

[Redacted] OGC) (FBI)

**From:** [Redacted] (OGC) (FBI)  
**Sent:** Monday, June 26, 2006 4:04 PM  
**To:** THOMAS, JULIE E. (OGC) (FBI)  
**Cc:** [Redacted] (OGC) (FBI)  
**Subject:** IOB violations

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**Follow Up Flag:** Follow up  
**Due By:** Friday, July 07, 2006 10:00 AM  
**Flag Status:** Flagged

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

**SENSITIVE BUT UNCLASSIFIED**  
**NON-RECORD**

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Julie, we had discussed last week the fact that we need uniformity in the IOB process [Redacted]

[Redacted]

[Redacted]

[Large Redacted Area]

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**FEDERAL BUREAU OF INVESTIGATION**

**Precedence:** ROUTINE

**Date:** 09/12/2006

**To:** All Divisions

**Attn:** ADIC/SAC  
CDC

**From:** Office of the General Counsel  
National Security Law Branch

**Contact:** National Security Law Branch, (202) 324-

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**Approved By:** Pistole John S  
Hulon Willie T  
Caproni Valerie F  
Thomas Julie F *[Signature]*

DECLASSIFIED BY 65179 DMH/KSR/BE  
ON 08-22-2007

**Drafted By:**

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**Case ID #:** (U) 278-HQ-C1229736

**Title:** (U) REVISED PROCEDURES FOR THE SUBMISSION  
OF REPORTS OF POTENTIAL INTELLIGENCE  
OVERSIGHT BOARD MATTERS

**Synopsis:** (U) To provide legal guidance to all divisions regarding the requirement to report conduct that may be unlawful or contrary to Executive Order or Presidential Directive (potential IOB matters). This electronic communication (EC) supersedes all previous oral and written guidance relating to reporting potential IOB matters.

(U)

~~Derived From : G-3  
Declassify On: X25-1~~

**Details:** (U) The President, by Executive Order 12334, dated 12/04/1981, established the President's Intelligence Oversight Board (PIOB). On 09/13/1993, by Executive Order 12863, the President renamed it the Intelligence Oversight Board (IOB) and established the Board as a standing committee of the President's Foreign Intelligence Advisory Board. Among its responsibilities, the IOB has been given authority to review the FBI's practices and procedures relating to foreign intelligence and foreign counterintelligence collection.

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To: All Division From: Office of the General Counsel  
Re: (U) 278-HQ-C1229736, 09/12/2006

(U) Section 2.4 of Executive Order 12863 mandates that Inspectors General and General Counsel of the Intelligence Community components (in the FBI, the Assistant Director, Inspection Division (INSD), and the General Counsel, Office of the General Counsel (OGC), respectively) report to the IOB intelligence activities that they have reason to believe may be unlawful or contrary to Executive Order or Presidential Directive. This language has been interpreted to mandate the reporting of any violation of a provision of The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG), effective 10/31/2003, or other guidelines or regulations approved by the Attorney General in accordance with EO 12333, dated 12/04/1981, if such provision was designed to ensure the protection of individual rights.<sup>1</sup> Violations of provisions that merely are administrative in nature and not deemed to have been designed to ensure the protection of individual rights are generally not reported to the IOB.<sup>2</sup> The FBI Inspection Division is required, however, to maintain records of such administrative violations for three years so that the Counsel to the IOB may review them upon request. The determination as to whether a matter is "administrative in nature" must be made by OGC. Therefore, such administrative violations must be reported as potential IOB matters.

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<sup>1</sup> (U) The Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations (AG Guidelines on General Crimes), effective 05/30/2002, are not considered guidelines or regulations approved by the Attorney General in accordance with EO 12333. Accordingly, any potential violation of the AG Guidelines on General Crimes should not be reported to OGC as a potential IOB matter.

<sup>2</sup> (U) This interpretation of the reporting requirements was furnished to the FBI by the PIOB during a meeting on 06/18/1982. William H. Webster, then Director of the FBI, concurred with this interpretation and confirmed the immediate implementation of reporting procedures in adherence to this interpretation in a letter, dated 07/14/1982, to Dr. W. Glenn Campbell, Chairman of the PIOB. This interpretation was confirmed by Mary C. Lawton, Counsel for Intelligence Policy, Office of Intelligence Policy and Review, Department of Justice, by letter dated 04/08/1983.

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To: All Division From: Office of the General Counsel  
Re: (U) 278-HQ-C1229736, 09/12/2006

### PROCEDURES

1. (U) **Obligation to Report Potential IOB Matters.** All FBI employees have an obligation to report conduct that may be unlawful or contrary to Executive Order or Presidential Directive, as described in the previous paragraph, within 14 days of the discovery of the possible error or violation. The failure to report such matters, for whatever reason, may result in severe disciplinary action, up to and including dismissal from the FBI.

2. (U) **Reporting Procedures.** FBI Headquarters (FBIHQ) divisions and field offices are responsible for monitoring intelligence activities and reporting possible IOB matters to Internal Investigations Section (IIS), INSD, and National Security Law Branch (NSLB), Office of the General Counsel, as discussed in this section.

3. (U) **Contents of IOB Reporting EC.** Reports of potential IOB matters are to be reported to INSD (Attn: IIS) and OGC (Attn: NSLB) by electronic communication (EC), uploaded into Case ID Number 278-HQ-C1229736-VIO, and should include the following information:

- A. The caption of the reporting EC should state: REPORT OF A POTENTIAL IOB MATTER;
- B. Identification of the substantive investigation in which the questionable activity occurred, including the names of relevant personnel including the case agent and his/her supervisor;<sup>3</sup>
- C. Identification of the subject's (or asset's) status as a United States (U.S.) person or non-U.S. person;
- D. A complete and thorough explanation of the error believed to have been

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<sup>3</sup> (U) It is no longer necessary to put the names of the case agent and supervisor in the caption, but the names should be included in the text of the reporting EC.

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To: All Division From: Office of the General Counsel  
Re: (U) 278-HQ-C1229736, 09/12/2006

committed and all relevant facts.  
The explanation should include:

(1) A statement regarding when the error occurred (including, in instances of delayed reporting, an explanation for the delayed reporting);

(2) A statement concerning the controlling law, regulation or NSIG provision that pertains to the violation [for example: "The Foreign Intelligence Surveillance Court authorized an electronic surveillance to begin at (time) on (date)," or "A full investigation was initiated on (date) and expired on (date)"];

(3) A complete statement of the status of the investigation or matter including, if applicable, when it was initiated, when it expired, when it was renewed, and whether it currently is opened or closed; and

(4) A statement if and when a Foreign Intelligence Surveillance Act (FISA) request has been submitted to Office of Intelligence Policy and Review, Department of Justice (OIPR), if relevant.

4. (U) **Approval Level of Reportable IOB Matters.** EC reports of potential IOB matters must be approved by the ADIC/SAC or Assistant Director, as appropriate. FBI personnel are encouraged to call NSLB with any questions as to what is required or should be included in initial reports of IOB matters.

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To: All Division From: Office of the General Counsel  
Re: (U) 278-HQ-C1229736, 09/12/2006

5. (U) **Quarterly Reports.** In addition to the foregoing, on a quarterly basis, each field office and FBIHQ division is required to submit to OGC (Attn: NSLB) an EC certifying that all employees of the office or division were contacted concerning the requirement to report possible IOB matters. (See MAOP, Part 1, 1-22.) The canvassing of employees may be accomplished by e-mail within field offices and HQ divisions. EC certifications to OGC/NSLB may be approved by an ASAC or Deputy Assistant Director, as appropriate. If a field office or FBIHQ division has already reported the matter to OGC, such matter does not need to be included in the quarterly report.

6. (U) **Action by OGC/NSLB.**<sup>4</sup> Following receipt of the information required by paragraph 3 above, OGC/NSLB will review the conduct described to determine if the reported error or violation requires notification to the IOB. OGC/NSLB will prepare a written opinion as to whether the matter is reportable to the IOB. If the reported matter is determined to require IOB notification, OGC/NSLB will prepare the necessary correspondence to the IOB setting forth the basis for the notification (see paragraph 8 below). That correspondence will be signed by the General Counsel or the General Counsel's designee. A copy of the correspondence will also be sent to INSD/IIS and to the SAC or Assistant Director who initially reported the matter for action deemed appropriate. Copies of that correspondence will also be delivered to the Office of the Attorney General, Department of Justice (DOJ), and OIPR.

7. (U) **Retention of reports of potential IOB matters that are not reported.** Reports of potential IOB matters determined by OGC/NSLB not to require notification to the IOB will be retained by INSD for three years for possible review by the Counsel to the IOB, together with a copy of the opinion concerning the basis for the determination that IOB notification was not required.

8. (U) **Conduct that must be reported as potential IOB violations.** The following incidents **must be reported** to OGC/NSLB as potential IOB violations. OGC/NSLB will then evaluate the potential IOB violation and determine whether the violation is

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<sup>4</sup> (U) Once INSD has been notified that a potential IOB error has occurred, it will take any action which it deems appropriate.

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To: All Division From: Office of the General Counsel  
Re: (U) 278-HQ-C1229736, 09/12/2006

reportable to the IOB. This list is not exhaustive. If there are any concerns regarding whether an incident is reportable to OGC/NSLB, please contact NSLB to discuss the matter.

A. (U) Engaging in activities believed to be unlawful or contrary to Executive Orders or Presidential Directives.

B. (U) Engaging in activities believed to violate the United States Constitution.

C. (U) Initiating electronic surveillance or physical search without authorization from the Foreign Intelligence Surveillance Court (FISC) or other legal authorization.

D. (U) Failing to terminate an authorized surveillance at the time prescribed by the FISC or other relevant legal authority.

E. (U) Engaging in investigative activity beyond the scope of the FISC order or other relevant legal authority.

F. (U) A carrier providing information beyond the scope of the FISC order or other relevant legal authority resulting in the unintentional acquisition of data.

G. (U) Failing to adhere to the minimization or dissemination requirements specified in a FISC order or other relevant legal authority.

~~H~~ (S) [Redacted]  
[Redacted]

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~~I~~ (S) [Redacted]  
[Redacted]

J. (U) Failing to submit the annual LHM within 90 days of the date that it was due.<sup>5</sup>

~~J~~ (S) [Redacted]  
[Redacted]

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(continued...)

To: All Division From: Office of the General Counsel  
Re: (U) 278-HQ-C1229736, 09/12/2006

(S) ~~(U)~~ K. ~~(S)~~ [Redacted]  
[Redacted]

(U) L. ~~(S)~~ Serving a National Security Letter (NSL) that contains a substantive typographical error that results in the acquisition of data that is not relevant to an authorized investigation (i.e., numbers on telephone number transposed).

(U) M. ~~(S)~~ Serving an NSL that requests information that is beyond the scope permissible by statute (i.e. content information).

(U) N. ~~(S)~~ A carrier providing information beyond the scope of an NSL resulting in the unintentional acquisition of data.

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~~(U)~~ O. ~~(S)~~ [Redacted]  
[Redacted]

~~(U)~~ P. ~~(S)~~ [Redacted]  
[Redacted]

~~(U)~~ Q. ~~(S)~~ [Redacted]  
[Redacted]

~~(U)~~ R. ~~(S)~~ [Redacted]  
[Redacted]

<sup>5</sup>( continued)

[Redacted]

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To: All Division From: Office of the General Counsel  
Re: (U) 278-HQ-C1229736, 09/12/2006

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

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(U) 9. ~~(S)~~ [redacted]  
[redacted]

(U) If the potential IOB violation involves the unintentional acquisition of information under the Foreign Intelligence Surveillance Act, the field should ensure that all inadvertently captured information is collected, sequestered, sealed, and delivered to the FBIHQ substantive unit to be submitted to the FISC, via OIPR, for appropriate disposition.

(s)

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

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10. (U) This EC supersedes all previous oral and written guidance relating to IOB matters. Questions concerning the IOB process or reporting procedures should be directed to OGC/NSLB.

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To: All Division From: Office of the General Counsel  
Re: (U) 278-HQ-C1229736, 09/12/2006

LEAD(s) :

Set Lead 1: (Action)

ALL RECEIVING OFFICES

(U) Disseminate to all division personnel.

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# FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 02/22/2007

To: Inspection  
General Counsel

Attn: IIS, Room 11861  
Attn: NSLB, Room 7975  
SSA [redacted]

From: [redacted]

Contact: [redacted]

Approved By: SAC  
ASAC  
CDC  
SSA

DATE: 08-21-2007  
CLASSIFIED BY 65179 DMH/KSR/ur  
REASON: 1.4 (c)  
DECLASSIFY ON: 08-21-2032

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Drafted By: [redacted]

(U) Case ID #: ~~(S)~~ 278-HO-C1229736-VIO (Pending) - 2211  
~~(S)~~ 278- [redacted] 136372 (Pending) - 127

Title: (U) INTELLIGENCE OVERSIGHT BOARD (IOB) ERROR b2 b7E

Synopsis: (U) To report possible IOB error.

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED EXCEPT  
WHERE SHOWN OTHERWISE

(U)

~~(S)~~

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

### Details:

(S) 1. [redacted]

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(U)

~~(S)~~

2. Case Agent: [redacted]  
Supervisor: SSA [redacted]

(U)

~~(S)~~

3. Possible IOB Error: Receiving telephone records  
outside the dates requested in the National Security  
Letter.

(S)

~~(S)~~

4. [redacted]

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To: Inspection From: [redacted]  
Re: ~~(S)~~ 278-HQ-C1229736-V10, 02/22/2007

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(U) ~~(S)~~ 5. Description of possible IOB Error (including any reporting delays).

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(U) [redacted] upon opening the above noted investigation, issued a National Security Letter (NSL) to [redacted] requesting local and long distance toll billing records associated with subject [redacted] for periods from 07/11/01 to 11/11/01; and from 04/29/04 to present.

(S)

(U) Pursuant to the NSL, [redacted] sent [redacted] telephone records for [redacted] As noted above, [redacted] requested telephone records for two sets of date ranges. [redacted] upon receipt of the telephone records checked to make sure the telephone number and the name of the subscriber matched the name and telephone number requested. Additionally, [redacted] checked to make sure the telephone date ranges requested were "included".

(S)

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(U) During a 2006 review of NSL's by NSLB [redacted] was notified that information not requested by the NSL noted above had been received. A review of the NSL related to this matter revealed records requested for the first set of dates were July 11, 2001 through November 11, 2001. Records actually received addressing that date range were June 23, 2001 through November 22, 2001. [The possible IOB violation would be the records received "prior to and after" the requested date range. These dates were identified as June 23, 2001 through and including July 10, 2001 and November 12, 2001 through and including November 22, 2001.]

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(U) Telephone records requested for the second set of dates were for April 29, 2004 to present (date of NSL). Records actually received addressing this date range were March 5, 2004 through July 8, 2004. [The possible IOB violation would be the telephone records received "prior to" the requested date range. These dates were identified as March 5, 2004 through April 28, 2004.]

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(U) [redacted] was interviewed during the NSL review by NSLB regarding the excess information received from [redacted]. There was no notification at that time that this was a possible IOB violation. [redacted] was notified by CDC on November 21, 2007 that this was a possible IOB violation.

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To: Inspection From: [REDACTED] b2  
(U) Re: ~~(S)~~ 278-HQ-C1229736-VIO, 02/22/2007 b7E

(U) Upon notification by CDC of the possible violation, [REDACTED] retrieved the above noted file from closed files and manually removed the telephone records suspected of being possible IOB violations. The removed records were subsequently sequestered with the [REDACTED] Division CDC pending results of the IOB inquiry. Additionally, telephone applications was notified and initiated the process of removing the noted records from ACS.

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To: Inspection From: [REDACTED]  
(U) Re: ~~(S)~~ 278-HQ-C1229736-VIO, 02/22/2007

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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.

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