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Page 1

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ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED EXCEPT  
WHERE SHOWN OTHERWISE

BY COURIER

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

DATE: 08-13-2007  
CLASSIFIED BY: 65179/DMH/KSR/PM  
REASON: 1.4 (c)  
DECLASSIFY ON: 08-13-2032

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]
- 1 - [redacted]
- 1 - IOB Library
- 1 - 278-HQ-C1229736-VIO

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

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Case ID : 278-HQ-C1229736-VIO

Serial : 601

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NSL VIO-23601

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Page 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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INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER  
IOB 2004  (U)

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NSL VIO-23602

(S) ~~(S)~~ Investigation of this IOB matter has determined that a new Special Agent in the [redacted] Office of the Federal Bureau of Investigation used information derived from [redacted] authorized electronic surveillance of a [redacted] to [redacted]

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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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Page 1

Precedence: ROUTINE

Date: 10/22/2004

To: Counterintelligence

Attn: Section Chief

Directors Office

Attn: Office of Professional Responsibility

[Redacted]

Attn: SAC

From: General Counsel

National Security Affairs/Room 7975

Contact: [Redacted]

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Approved By: Thomas Julie F

[Redacted]

DATE: 08-13-2007  
CLASSIFIED BY: 65179/DMH/KSR/RW  
REASON: 1.4 (c)  
DECLASSIFY ON: 08-13-2032

Drafted By:

[Redacted]

(U) Case ID #: (S) 278-HQ-1425173

(U) Title: (S) INTELLIGENCE OVERSIGHT BOARD (IOB)  
IOB MATTER 2003-[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), but, rather, that a record of this decision should be maintained in the investigative control file for review by the Counsel to the IOB.

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

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Reference: (S) 278-HQ-1425173

[Redacted]

(S)

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

Details: (U) Referenced electronic communications from the Inspection Division (ID) to OGC, National Security Law Branch (NSLB), dated May 28, 2003, advised OGC of a possible IOB violation involving actions exceeding the authorized scope of otherwise permitted activity. OGC has reviewed the facts of the captioned matter and has determined that reporting to the IOB is not warranted. Our analysis follows.

(S) As set forth in the referenced ECs, [Redacted] Division was conducting a [Redacted] of a [Redacted]

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Case ID : 278-HQ-1425173

Serial : 3

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NSL VIO-23604

[Redacted]

SA [Redacted] SA [Redacted] under the supervision of SSA [Redacted]

[Redacted]

No NSL had been issued.

[Redacted]

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[Redacted] Upon discovery of the mistake, an appropriate NSL was prepared covering the period 01/10/01-04/30/03.

(U) Also following discovery of this mistake, additional training and advice was provided to [Redacted] investigative personnel regarding the proper use of NSL and the restrictions pertaining to [Redacted] [Redacted] without a NSL.

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(U) ~~(S)~~ Section 2-56 of the National Foreign Intelligence Program Manual requires OGC to determine whether the facts related above must be reported to the IOB. Based on the analysis set forth below, it is OGC's determination that they need not be in this instance.

(U) Section 2.4 of Executive Order (E.O.) 12863, dated September 13, 1993, mandates that Inspectors General and General Counsel of the Intelligence Community components (in the FBI, the Assistant Director, INSD, and the General Counsel, OGC, respectively) report to the IOB concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive.

(U) ~~(S)~~ Title 18, United States Code, Section 2709, Counterintelligence access to Telephone Toll and Transactional Records states that:

- (b) Required certification. --The Director of the Federal Bureau of Investigation, or his designee . . . may-
  - (1) request the name, address, length of service, and local and long distance toll billing records of a person or entity if the Director . . . certifies in writing to the wire or electronic communication service

(S)

provider to which the request is made that the name, address, length of service, and toll billing records sought are relevant to an authorized investigation ...

(U) In the case of a US Person, such failure to comply would likely constitute an IOB violation. In the instant case, however, the subject of the investigation was not a US Person but rather [redacted]

[redacted]

As such, the sole determination we must make is whether the FBI's failure to conform to its internal administrative requirements -i.e., the National Foreign Intelligence Program Manual (NFIPM)- is reportable as a matter of policy, to the IOB.

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(S) As previously discussed, in this instance,

[redacted]

Both SA [redacted] and his supervisor were operating under the mistaken belief that the information provided was covered under an existing FISA. Upon learning of the mistake, a NSL was retrospectively issued to cover the period in question. It is clear that the error committed did not impinge upon the individual rights of a US Person. Although the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigation (FCIG) have been modified as of October 31, 2003, the underlying principal remains the same, and consequently, because io'nly violations of ithe' FCIG which iare' designed to safeguard the rights of U.S. persons are required to be reported to the IOB, il' it is our opinion that this matter need not be reported to the IOB. Consistent with our prior opinions, a record of this decision should be maintained in the control file for future review by Counsel to the IOB.

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Lead(s):

Set Lead 1: (Action)

COUNTERINTELLIGENCE DIVISION

AT WASHINGTON, DC

(U) For action deemed appropriate.

Set Lead 2: (Action)

DIRECTOR'S OFFICE

AT OPR FO, DC

(U) For action deemed appropriate.

Set Lead 3: (Action)

[Redacted]

AT

[Redacted]

(U) For action deemed appropriate.

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1 - [Redacted]

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\*\*FOOTNOTES\*\*

(U) 11: (S) OGC EC to INSD, dated May 28, 1999 and titled SSA

[Redacted] SA [Redacted]  
Field Office; IOB Matter 97 [Redacted]

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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]

DATE: 08-13-2007  
CLASSIFIED BY 65179/DNH/RSR/RW  
REASON: 1.4 (c)  
DECLASSIFY ON: 08-13-2032

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**Approved By:** Thomas Julie F

**Drafted By:** [Redacted]

**Case ID #:** (U) 278-HQ-C1229736-VIO-831 (Pending)  
(S) [Redacted] (Pending)

**Title:** (S) INTELLIGENCE OVERSIGHT BOARD MATTER  
IOB 2004-[Redacted]

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**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]

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(U) ~~(S) Derived From : G-3  
Declassify On: X1  
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To: Director's Office From: General Counsel  
Re: (U) 278-HQ-C1229736-VIO, 05/03/2005

(S) ~~(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] [redacted] No written summaries of 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) ~~(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

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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.

(S) ~~(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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To: Director's Office From: General Counsel  
Re: (U) 278-HQ-Cl229736-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]

(U) For action deemed appropriate.

**CC: Ms. Thomas**

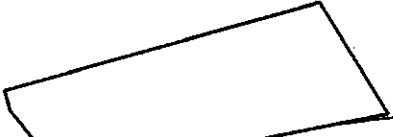
[REDACTED]

**IOB Library**

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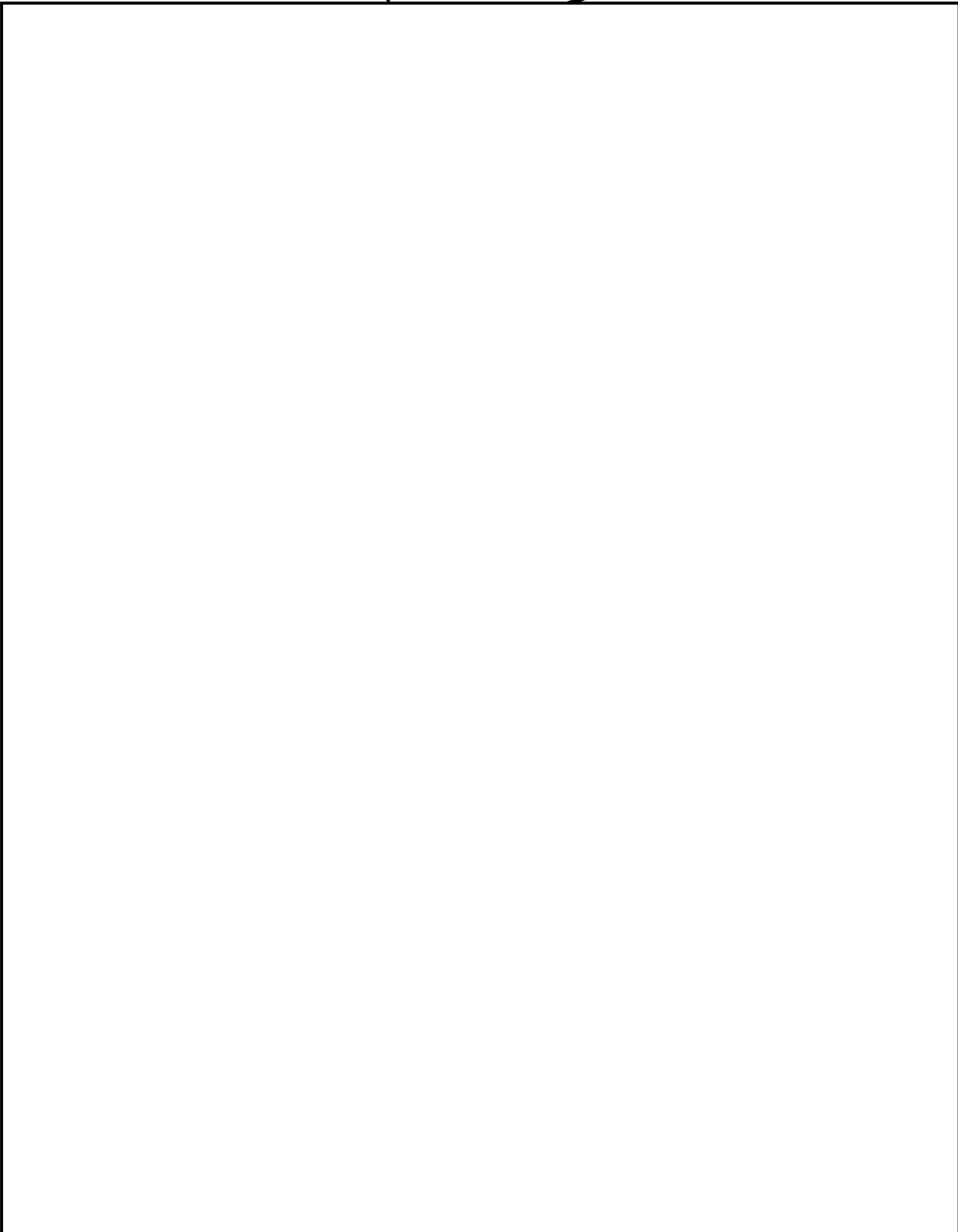
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JOB CHART TEMPLATE

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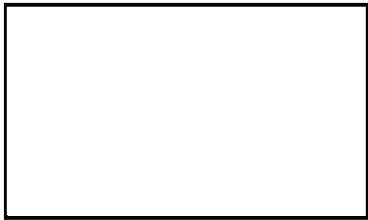


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NSL VIO-23632

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DATE 08-13-2007 BY 65179/DML/KSR/RW

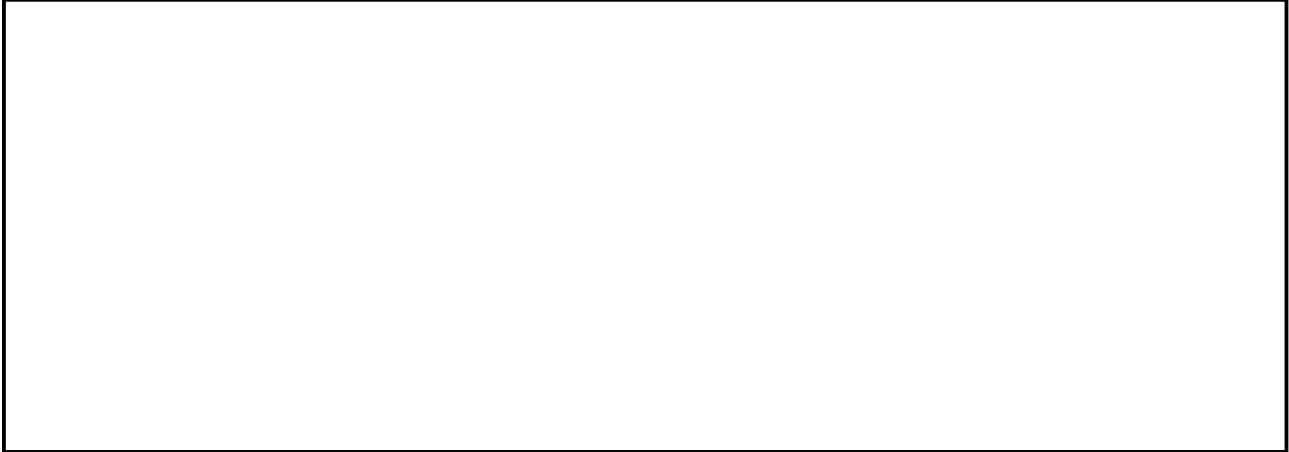
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IOBs 2005



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DECLASSIFIED BY 65179/DMR/KSR/RH  
ON 06-13-2007

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NSL VIO-23634

Precedence: ROUTINE

Date: 06/30/2004

To: Director's Office  
Counterterrorism

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

[Redacted]

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From: General Counsel  
National Security Law Branch  
Counterterrorism Law Unit I/Room 7975  
Contact: [Redacted]

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Approved By: Curran John F  
[Redacted]

DATE: 08-13-2007  
CLASSIFIED BY 65179/DNH/KSR/PL  
REASON: 1.4 (c)  
DECLASSIFY ON: 08-13-2032

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Drafted By: [Redacted]

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

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

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

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

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

(U) Details: (S) As discussed in the referenced electronic communication (EC) on 2/13/2003, the [Redacted] Division [Redacted]

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(S) [Redacted] as that term is defined in Section 1801(i) of the Foreign Intelligence Surveillance Act of 1978, 50 U.S.C. Section 1801 et seq. [Redacted]

(S) [Redacted] Due to administrative backlog and the subsequent three day holiday weekend, captioned matter was not administratively closed in ACS until 02/18/2004.

(U) (S) On 11/07/2003, [Redacted] set a routine lead to the [Redacted] Division [Redacted] to serve a National Security Letter (NSL) in this case. [Redacted] served the NSL to the telephone provider [Redacted] on 11/14/2003, but [Redacted] did not provide the requested telephone records to [Redacted] until 02/27/2004, after the expiration (02/13/2004) and administrative closure (2/18/2004) of this investigation.

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Case ID : 278-HQ-C1229736-VIO Serial : 502

(S) 278- [Redacted] C63856-VIO 6

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

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

(U) Section 2.4 of Executive Order (E.O.) 12863, dated September 13, 1993, mandates that Inspectors General and General Counsels of the Intelligence Community components (in the FBI, the Assistant Director, Inspection Division, and the General Counsel, OGC, respectively) report to the IOB concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive. This language was adopted verbatim from E.O. 12334, dated December 4, 1981, when the IOB was known as the President's Intelligence Oversight Board (PIOB). By longstanding agreement between the FBI and the IOB (and its predecessor, the PIOB), this language has been interpreted to mandate the reporting of any violation of a provision of the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations (FCIG), ii' or other guidelines or regulations approved by the Attorney General in accordance with E.O. 12333, dated December 4, 1981, if such provision was designed in full or in part to ensure the protection of the individual rights of U.S. persons. Violations of provisions that are essentially administrative in nature need not be reported to the IOB. The FBI is required, however, to maintain records of such administrative violations so that the Counsel to the IOB may review them upon request.

(U) ~~(S)~~ Paragraphs II.C.3., II.D.3., and V.12, of The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG) authorize the use of National Security Letters in a [redacted] authority, on 11/07/2003, [redacted] lawfully issued a NSL for [redacted] that requested telephone records in this case. On 11/14/2003, [redacted] properly served the NSL on [redacted]. [redacted] subsequent failure to cancel this lead at the time they closed the case was an administrative error that did not affect the lawfulness of the previously served NSL. [redacted] properly sealed and archived the telephone records received from the NSL because the case was no longer open at the time of their receipt.

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(U) ~~(S)~~ The late receipt of the telephone records in this

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

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

**\*\*FOOTNOTES\*\***

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

LEAD (s)

Set Lead 1: (Action)

DIRECTOR'S OFFICE

AT OPR, FO, DC

(U) For action deemed appropriate.

Set Lead 2: (Action)

COUNTERTERRORISM

AT WASHINGTON, DC

(U) Read and clear.

Set Lead 3: (Action)

[redacted]

AT

[redacted]

(U) Read and clear.

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Set Lead 4: (Action)

[Redacted]

AT [Redacted]

(U) Read and clear.

- 1 - Mr. Curran
- 1 - [Redacted]
- 1 - [Redacted]

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Precedence: ROUTINE

Date: 02/14/2005

To: [Redacted]

Attn: ASAC [Redacted]  
CDC

Inspection

Attn: Internal Investigation Section

Counterintelligence

Attn: AD

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From: General Counsel

National Security Law Branch/Rm. 7975

Contact: [Redacted] Ext [Redacted]

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Approved By: Thomas Julie F  
[Redacted]

(U) Drafted By: [Redacted]

Case ID #: (S) 278-HQ 1381271 (Pending)

DATE: 08-13-2007  
CLASSIFIED BY: 65179/DMH/KSR/RW  
REASON: 1.4 (a,d)  
DECLASSIFY ON: 08-13-2032

(U) Title: (S) SA [Redacted]  
SSA [Redacted]  
POSSIBLE INTELLIGENCE OVERSIGHT BOARD  
IOB MATTER 2002 [Redacted]

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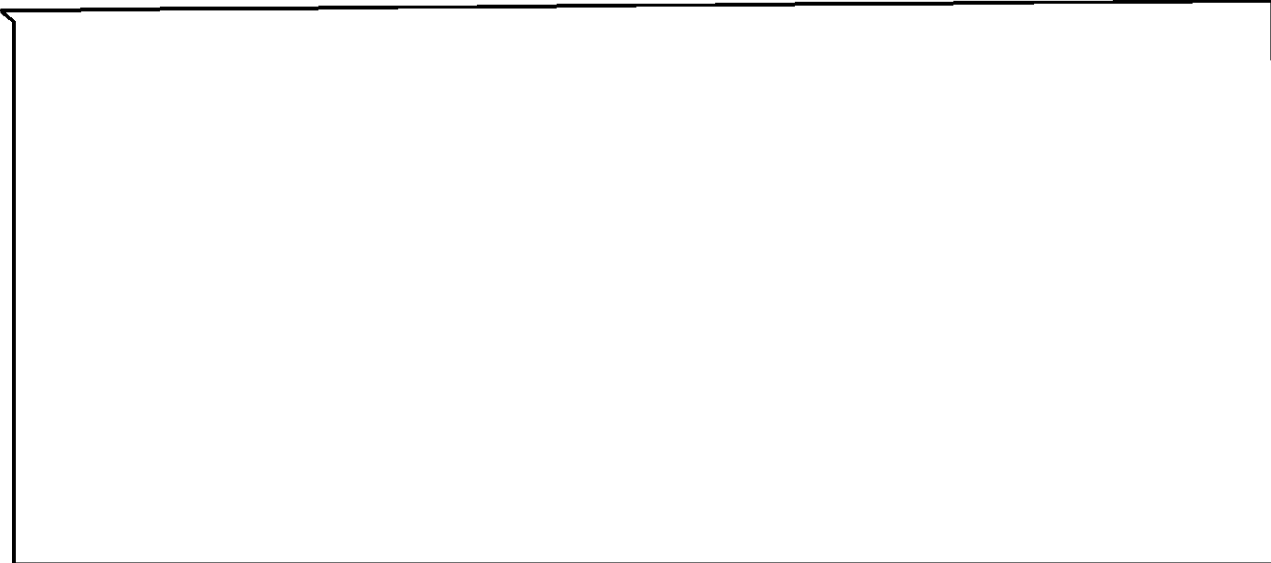
(U) Synopsis: (S) It is the opinion of the Office of the General Counsel (OGC) that the referenced matter need not be reported to the IOB, but, rather, that a record of this decision should be maintained in the investigation control file for review by Counsel to the IOB. Our analysis follows.

(U) (S) Derived from: G-3  
Declassify on: X25-1

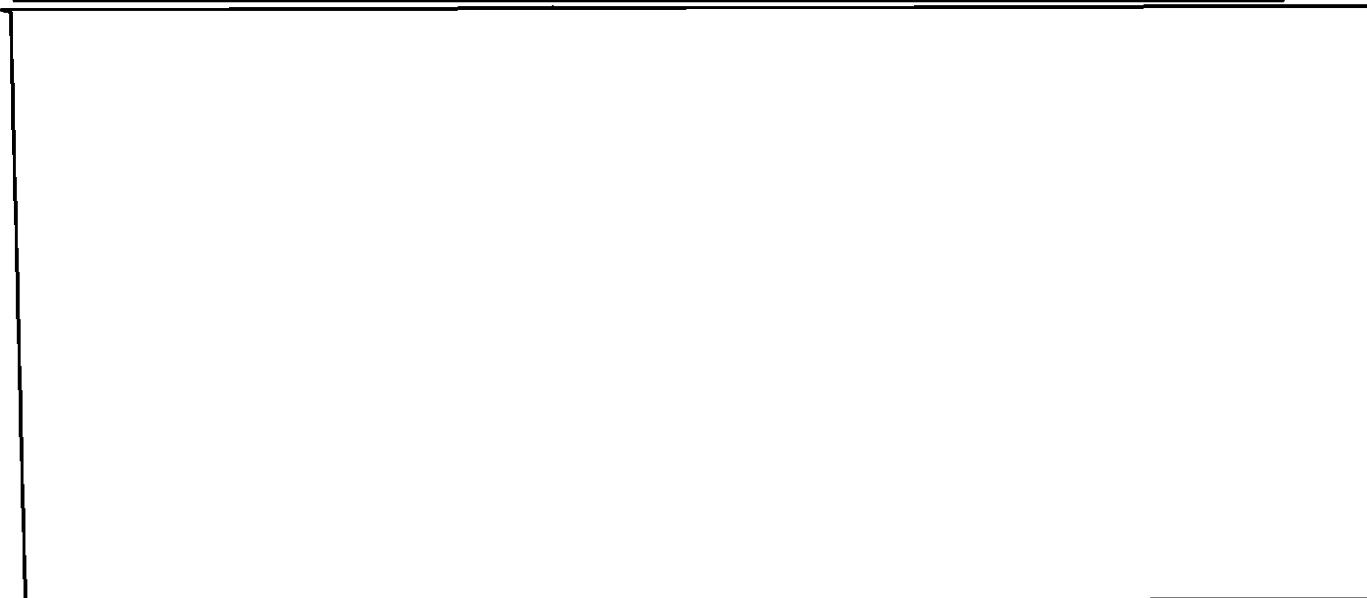
(U) Reference: (S) 278-HQ-1381271 Serial 2

Details: (S) [Redacted]

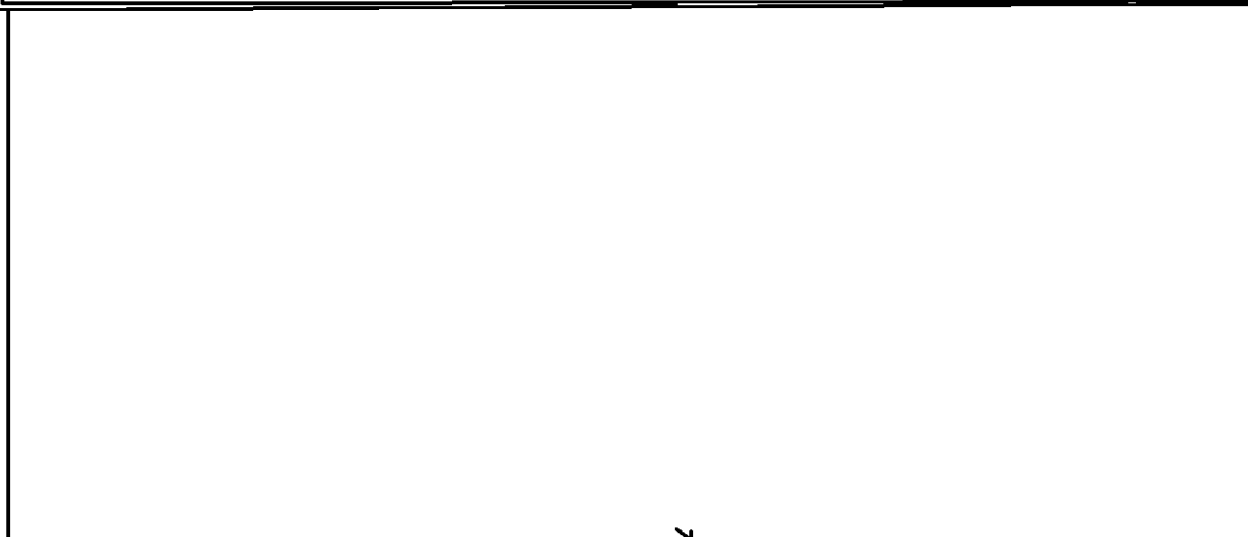
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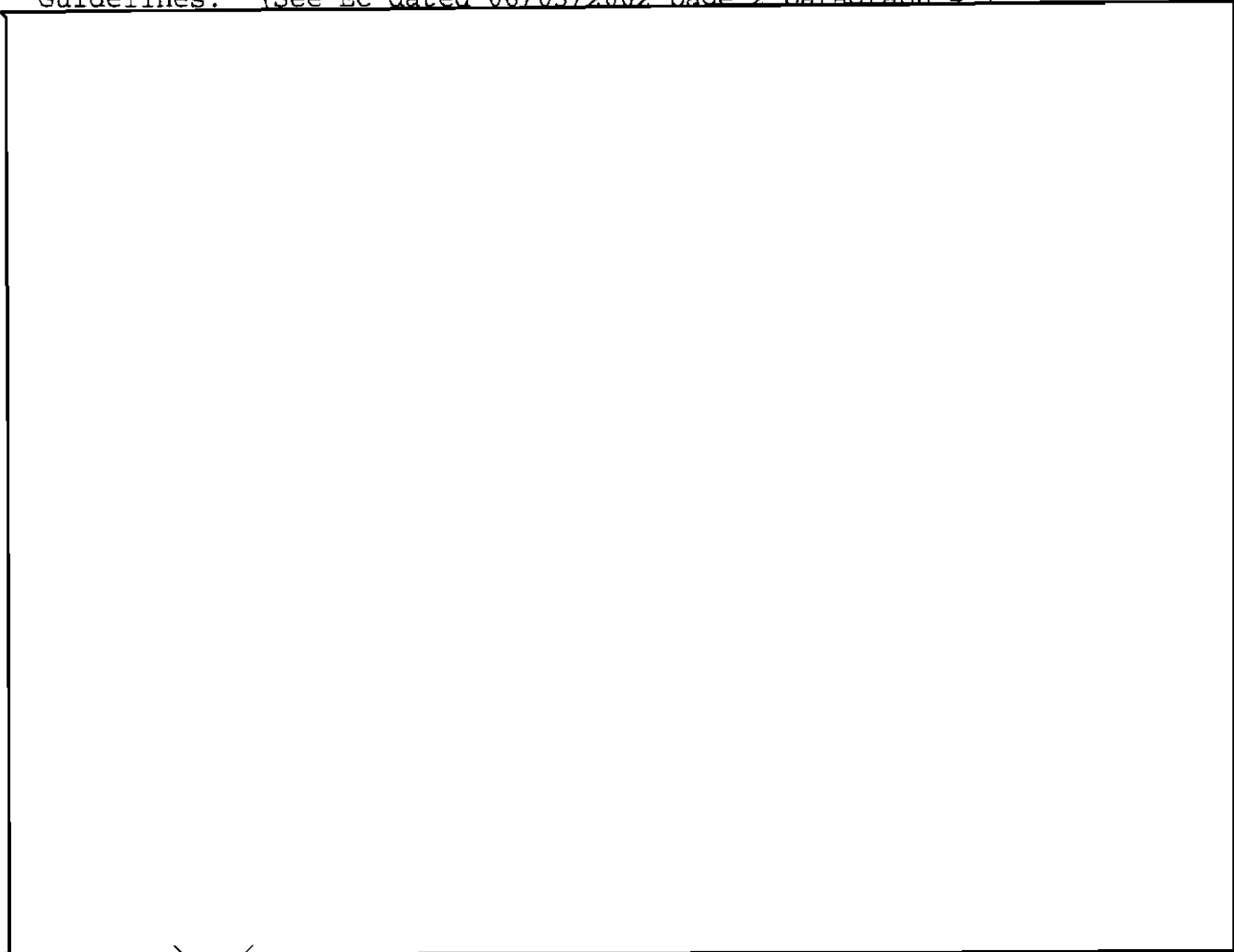


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Guidelines. (See EC dated 06/03/2002 page 2 paragraph 4.)

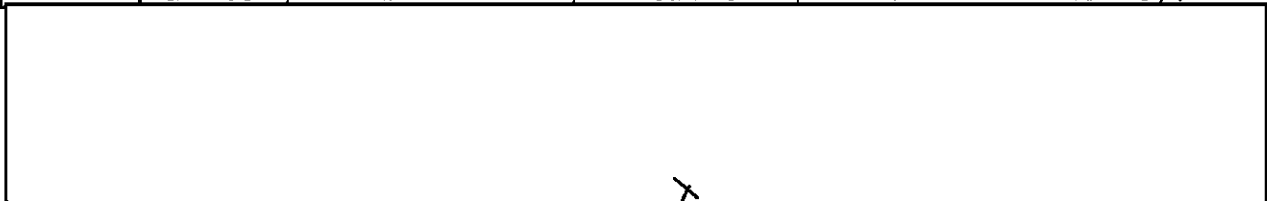


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(U) ~~(S)~~ By EC dated 07/17/2002, Inspection tasked OGC/NSLU to review the facts set forth herein for determination of a possible IOB violation, with a focus toward assessing whether  exceeded the limits regarding investigation of a person or persons, organization or organizations before any investigation had been authorized.

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(U) ~~(S)~~ After CD-3C submitted the EC regarding possible IOB violations, an analyst from CD-3C was tasked with going through each of the  AFOSI investigative summaries to look for specific references to FBI activities. In a document dated June 7, 2002, the analyst, noting that he made a thorough review of the  AFOSI reports, listed activities of  investigations as having referenced possible FBI activity.



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(S) [Redacted]

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listed:

- AFOSI hosted strategy meeting with FBI.
- FBI searching file holdings.
- FBI to [Redacted]
- FBI to [Redacted]
- FBI will request NSL.

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(S) [Redacted] FBI team is available to assist if necessary.

The FBI may search its own records, and other U.S. government records without opening an investigation. An ACS check by the analyst indicated no NSLs were obtained.

[Redacted]

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(U) ~~(S)~~ In response to CD-3C's request for additional information, on 06/04/2002, SA [Redacted] FBI [Redacted] provided a summary of the investigation(s) conducted jointly with or independently of AFOSI for the period [Redacted] SA [Redacted] advised . . . [Redacted] has not participated [Redacted]

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(S)

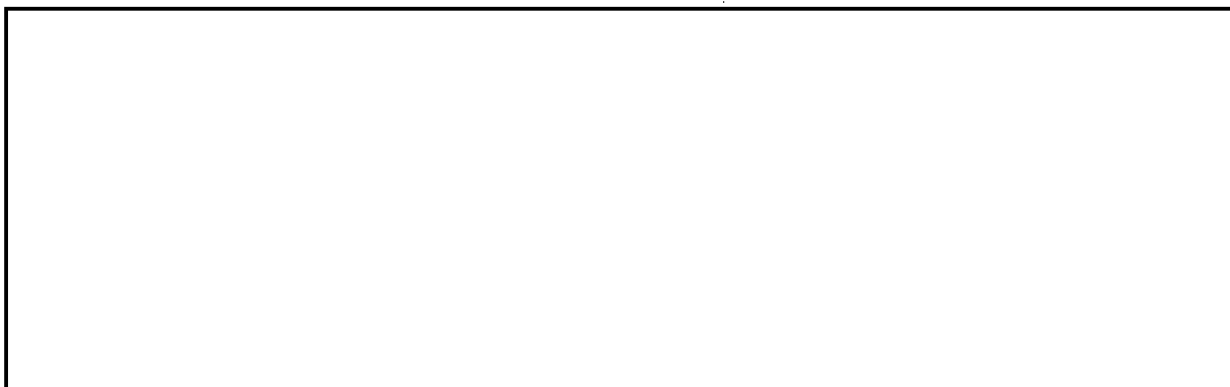


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LEGAL ANALYSIS

The question presented in this IOB investigation is whether or not the FBI exceeded its legal authorities in the investigation of the [redacted]. The answer is- No. The Attorney General Guidelines For the FBI Foreign Intelligence Collection And Foreign Counterintelligence Investigations, March 8, 1999 (AG Guidelines) were in effect during the time periods herein. Under these guidelines, prior to opening an investigation ([redacted]) the FBI could: collect information from U.S. Government agencies, examine FBI records, and review publically available reference material. (AG Guidelines, Part III B(5).) Under these same guidelines, the FBI had authority to share intelligence information with other federal authorities, which would include a Department of Defense intelligence agency such as the Air Force OSI. (AG Guidelines Part VII B(2) (a).)

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In sum, there is no evidence that the FBI exceeded its legal authority. The Air Force was fully informed of the potential IOB violations, conducted its own investigation, and found no instance where the Air Force exceeded its authority. The validity of the Air Forces conclusion is beyond the scope of

this inquiry.

Therefore, this is not a matter which is required to be reported to the IOB.

Set Lead 1: (Adm)

[Redacted]

AT

[Redacted]

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(U) Read and clear.

Set Lead 2: (Adm)

COUNTERINTELLIGENCE

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(U) Read and clear.

Set Lead 3: (Action)

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(U) For review and action deemed appropriate.

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