to the IOB. Our analysis follows.

(U) ~~(S)~~ ~~Derived From: G-3~~
~~Declassify On: X-1~~ ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

Administrative: (U) This communication contains one or more footnotes. To read the footnotes, download and print the document in Corel WordPerfect 8.

(U) **Details:** ~~(S)~~ By electronic communication (EC) dated October 5, 2005 (cited below),¹ the [Redacted] Division [Redacted]

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¹ (U) See EC from the [Redacted] Division to the Inspection Division and General Counsel, dated May 5, 2005, Case ID# 278-HQ-C1229736-VIO Serial 2514, titled "POSSIBLE INTELLIGENCE OVERSIGHT BOARD MATTER (IOB)" hereinafter

~~SECRET~~

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~~SECRET~~

To: [redacted] From: General Counsel
(U) Re: ~~(S)~~ 278-HQ-CI229736-VIO, 12/2/2005

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reported a potential IOB involving a National Security Letter (NSL) requested by [redacted] which, through a transcription error, sought information about a e-mail address belonging to a person who was not the subject of an FBI national security investigation.

(S) The US person who is the subject of the

[redacted] had an e-mail address of [redacted]. The case agent sent his Investigative Support Specialist (IIA) the above mentioned correct e-mail address with which to draft an NSL. The IIA then drafted the NSL with the incorrect address of [redacted].

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(U) ~~(S)~~ During the week of September 2, 2005, the case agent received the NSL response from the communications provider and noticed the error associated with the e-mail address. The case agent immediately notified his supervisor and put the original in the 1A envelope. The case agent then contacted the Associate Division Counsel who took possession of the unauthorized information and is presently holding the information in his safe.

(U) ~~(S)~~ The case agent reports that nothing from the response to this NSL has been reviewed. The agent also reports that no personal or identifying information from the NSL return has been uploaded into ACS. [redacted]

b2
b7E

(U) ~~(S)~~ As required by Executive Order (E.O.) 12863 and Section 2-56 of the National Foreign Intelligence Program Manual (NFIPM), OGC was tasked to determine whether the errors described here are matters which must be reported to the IOB. They must.

(U) Section 2.4 of 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, Inspection Division, and the General Counsel, OGC, respectively) report to the IOB all information "concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive." This has been interpreted to include violations of

cited as [redacted] EC."

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~~SECRET~~

~~SECRET~~

To: [redacted] From: General Counsel
(U) Re: ~~(S)~~ 278-HQ-C1229736-VIO, 12/2/2005

b2
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the Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection ("Attorney General's Guidelines"), the implementation of which is mandated by Executive Order 12333.

~~(S)~~ As set forth in Section V.12 of the Attorney General's Guidelines, use of NSLs in conformity with 18 U.S.C. 2709 is authorized when records of electronic communications are sought [redacted] 18 U.S.C. 2709 authorizes the FBI to seek relevant records from a wire or electronic communication service provider when those records "are relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities." Here, issuance of an NSL which requested records for e-mail address [redacted] was neither authorized by law, nor was it authorized by the Attorney General's Guidelines, since e-mail address [redacted] is not relevant to a counterintelligence investigation.

b1
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(S) (U) Consequently, in accordance with E.O. 12863 and Section 2-56 of the NFIPM, the error must be reported to the IOB, which this Office will do.

LEAD(s):

Set Lead 1: (Info)

[redacted]

b2
b7E

(U) Read and clear.

Set Lead 2: (Discretionary)

INSPECTION

AT WASHINGTON, DC

(U) For review and action deemed appropriate.

Set Lead 3: (Info)

COUNTERINTELLIGENCE

AT WASHINGTON, DC

~~SECRET~~

~~SECRET~~

To: From: General Counsel
(U) Re: ~~(S)~~ 278-HQ-CI229736-VIO, 12/2/2005

b2
b7E

(U) Read and clear.

◆◆

~~SECRET~~

4

NSL VIO-24412

~~SECRET~~

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 02/21/2005

To: [Redacted]

Attn: ASAC - CI

Squad [Redacted]

SSA [Redacted]

SA [Redacted]

Counterintelligence

Attn: CD-1

Inspection

Attn: Inspection Division

b2
b7E
b6
b7C

From: General Counsel

National Security Law Branch/CILU/ HQ room 7975

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

Approved By: Thomas Julie F. [Redacted]

2/22/05
50/20/05

DATE: 08-17-2007
CLASSIFIED BY: 63178 DMH/KSR/JE
REASON: 1.4 (c)
DECLASSIFY ON: 08-17-2032

Drafted By: [Redacted]

689

(U)

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

(S) [Redacted]

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b7E
b6
b7C
b7A

(U)

Title: ~~(S)~~ SSA [Redacted]
SA [Redacted] Division
IOB 2004 [Redacted]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

(U)

Synopsis: ~~(S)~~ It is the opinion of the Office of General Counsel (OGC) that the above referenced matter must be reported to the IOB and to the FBI's Inspection Division. OGC will prepare and deliver the required correspondence to the IOB. Our analysis follows.

(U)

~~(S)~~ ~~Derived From : G-3~~
~~Declassify On: 02/21/2030~~

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

~~SECRET~~

To: [redacted] From: General Counsel
Re: ~~(S)~~ 278-HQ-C1229736-VIO, 02/21/2005

b2
b7E

(U) ~~(S)~~ Details: By electronic communication (EC) dated May 12, 2004 (cited below),¹ the [redacted] Division reported a potential IOB involving a National Security Letter (NSL) requested by [redacted] which, through typographical error, sought information about [redacted] telephone number belonging to a person who was not the subject of an FBI national security investigation.

b2
b7E

(S) [redacted]
[redacted]
[redacted] case agent SA [redacted] requested an NSL for [redacted] telephone, [redacted]
[redacted]
[redacted] Due to a typographical error, the NSL, which was prepared at the [redacted] Division and signed by the Special Agent in Charge, sought records for cellular telephone number [redacted] By EC dated [redacted]
[redacted]
[redacted] That EC listed the subject's [redacted] telephone number correctly, but [redacted] NSL contained the incorrectly typed [redacted] telephone number.⁵
[redacted]
[redacted] received the results of the NSL request [redacted]
[redacted]

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¹ (U) See EC from the [redacted] Division to the Inspection Division and General Counsel, dated May 12, 2004. Case ID# 278-HQ-C1229736-VIO Serial 464, titled "SSA [redacted] SA [redacted] Division; IOB" hereinafter cited as [redacted] EC.

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² (U) See [redacted] EC.

³ (U) See [redacted] EC. It is unclear from the information submitted whether this typographical error was contained in the case agent's request for the NSL, or if it was first made in the preparation of the NSL itself. Since it was the case agent's duty to review the NSL for accuracy prior to his sending the NSL [redacted] this fact is of no consequence to this opinion.

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b7E

⁴ (S) [redacted]
[redacted]

⁵ (U) Id.

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b7E
b6
b7C

To: [redacted] From: General Counsel b2
(U) Re: ~~(S)~~ 278-HQ-CI229736-VIO, 02/21/2005 b7E

(S) [redacted] The results of the NSL include [redacted]
[redacted] records associated [redacted] telephone service of a
person who is not the subject of an FBI national security
investigation. Upon receipt of the results of the NSL, [redacted]
[redacted] discovered the error.

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(U) ~~(S)~~ As required by Executive Order (E.O.) 12863 and
Section 2-56 of the National Foreign Intelligence Program Manual
(NFIPM), OGC was tasked to determine whether the errors described
here are matters which must be reported to the IOB. They must.

(U) Section 2.4 of 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, Inspection Division, and the General Counsel, OGC,
respectively) report to the IOB all information "concerning
intelligence activities that they have reason to believe may
be unlawful or contrary to Executive order or Presidential
directive." This has been interpreted to include violations of
he Attorney General's Guidelines for FBI National Security
Investigations and Foreign Intelligence Collection ("Attorney
General's Guidelines"), the implementation of which is mandated
by Executive Order 12333.

~~(S)~~ [redacted]

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(S) Here, issuance of an NSL which requested records for [redacted]
number [redacted] was neither authorized by law, nor was it
authorized by the Attorney General's Guidelines, since that
telephone number is not relevant to a counterintelligence
investigation.

6 (S) [redacted]
[redacted]
7 (U) See [redacted] EC.

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~~SECRET~~

To: From: General Counsel
(U) Re: ~~(S)~~ 278-HQ-C1229736-VIO, 02/21/2005

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b7E

(U) Consequently, in accordance with E.O. 12863 and Section 2-56 of the NFIPM, the error must be reported to the IOB, which this Office will do.

~~SECRET~~

~~SECRET~~

(U) To: [redacted] From: General Counsel b2
Re: ~~(S)~~ 278-HQ-CI229736-VIO, 02/21/2005 b7E

LEAD(s) :

Set Lead 1: (Info)

[redacted]

AT

[redacted]

b2
b7E

(U) Read and clear.

Set Lead 2: (Discretionary)

INSPECTION

AT WASHINGTON, DC

(U) For review and action deemed appropriate.

Set Lead 3: (Info)

COUNTERINTELLIGENCE

AT WASHINGTON, DC

(U) Read and clear.

◆◆

~~SECRET~~

March 1, 2005

BY COURIER

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

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 08-17-2007 BY 65179 DMH/KSR/JE

Dear General Scowcroft:

This letter forwards for your information a self-explanatory enclosure entitled "Intelligence Oversight Board (IOB) Matter, [redacted] Division, IOB Matter 2004 [redacted] (U)

b2
b7E

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

Enclosure

- 1 - AD Szady b6
- 1 - DGC Thomas b7C
- 1 - UC [redacted]
- 1 - 278-HQ-CI229736-VIO- 690

UNCLASSIFIED WHEN
DETACHED FROM
CLASSIFIED ENCLOSURE

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

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

~~SECRET~~

NSL VIO-24421

~~SECRET~~

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,

Julie F. Thomas
Deputy General Counsel

- 1 - The Honorable Alberto R. Gonzalez
Attorney General
U.S. Department of Justice
Room 5111
- 1 - Mr. James A. 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 _____	Affairs _____
Director _____	Gen. Counsel _____	Off. of Public & _____
Deputy Director _____	Info. Res. _____	Cong. Affs. _____

~~SECRET~~

DATE: 08-17-2007
CLASSIFIED BY: 65179 DMH/KSR/JE
REASON: 1.4 (b)
DECLASSIFY ON: 08-17-2032

~~SECRET~~

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER [redacted] b2
[redacted] DIVISION b7E
IOB MATTER 2004-[redacted] (U)

(S) The [redacted] Division [redacted] of the Federal Bureau of Investigation ("FBI") has reported that it issued a National Security Letter (NSL) for records for [redacted]. The FBI served that NSL on [redacted] and received the results of the NSL, including the name, address, length of service, and local and long distance toll billing records associated with the [redacted]. Due to a typographical error, the NSL was issued for the [redacted] telephone records of a telephone that is neither relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, nor that is related to the subject of a national security investigation.

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(U) ~~(S)~~ Issuance of this NSL was not authorized by law, since 18 U.S.C. 2709 only authorizes the FBI to seek relevant records from a wire or electronic communication service provider when those records "are relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities." In addition issuance of this NSL was not authorized by the Attorney General's Guidelines since Section V.12 of the Attorney General's Guidelines authorizes use of NSLs only in conformity with 18 U.S.C. 2709, and when the telephone records are sought as part of a Preliminary or Full Investigation.

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

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

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

~~SECRET~~

~~SECRET~~

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 03/23/2004

To: [Redacted]

Attn: ASAC [Redacted]
SSA [Redacted]
SA [Redacted]
ACDC [Redacted]

Cyber Division

Attn: C3IU

Director's Office

Attn: Office of Professional Responsibility

From: General Counsel

National Security Law Branch/Rm. 7974

Contact: [Redacted] Ext. [Redacted]

b2
b7E
b6
b7C

Approved By: Curran John F. *2/26/04*

[Redacted Signature]

DATE: 08-17-2007
CLASSIFIED BY 65179 DMH/KSR/JB
REASON: 1.4 (c)
DECLASSIFY ON: 08-17-2032

Drafted By:

(U) Case ID #: ~~(S)~~ 278-HQ-C1229736-VIO-445 (Pending)
(U) ~~(S)~~ 288B [Redacted] 227337-19

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

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

b2
b7E

(U) Synopsis: ~~(S)~~ It is the opinion of the Office of General Counsel (OGC) that the above referenced matter must be reported to the IOB and to the FBI's Office of Professional Responsibility (OPR). OGC will prepare and deliver the required correspondence to the IOB. Our analysis follows.

~~(U) ~~(S)~~ Derived from: G-3
Declassify on: X-1~~

~~SECRET~~

~~SECRET~~

To: [redacted] From: General Counsel b2
(U) Re: ~~(S)~~ 278-HQ-C1229736-VIO , 02/24/2004 b7E

(U) Reference: ~~(S)~~ 278-HQ-C1229736-VIO Serial 370 b2
(U) ~~(S)~~ 288B [redacted] 227337 Serial 7 b7E

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

Details: (S) By electronic communication (EC) dated 02/10/04 (cited below)¹, the [redacted] reported a possible IOB error in conjunction with an ongoing [redacted] Cyber investigation on e-mail address [redacted]

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[redacted] On October 16, 2003 a National Security Letter (NSL) was sent to [redacted] This NSL requested subscriber information records for the target's e-mail address. Due to delays in processing the NSL, the results were not received from [redacted] until late January.

(U) ~~(S)~~ While reviewing [redacted] response to the NSL, SA [redacted] discovered that, in addition to the requested transactional data, some e-mail content, i.e. message text, was included by [redacted] Upon discovering [redacted] error, SA [redacted] returned the NSL response to its envelope, and ceased his analysis of the material.

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b7D
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(U) ~~(S)~~ On February 25, 2004, a letterhead memorandum was sent to the Office of Intelligence Policy and Review (OIPR), Department of Justice (DOJ), with the sealed e-mail message content for submission to the FISC for eventual destruction. Consistent with the requirements of Executive Order (E.O.) 12863 and Section 2-56 of the National Foreign Intelligence Program Manual (NFIPM), OGC was tasked to determine whether the surveillance error described here is a matter which must be reported to the IOB. It must:

¹ (U) See EC from the [redacted] to the General Counsel, dated 02/10/04, Case ID# 278-HQ-C1229736-VIO Serial 370, titled "Intelligence Oversight Board Matter," hereinafter cited as [redacted] EC."

~~SECRET~~

b2
b7E

~~SECRET~~

To: [REDACTED] From: General Counsel
(U) Re: ~~(S)~~ 278-HQ-C1229736-VIO , 02/24/2004

b2
b7E

(U) Section 2.4 of 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, Inspection Division, and the General Counsel, OGC, respectively) report to the IOB all information "concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive." In this instance, as the [REDACTED] has reported, the content of the e-mail account collected in response to an FBI NSL was obtained without the authorization required by law. Consequently, in accordance with E.O. 12863 and Section 2-56 of the NFIPM, the error must be reported to the IOB, which this Office will do.

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b7E

~~SECRET~~

~~SECRET~~

To: [redacted] From: General Counsel
(U) Re: ~~(S)~~ 278-HQ-C1229736-VIO , 02/24/2004

b2
b7E

Lead(s):

Set Lead 1: (Adm)

[redacted] DIVISION

b2
b7E

AT [redacted]

(U) Read and clear.

Set Lead 2: (Action)

CYBER DIVISION

AT WASHINGTON, DC

(U) Acknowledge that the unauthorized "take" described in the [redacted] EC 278-HQ-C1229736-VIO Serial 370 was submitted to the FISC for destruction, via the Office of Intelligence Policy and Review, Department of Justice.

b2
b7E

Set Lead 3: (Action)

DIRECTOR'S OFFICE

AT OPR, FO, DC

(U) For review and action deemed appropriate.

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

b6
b7C

♦♦

~~SECRET~~

April 28, 2004

BY COURIER

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

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 03-17-2007 BY 65179 DMH/KSR/JS

Dear General Scowcroft:

This letter forwards for your information a self-explanatory enclosure entitled "Intelligence Oversight Board (IOB) Matter, [redacted] Division, IOB Matter 2004-[redacted] (U) b2 b7E

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

Enclosure

- 1 - [redacted] b6
- 1 - Mr. Curran b7C
- 1 - SSA [redacted]
- 1 - OPR
- 1 - 278-HQ-C1229736-VIO-446

UNCLASSIFIED WHEN
DETACHED FROM
CLASSIFIED ENCLOSURE

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

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

~~SECRET~~

NSL VIO-24428

MAIL ROOM

FBI/DOJ

~~SECRET~~

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 General Counsel

- 1 - The Honorable John D. Ashcroft
Attorney General
U.S. Department of Justice
Room 5111
- 1 - Mr. H. Marshall Jarrett
Counsel, Office of Professional Responsibility
U.S. Department of Justice
Room 4304
- 1 - Mr. James Baker
Counsel, Office of Intelligence Policy and Review
U.S. Department of Justice
Room 6150

JFC

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

PA
4/26/04

- 2 -

~~SECRET~~

NSL VIO-24429

~~SECRET~~

INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER

b2

[REDACTED] DIVISION

b7E

IOB MATTER 2004 [REDACTED] (U)

(S) [REDACTED]

[REDACTED]

[REDACTED] On October 16, 2003, a National Security Letter (NSL) (288B [REDACTED] 227337 Serial 16) was sent to [REDACTED], requesting transactional information for the listed account. Upon review of the material provided by [REDACTED] in response to the NSL, the case agent noted that, along with transactional information, [REDACTED] had sent e-mail message content. Upon discovering [REDACTED] error, the case agent immediately ceased review of the material, placed it into a sealed envelope, and reported the matter to his supervisor. The sealed envelope was sent to the Office of Intelligence Policy and Review for sequestration with the Foreign Intelligence Surveillance Court.

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(U) As required by FBI policy, the error has also been reported to the FBI's Office of Professional Responsibility.

DATE: 08-17-2007
CLASSIFIED BY 65179 DMH/EZR/JE
REASON: 1.3 (c)
DECLASSIFY ON: 08-17-2032

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

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

~~SECRET~~

NSL VIO-24430

~~SECRET~~

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 10/21/2004

To: Director's Office
Counterintelligence

[Redacted]

Attn: OPR
Attn: AD
Attn: SAC
CDC

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

From: General Counsel
NSLB/CILU/Room 7975
Contact: [Redacted]

b2
b7E
b6

Approved By: Thomas Julie

690 10/21/04
10/22/04

[Redacted]

DATE: 08-20-2007
CLASSIFIED BY 65179 DMH/ESR/JE
REASON: 1.4 (c)
DECLASSIFY ON: 08-20-2032

Drafted By:

(U) Case ID #: ~~(S)~~ 278-HO-C1229736-VIO - (Pending)
(S) [Redacted]

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

(U) Synopsis: ~~(S)~~ The Office of the General Counsel (OGC) considers that this matter must be reported to the Intelligence Oversight Board (IOB) and to the Office of Professional Responsibility (OPR). OGC will prepare an appropriate cover letter and a memorandum to the IOB. Our analysis follows.

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

Details: (S) [Redacted]

[Redacted]

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(S)

[Redacted]

~~SECRET~~

b1
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b7C

To: Director's Office From: General Counsel
(U) Re: ~~(S)~~ 278-HQ-C1229737-VIO, 10/21/2004

(S) [Redacted]

The information that SA [Redacted] obtained was never memorialized in any FBI document other than the file's case review sheet as of the 6/22/2004 file review. SSA [Redacted] informed SA [Redacted] who was not previously aware of the fact, that a National Security Letter (NSL) was the appropriate method for obtaining banking information in a foreign counterintelligence investigation. SSA [Redacted] promptly reported the matter to the Office of the General Counsel (OGC). An NSL was subsequently issued in this case to obtain the subject's bank information, which is clearly relevant to a foreign counterintelligence investigation.

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(U) The Right to Financial Privacy Act (RFPA), Title 12, United States Code, Section 3401 et seq. (12 USC § 3401 et seq.) states in §3402 that "[e]xcept as provided by section 3403(c) or (d), 3413, or 3414 of this title, no Government authority may have access to or obtain copies of, or the information contained in the financial records of any customer from a financial institution"

(U) 12 USC §3414 provides in part:

(a)(1) Nothing in this chapter (except sections 3415, 3417, 3418, and 3421 of this title) shall apply to the production and disclosure of financial records pursuant to requests from--

- (A) a Government authority authorized to conduct foreign counter- or foreign positive-intelligence activities for purposes of conducting such activities; or
- (B)

(2) In the instances specified in paragraph (1), the Government authority shall submit to the financial institution the certificate required in section 3403(b) of this title signed by a supervisory official of a rank designated by the head of the Government authority.

(U) Section 2-17 of the National Foreign Intelligence Program Manual (NFIPM) lists the FBI officials who can request

~~SECRET~~

To: Director's Office From: General Counsel
(U) Re: ~~(S)~~ 278-HQ-C1229737-VIO, 10/21/2004

financial records under the foregoing section of RFPA. According to section 2-17 of the NFIPM, such requests must be made by an Assistant Special Agent in Charge or a more senior official.

(U) 12 USC §3417 provides for civil liability of an agency or department of the United States that obtains financial records or information in violation of the RFPA. The same section deals with "disciplinary action for wilful or intentional violation" of these RFPA provisions by agents or employees of the government.

(U) ~~(S)~~ In this instance, the conduct of SA [redacted] was wilful and intentional, even though she did not realize that she had acted in contravention of the RFPA and Bureau policy. It should also be noted that SA [redacted] was at the time a probationary agent. Inasmuch as her actions nevertheless amount to "intelligence activities that . . . may be unlawful or contrary to Executive order or Presidential directive" they are reportable to the Intelligence Oversight Board (IOB) under the terms of section 2.4 of Executive Order 12863. OGC will therefore prepare a cover letter and a memorandum to report this matter to the IOB and to advise that it has been referred to the Office of Professional Responsibility.

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b7C

~~SECRET~~

~~SECRET~~

To: Director's Office From: General Counsel
(U) Re: ~~(S)~~ 278-HQ-C1229737-VIO, 10/21/2004

LEAD(s):

Set Lead 1: (Action)

DIRECTOR'S OFFICE

AT OPR FO, DC

(U) For action deemed appropriate.

Set Lead 2: (Action)

COUNTERINTELLIGENCE

AT WASHINGTON, DC

(U) Please read and clear.

Set Lead 3: (Action)

[REDACTED]

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AT [REDACTED]

(U) For action deemed appropriate.

♦♦

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BY COURIER

October 26, 2004

General Brent Scowcroft (USAF Retired)
Chairman
Intelligence Oversight Board
Room 5020
New Executive Office Building
725 17th Street, N.W.
Washington, D.C. 20503

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 08-20-2007 BY 65179 DMH/KSR/JE

Dear General Scowcroft:

This letter forwards for your information a self-explanatory enclosure entitled, "Intelligence Oversight Board (IOB) Matter, IOB 2004 [redacted] (U)

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The enclosure sets forth details of investigative activity which the FBI has determined may have been 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)

UNCLASSIFIED WHEN
DETACHED FROM
CLASSIFIED ENCLOSURE

- 1 - Ms. Thomas
- 1 - [redacted] IOB Library
- 1 - [redacted] - 278-HQ-C1229736-VIO - 601

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

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NSL VIO-24435

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-2-

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.

Sincerely,

Julie Thomas
Deputy General Counsel

Enclosure

- 1 - The Honorable John D. Ashcroft
Attorney General
U.S. Department of Justice
Room 5111
- 1 - Mr. James Baker
Counsel, Office of Intelligence Policy and Review
U.S. Department of Justice
Room 6150

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CLASSIFIED ENCLOSURE

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

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NSL VIO-24436

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INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER

DATE: 08-20-2007

IOB 2004 (U) b2

CLASSIFIED BY 65179 DMH/KSE/JE

REASON: 1.4 (C)

DECLASSIFY ON: 08-20-2032

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WHERE SHOWN OTHERWISE

(S) Investigation of this IOB matter has determined that a new Special Agent in the
 of the Federal Bureau of Investigation used information

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(U) ~~(S)~~ Such information is relevant in national security investigations of this type. However, the proper method for obtaining bank records is through a National Security Letter under Title 12, United States Code, Section 3414(a)(1)(A). Access to financial records by government authorities through means not provided by law is prohibited under Title 12, United States Code, Section 3402.

(U) ~~(S)~~ The Agent recorded her action on a case review sheet associated with the subject's file. However, no other record of the incident was made or retained by the FBI. The matter came to light during the course of a file review, when it was noted by the Agent's supervisor. The Agent has since been counseled concerning the Right to Financial Privacy Act (RFPA) and the correct method for obtaining financial records under the RFPA.

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

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

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NSL VIO-24437

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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 06/28/2004

To: General Counsel

Attn: National Security Law Branch
SSA [redacted]
Room 7975

From: [redacted]

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Contact: [redacted]

Approved By: [redacted]

Heimbach Michael *MH*

DATE: 08-20-2007
CLASSIFIED BY 65179 DMH/KSP/JE
REASON: 1.4 (c)
DECLASSIFY ON: 08-20-2032

Drafted By: [redacted]

Case ID #: (S) [redacted]

Title: (U) Intelligence Oversight Board (IOB)

[redacted]
Special Agent

[redacted]
Intelligence Oversight

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

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Synopsis: (U) To notify the Office of General Counsel of a possible IOB violation regarding the reviewing of bank account information without obtaining a National Security Letter (NSL).

(U)

~~(S)~~

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

Details: (S) On June 22, 2004, SSA [redacted] conducted SA [redacted] file review. SA [redacted] is a probationary agent with an EOD of October 20, 2002. During the file review, SSA [redacted] determined that SA [redacted] had telephonically accessed the [redacted]

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Upon further questioning, SA [redacted] advised that she utilized the FISA derived information regarding [redacted]

(S)

[redacted] The information SA [redacted] obtained was never memorialized on any type of FBI document except on the files case

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To: General Counsel From: [redacted]
Re: (S) [redacted] 06/28/2004

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review sheet of June 22 file review. SSA [redacted] verbally advised SA [redacted] that she should have acquired a National Security Letter (NSL) to obtain [redacted].
(S) [redacted] Due to SA [redacted] being a probationary agent, SSA [redacted] verbally counseled SA [redacted] on this matter and advised her that the incident would be reported to the General Counsel due to a possible IOB violation. SA [redacted] apologized for her improper action and guaranteed that in the future, she will refer to FBI regulations and guidelines.

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Set Lead 1: (Info)

General Counsel
At Washington D.C.

(U) ~~(S)~~ Read and Clear.

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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 09/15/2004

To: Director's Office
Counterintelligence

[Redacted]

Attn: OPR
Attn: AD
Attn: SAC
Attn: SAC

DATE: 08-20-2007
CLASSIFIED BY 65179 DMH/KSR/JB
REASON: 1.4 (c)
DECLASSIFY ON: 08-20-2032

From: Office of the General Counsel
NSLB/CILU/Rm 7975

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

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Approved By: Curran John F

[Redacted] 9/21/04
[Redacted] 9/20/04

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

Drafted By:

Case ID #: (U) 278-HO-C1229736-VIO (Pending)
(S) [Redacted] 595-

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Title: (U) INTELLIGENCE OVERSIGHT BOARD MATTER
IOB 2004 [Redacted]

Synopsis: (U) The Office of the General Counsel considers that this matter warrants a report to the Intelligence Oversight Board and to the Office of Professional Responsibility. Our analysis follows.

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

Details: (S) [Redacted]

[Large Redacted Block]

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(U) ~~(S)~~ On 5/21/2004, the SAC authorized the issuance of National Security Letters (NSLs) seeking [Redacted] about the

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To: Director's Office Attn:OPR
From: Office of the General Counsel
Re: (U) 278-HQ-C1229736-VIO, 09/15/2004

subject from the [redacted] The letters, which cited Title 15, United States Code, Section 1681v (15 USC §1681v), requested "a copy of a consumer report and all other information contained in your files for the below listed consumer [i.e., the subject]." All three NSLs included a certification by the SAC, purportedly "in accordance with 15 USC §1681v(b)," that "the information sought is relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities [etc]."

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(U) ~~(S)~~ The letters were duly delivered to two of the [redacted] both of which provided the requested [redacted] information. The third letter, which had been sent to the [redacted] office for delivery to [redacted] was returned unexecuted to [redacted] by a [redacted] intelligence analyst who noticed that it referred to 15 USC §1681v instead of 15 USC §1681u.

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(U) ~~(S)~~ After learning of the error, the [redacted] office determined that the two [redacted] had already been disseminated to a member of the [redacted] Foreign Counterintelligence Task Force in connection with the investigation. The reports were retrieved, sealed, and forwarded to Headquarters together with a report of the incident. (See 278-TR-C1229736-VIO, serial 573.)

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(U) The section of law cited in the three NSLs, 15 USC §1681v, was added by the USA Patriot Act, P.L. 107-56. It provides in part that "a consumer reporting agency shall furnish a consumer report of a consumer and all other information in a consumer's file to a government agency authorized to conduct investigations of, or intelligence or counterintelligence activities and analysis related to, international terrorism when presented with a written certification by such government agency that such information is necessary for the agency's conduct of such investigation, activity or analysis." (Emphasis added.)

(U) By way of contrast, 15 USC §1681u is an older statute that applies to both counterintelligence and counterterrorism investigations. In connection with an authorized investigation of such cases, the FBI may use an NSL to obtain the names and addresses of all financial institutions at which a consumer maintains or has maintained an account. If additional information is needed, such as a consumer report, a designated Bureau official is required to seek an ex parte court

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To: Director's Office Attn:OPR
From: Office of the General Counsel
Re: (U) 278-HQ-Cl229736-VIO, 09/15/2004

order directing the consumer reporting agency to furnish the report to the FBI.

(U) To obtain the ex parte order, the FBI must show "that the consumer report is sought for the conduct of 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 to the Constitution of the United States."

(U) ~~(S)~~ The Office of the General Counsel issued instructions regarding the differences between 15 USC §1681u and 15 USC §1681v, together with sample forms, in an EC dated 10/1/2003. (See 66F-HQ-A1255972, serial 32.)

(U) The [redacted] office cited the wrong section of the [redacted] in three NSLs that requested [redacted] of a U.S. person in connection with a counterintelligence investigation. Moreover, the letters included a certification that was misleading although not untrue. (The certification stated, correctly, that the information was needed in connection with an authorized investigation to protect against international terrorism or clandestine intelligence activities. Section 1681v, however, refers only to international terrorism.) Two of the three letters resulted in the production of [redacted] that would not have been available solely through an NSL if the correct section had been cited.

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(U) In weighing the gravity of this matter, the Office of the General Counsel notes that [redacted] citation of 15 USC 1681v does not appear to have been a deliberate effort to circumvent the requirements of section 1681u. Once apprised of the error, [redacted] immediately took appropriate action to recover and seal the information that it obtained based of the error and to report the matter to Headquarters. The question of intent is relevant because 15 USC §1681u(j) suggests that Congress did not consider disciplinary action by an agency to be warranted unless "the circumstances surrounding the violation raise questions of whether or not an employee of the agency or department acted wilfully or intentionally with respect to the violation. . . ."

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(U) We are also mindful of the fact that the [redacted] office could have obtained exactly the same result (i.e., the subject's [redacted] if it had followed the two step process

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To: Director's Office Attn:OPR
From: Office of the General Counsel
Re: (U) 278-HQ-C1229736-VIO, 09/15/2004

set forth in 15 USC §1681u, namely, an NSL followed by an ex parte application for a court order. The proof required for such an order is minimal and the facts in this case would have justified it.

(U) Nevertheless, in preserving a distinct provision for obtaining [redacted] in counterintelligence cases, Congress apparently intended to apply a different standard to this type of case. By using Section 1681v rather than Section 1681u for a counterintelligence case, the [redacted] office contravened the intent of Congress, albeit inadvertently. The matter should therefore be referred to the Intelligence Oversight Board and to the Office of Professional Responsibility. OGC will prepare a cover letter and a memorandum to report this matter to the IOB.

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(U) The action of Intelligence Analyst [redacted] in detecting this error and calling it to the attention of the [redacted] office is to be commended.

LEAD(s):

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Set Lead 1: (Action)

DIRECTOR'S OFFICE

AT OPR FO, DC

(U) For action deemed appropriate.

Set Lead 2: (Action)

COUNTERINTELLIGENCE

AT WASHINGTON, DC

(U) Please read and clear.

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~~SECRET~~

To: Director's Office Attn:OPR
From: Office of the General Counsel
Re: (U) 278-HQ-C1229736-VIO, 09/15/2004

Set Lead 3: (Action)

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AT

[REDACTED]

(U) For action deemed appropriate

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Set Lead 4: (Discretionary)

[REDACTED]

AT

[REDACTED]

(U) For action deemed appropriate.

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~~SECRET~~

BY COURIER

October 18, 2004

General Brent Scowcroft (USAF Retired)
Chairman
Intelligence Oversight Board
Room 5020
New Executive Office Building
725 17th Street, N.W.
Washington, D.C. 20503

Dear General Scowcroft:

This letter forwards for your information a self-explanatory b2 enclosure entitled, "Intelligence Oversight Board (IOB) Matter, IOB 2004- (U)

The 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)

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DATE 08-20-2007 BY 65179 DMH/KSR/JE

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CLASSIFIED ENCLOSURE

1 - Mr. Curran *[Handwritten initials]* - IOB Library

278-HQ-C1229736-VIO - 596

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

~~SECRET~~

NSL VIO-24445

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-2-

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.

Sincerely,

John F. Curran
Deputy General Counsel

Enclosure

- 1 - The Honorable John D. Ashcroft
Attorney General
U.S. Department of Justice
Room 5111
- 1 - Mr. James Baker
Counsel, Office of Intelligence Policy and Review
U.S. Department of Justice
Room 6150

UNCLASSIFIED WHEN
DETACHED FROM
CLASSIFIED ENCLOSURE

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NSL VIO-24446

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INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER

IOB 2004 [redacted] (U)

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DECLASSIFIED BY 65179 DMH/KSR/JE
ON 08-20-2007

(U) ~~(S)~~ Investigation of this IOB matter has determined that the [redacted] Field Office obtained [redacted] from two [redacted] 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 [redacted] for authorized counterterrorism cases. Title 15, United States Code, Section 1681u, allows the FBI to use an NSL to obtain certain information from [redacted] 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 [redacted] 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).

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(U) ~~(S)~~ The [redacted] that were procured from [redacted] 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 [redacted] 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.

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

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NSL VIO-24447

FEDERAL BUREAU OF INVESTIGATION
FOIPA
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