



## ADMINISTRATIVE SUBPOENAS

- I. The Administration supports granting the FBI the ability to use administrative subpoenas.
- II. Administrative subpoenas are a constitutional, time tested, legitimate law enforcement tool.
  - A. Like grand jury subpoenas, section 215 orders (Business Records), and national security letters, administrative subpoenas are used as a building block of an investigation.
  - B. Operate under a standard of relevance.
  - C. Administrative subpoenas exist in more than 300 instances. The Office of Legal Policy's Report to Congress on the Use of Administrative Subpoena Authorities by Executive Branch Agencies and Entities indicated that 335 provisions grant administrative subpoena authorities to federal government entities in furtherance of specified statutory schemes.
  - D. They are not available to the FBI in national security investigations.
  - E. FBI has authority to issue administrative subpoenas in health care fraud investigations, drug investigations, and in certain investigations of crimes against children. In health care fraud investigations, the Attorney General delegated this authority to U.S. Attorneys Offices and in drug and child pornography investigations; authority was delegated to the management level within the FBI.
    1. In 2001, DOJ issued 2,102 administrative subpoenas in federal health care investigations and 1,783 in child abuse and exploitation investigations.
- III. Administrative subpoenas provide a mechanism for obtaining relevant information in terrorism investigations quickly and without a significant expenditure of person hours. Administrative subpoenas compel the recipient to provide documents to the FBI, as opposed to national security letters that request documents.
  - A. Even if available in the particular situation, grand jury subpoenas may cause delays when:
    1. An AUSA is not available,
    2. A grand jury is not sitting at the moment documents are needed, or

3. A grand jury is not empanelled in the judicial district where the investigation is taking place.
- B. Section 215 orders are classified and thus more difficult for the FBI and the recipient to handle than unclassified administrative subpoenas.
- IV. Like grand jury subpoenas, administrative subpoenas are subject to pre-enforcement judicial review.
- V. Safeguards are built into the system:
- A. FBI bound by the Attorney General's Guidelines.
- B. Administrative subpoenas would require FBI SAC approval.
- C. Recipient would be able to challenge in Court.
- D. If Congress provides for reporting requirements, they should be designed to protect the identities of the people and institutions involved.
- VI. Congress should not limit the use of administrative subpoenas to exigent circumstances.
- A. "With regard to exigent circumstances, terrorism cases are, by their very nature, potentially life threatening and unpredictable. Because the ultimate target and timing of a terrorist scheme may not be readily apparent, granting law enforcement the ability to respond quickly in these situations is critical. Any attempt to fashion language in the statute to cover every potential exigency is likely to fall short. This shortcoming would limit the usefulness of the statute and could result in grave consequences...."
- (Statement of Rachel Brand, Principal Deputy Assistant Attorney General, Office of Legal Policy, June 22, 2004).
- VII. Granting administrative subpoena authority would not make 215 superfluous. For certain types of sensitive information or quantities of documents (bulk collection), the FBI may well choose to use a 215 order.

POC:

Director's Research Group

(202)324- [redacted]

Information provided by [redacted]

Assistant General Counsel  
National Security Law Branch

Approved by DCG Julie F. Thomas

Dated: 01/17/2006

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## Summary of the Joint Congressional Patriot Act Conference Report

### I. FISA DURATION

1. Extends the tenure of FISA surveillance and search orders to any agents of a foreign power who are not U.S. persons (e.g. lone wolf terrorists).
2. Extends the life time of FISA pen register/trap & trace orders and extensions from 90 days to one year when the information to be obtained does not involve a U.S. person.

### II. BUSINESS RECORDS

1. Orders for the production of certain library, bookstore, firearm sales, tax return, educational or medical records must be approved by the FBI Director or Deputy Director or Executive Assistant Director.
2. Adds numerous procedural changes including: presumptive relevancy test; mandatory adherence to minimization procedures; permitted disclosure to recipient's attorney; recipient may seek FISA Court review of request.

### III. EMERGENCY DISCLOSURES (18 U.S.C. 2702)

Attorney General (AG) will report emergency disclosures to Senate Judiciary Committee (annually).

### IV. ROVING FISA SURVEILLANCE

FISA Court must find specific facts in the application. Notice must be given to the FISA Court within 10 days. Additional reporting to Senate Judiciary Committee.

### VI. WIRETAP PREDICATES

Adds new offenses to the wiretapping predicate offense list.

### VII. SNEAK AND PEAK WARRANTS

Permits delay of disclosure no more than 30 days (90 day extensions). Requires detailed annual, public reports of the use of the authority.

## **VIII. NATIONAL SECURITY LETTERS (NSLs)**

1. Authorizes judicial enforcement of NSLs. Recipient may challenge NSL in Court and may disclose to those necessary for compliance and to attorney for legal advice.
2. Government must provide detailed reports on use of NSLs to the Judiciary Committees and other Committees.
3. Inspector General, Department of Justice directed to conduct audit of the effectiveness and abuse of NSLs.

## **IX. FISA PEN REGISTER**

Upon request, requires providers to supply available customer information relating to communications subject to FISA pen register orders. Requires full reports to the Congressional Judiciary Committees (twice per year).

## **X. SUNSET PROVISIONS**

1. The following sections of the Patriot Act which are set to expire on February 3, 2006, would be made permanent:
  - Sec. 201 - (wiretapping: terrorism predicate offenses)
  - Sec. 202 - (wiretapping: computer predicate offenses)
  - Sec. 203(b) - (wiretapping: sharing foreign intelligence information)
  - Sec. 203(d) - (law enforcement sharing foreign intelligence information)
  - Sec. 204 - (ECPA foreign system pen register/trap & trace)
  - Sec. 207 - (duration of FISA orders)
  - Sec. 209 - (access to stored voice mail)
  - Sec. 212 - (emergency access to email)
  - Sec. 213 - (delayed notice of sneak & peek)
  - Sec. 214 - (FISA pen register/trap & trace)
  - Sec. 217 - (computer trespasser communications)
  - Sec. 218 - (the wall)
  - Sec. 220 - (nation-wide service of ISP orders)
  - Sec. 223 - (sanctions)
  - Sec. 225 - (FISA helper immunity)
2. The following provisions would be extended until December 31, 2009:
  - Sec. 206 - (roving FISA wiretaps)
  - Sec. 215 - (FISA access to business records)
  - The "lone wolf" provision (of the Intelligence Reform and Terrorism Prevention Act of 2004).

**XI. MATERIAL SUPPORT (18 U.S.C. § 2339B)**

Makes 18 U.S.C. § 2339B, Providing Material Support or Resources to Designated Foreign Organizations permanent.

**XII. DRUG TRAFFICKING**

Make it a federal crime to engage in drug trafficking for the benefit of a foreign terrorist organization or of a person planning or committing a terrorist offense.

**XIII. DATA MINING**

AG to report to Congress on data mining activities conducted by federal agencies.

POC:

[Redacted]

Director's Research Group

(202) 324-[Redacted]

Information from:

[Redacted]

Assistant General Counsel  
Office of the General Counsel

Approved by: DGC Julie F. Thomas

Dated: 01/18/2006

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**Responses of the Federal Bureau of Investigation  
Based Upon the May 2, 2006 Hearing Before the  
Senate Committee on the Judiciary  
Regarding FBI Oversight**

**Questions Posed by Senator Leahy**

**INTELLIGENCE VIOLATIONS**

60. OGC. (U) According to a recent report by the Office of the Inspector General, the FBI reported more than 100 possible intelligence violations to the President's Intelligence Oversight Board over the past two years. These violations included incidents where FBI agents intercepted communications outside of the scope of the order from the FISA court, and incidents where FBI agents continued investigative activities after their authority expired. What steps is the FBI taking to reduce the incidence of these types of intelligence violations?

**Response**

(U) The referenced errors were either inadvertent or third-party errors. Certainly none was committed willfully. Nevertheless, the FBI continuously endeavors to reduce any errors inadvertently committed in the course of executing orders by the FISC. We have increased training with respect to all FISA-related matters. Where specific procedural or technical changes were necessary to reduce recurring errors, we have implemented the changes.

**NATIONAL SECURITY LETTERS**

71. OGC. (U) The Justice Department has reported that in 2005, the FBI issued 9,245 national security letters for information on 3,501 U.S. citizens and legal residents. Let me repeat two

*Derived from: The AG's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection, October 31, 2003*

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questions I asked you at the hearing, which you were unable to answer at the time. (A) How do the 2005 numbers compare to the same numbers over the past 10 years. (B) Would you support declassifying those earlier numbers (for calendar years 1995 through 2004) and, if not, please explain why that information needs to remain classified when comparable and more current information is now publicly available.

**Response**

(U) During 2005, the number of NSL requests (excluding NSLs for subscriber information) for information concerning U.S. persons totaled 9,254 (*vice* 9,245 as set forth in the question). There were 3,501 different U.S. persons involved in the total 9,254 NSLs that related to U.S. persons.

(U) Corresponding numbers are not currently available for the preceding ten-year period, nor would it be possible to retrieve them for that ten-year period. The numbers were calculated for the first time in 2006 to report 2005's totals in satisfaction of the new reporting requirement set forth in the USA PATRIOT Improvement and Reauthorization Act of 2005, enacted on March 9, 2006. In that regard, certain important points should be emphasized.

(U) First, the above numbers reflect the FBI's good-faith effort to provide the most accurate numbers possible. However, because compilation of the above numbers, in this context, could not be fully accomplished by computer, FBI personnel personally reviewed each NSL for 2005, confirming to the extent possible that any given U.S. person was not reported more than once. That effort was necessary because many names appear in the NSLs in a variety of forms or styles (e.g., John Doe and Johnny Doe; Elizabeth Roe, Liz Roe, and Betty Roe; or a person who uses one or more aliases). As a result, it is possible, despite the best efforts of FBI personnel, that the total number set forth above could include circumstances in which one person is reported multiple times.

(U) Secondly, four statutes authorize the FBI's use of NSLs. The FBI has traditionally tracked NSL totals, separately, within each of those four categories. Currently, the FBI does not cross-reference those four separate databases so as to determine different U.S. persons. Furthermore, the inability to cross-reference is exacerbated by the variety of forms and styles in names, discussed above. As a result, it is possible, despite the best efforts of FBI personnel, that the total number set forth above could include circumstances in which one person is reported multiple times.

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Questions Posed by Senator Feingold

National Security Letters

103. OGC. (U) When you appeared before the Judiciary Committee on May 2, 2006, I asked you about the disparity between the number of National Security Letters (NSLs) that were issued in 2005 versus the number of Section 215 business records orders issued in 2005. You agreed that obtaining a Section 215 order requires judicial approval, and that issuing a NSL does not require judicial approval, but said that you would get back to me about why so many more NSLs were issued in 2005. Please provide a response.

Response

(U) The reason that there are a great deal more NSLs issued than business records is two-fold. First, the information available under NSLs tends to be of a type that is generally necessary to a thorough investigation in most, if not all, cases. That is, records available under an Electronic Communications Privacy Act NSL, 18 U.S.C. Section 2709, concerning the target's communications, assist in determining his associates; records available under a Right to Financial Privacy Act NSL, 12 U.S.C. Section 3414, and a Fair Credit Reporting Act NSL, 15 U.S.C. Section 1681u, concerning his bank accounts and financial dealings, assist in determining the nature of his activities (e.g., financing terrorist organizations, receiving payments for espionage). Further, to the extent those types of records identify associates of targets who may be engaged in nefarious activities, the gathering of NSL information often leads to the opening of additional investigations and the need for additional NSLs. Moreover, with appropriate approvals, NSLs can be issued at the field-office level without the intervention of FBI headquarters.

(U) Business records (i.e., records kept in the normal course of business), on the other hand, may not be essential to every case. Further, when information that could be obtained by a business record order is necessary to advance an investigation, the information may not be protected by statute and, therefore, may be voluntarily provided by the business. When not voluntarily provided by a third party, a business record request is necessary to compel production. By statute, an application for a "215 order" may only be requested by myself or one of my designees. Thereafter, they must go to the FISC to be issued. Thus, the business record requests

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require a higher level of approval within the FBI, and they cannot be issued within the FBI. In practical terms, these factors--in combination with those set forth above--mean that business record orders take much longer to obtain than NSLs. Therefore, many fewer are requested.

(U) At this point, I feel compelled to reiterate the FBI's continuing need for administrative subpoenas in national security investigations. Administrative subpoenas are a constitutional, time-tested, ordinary tool of law enforcement. They would be an exceptionally helpful tool in filling gaps in getting us the information we need in our national security investigations. Yet, the FBI continues to be deprived of their use in this context.

(U) The use of administrative subpoenas in national security investigations would provide a mechanism for obtaining relevant information quickly and without a significant expenditure of person-hours. Grand jury subpoenas, in contrast to administrative subpoenas, even if available in a particular situation, may still result in delay when (1) an AUSA is not available, (2) a grand jury is not sitting at the moment the documents are needed, or (3) a grand jury is not empaneled in the judicial district where the investigation is taking place. Section 215 orders, in contrast to administrative subpoenas, are classified and, therefore, more difficult for the FBI and the recipient to handle than unclassified administrative subpoenas would be.

(U) At no time in history has the simple investigative tool of administrative subpoenas been more necessary in national security investigations. FBI agents conducting national security investigations continue to face repeated delays and obstacles when attempting to gather basic records and materials--frustrations that are seldom experienced when investigating a drug dealer or a "dirty doctor." These investigations are not fishing expeditions, but legitimate and timely quests for relevant information. The FBI needs administrative subpoena authority in this context.

#### USA PATRIOT Act

109. OGC. (U) In March, Chairman Specter introduced legislation (S. 2369) that contained four additional changes to the Patriot Act, beyond what was in the reauthorization package.

a. (U) In Chairman Specter's bill, the provision relating to Section 215 would require the government to convince a FISA judge: (1) that the business records pertain to a terrorist or spy; (2) that the records pertain to an individual in contact with or known to a suspected terrorist or

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spy; or (3) that the records are relevant to the activities of a suspected terrorist or spy. Do you agree this standard is adequate to provide agents with the flexibility they need? If not, please provide specific examples demonstrating why not.

**Response**

(U) ~~(S)~~ No, we do not believe this standard provides adequate flexibility in all circumstances, although it would provide such flexibility in the vast majority of investigations. As the proposed statute reads, the term "suspected agent of a foreign power" should in fact cover most targets of national security investigations. And, the requested records, to be relevant to the investigation of the target, most often would pertain either to the activities of the suspected agent of a foreign power (criteria #3) or the activities of someone in contact with the suspected agent of a foreign power (criteria #2). Criteria #1 would encompass situations in which the target is a foreign power, or where the individual targeted is an agent of a foreign power (presumably, a case in which the likelihood of that status has reached beyond just "suspected"). Thus, almost all national security investigations would be covered. However, there are circumstances other than the case of a foreign power or agent of a foreign power under which the FBI may open an authorized national security investigation. (Examples would include situations in which an individual is a foreign official or visitor from a threat country, an individual or group is the target of a recruitment or infiltration effort by a terrorist organization, or an individual or group is the target of international terrorism, espionage, etc. Such examples are discussed in more detail within Part II of the Attorney General's Guidelines.) Nevertheless, there would be cases beyond the reach of a business record order if the statute were to remain as proposed. We do believe, however, that adjustments in the statute could be made to encompass such circumstances without adversely impacting the principles set forth above.

b. (U) Another provision would add a four-year sunset to recent changes to the National Security Letter statutes. Given that the sunset would allow existing law to govern any ongoing investigations, do you have any objection to that sunset provision?

**Response**

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(U) We do not favor a sunset provision, inasmuch as the revisions of the NSL statutes appear to be reasonable and fair to both the FBI, as the issuer of NSLs, and to the recipients of NSLs. If they prove not to work out as intended, the statutes can be revised once again. On the other hand, a sunset provision would obviously allow for, if not mandate, a reevaluation of the manner in which the new provision of the NSL statutes will have worked over the course of the next four years. Either way, we would probably come to the same point. That is, in a few years, the statutory changes will be reviewed to determine whether they have worked as intended, and changes will be made as needed.

c. (U) Another provision of the bill would make sure that recipients of business records orders under Section 215 of the Patriot Act and recipients of National Security Letters can get meaningful judicial review of the accompanying gag orders. Under the reauthorization package, the recipient would have to prove that any certification by the government that disclosure would harm national security or impair diplomatic relations was made in bad faith. This seems to be a virtually impossible standard to meet. How frequently would you estimate that FBI agents make such certifications in bad faith?

Response

(U) The statute does provide for meaningful review. The bad-faith standard only applies to a certification by the Attorney General, Deputy Attorney General, an Assistant Attorney General, or FBI Director, upon filing of a petition challenging the non-disclosure provision of a production order. We do not expect that any such certifications will be in bad faith.

(U) As to other challenges to the production order or nondisclosure order, the standard is not bad faith. The statute provides that a person receiving a business record order may challenge the legality of that order by filing a petition in the FISC to modify or set aside the order. A judge considering the petition may grant such petition if the judge finds that such order does not meet the requirements of the statute or is otherwise unlawful. Not less than one year after the date of the issuance of the production order, the recipient of a production order may challenge the nondisclosure order imposed in connection with the order by filing a petition in the FISC to modify or set aside such nondisclosure order. A judge considering that petition may grant such petition if the judge finds that there is no reason to believe that disclosure may endanger the national security of the United States, interfere with a criminal, counterterrorism, or

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counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of any person. Thus, a FISC judge, upon filing of a petition challenging the production order or the non-disclosure provision of a production order, is expected to provide a meaningful review of the reason for the non-disclosure order.

d. (U) Chairman Specter's bill would require that subjects of delayed notice criminal searches be notified of the search within 7 days, unless a judge grants an extension of that time. The bill would leave in place the ability to get unlimited 90-day extensions. Given that the government can obtain unlimited 90-day extensions, why not create a presumption that a citizen should be notified within 7 days if his or her home has been searched by the government?

**Response**

[ILU is submitting the response for QFR No. 109d.]

**Questions Posed by Senator Schumer**

116. OGC. (U) Among the more disturbing aspects of everything the Inspector General has presented today in his written testimony are his reports of FBI intelligence violations, specifically: FBI agents intercepting communications outside the scope of FISA orders; FBI agents continuing investigative activities after the authority for the investigation expired; and third parties providing information that was not part of a national security letter request. In light of these findings, please explain the following.

a. (U) Were any of these activities that the OIG defines as violations authorized by you, personally, or any deputy of yours?

**Response**

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(U) No, as stated previously, none of these violations was found to have been wilful--i.e., made knowingly, in contravention of law or policy. I would never authorize such knowing violations nor tolerate such action by a subordinate.

b. (U) Were any of these activities authorized by the President?

**Response**

(U) No. (See the response to No. 116a, above.)

c. (U) Does the use of surveillance outside the scope of FISA orders by the FBI have any connection to the NSA domestic surveillance program the President has described? Is it part of a separate program?

**Response**

(U) No, in response to each question. As previously stated, the compliance issues noted by the IG were inadvertent, and not wilful, violations.

**Questions Posed by Senator Durbin**

**USA PATRIOT Act**

131. OCA. (U) Section 5 of the USA PATRIOT Act Additional Reauthorizing Amendments Act of 2006 (Public Law 109-178), "Privacy Protections for Library Patrons," is intended to clarify that the FBI may not issue National Security Letters to libraries that are functioning in their traditional role, including but not limited to, lending books, providing access to books or

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periodicals in digital form, and providing basic access to the Internet. During the debate on the USA PATRIOT Act Additional Reauthorizing Amendments Act, Senator Sununu, the legislation's author and lead sponsor, and I engaged in a colloquy on the floor of the Senate to make clear congressional intent in this respect. During the hearing, my staff provided a copy of this colloquy to your staff. I have also attached a copy of the colloquy to these questions. During the hearing, I asked you if you agreed that Section 5 clarifies that a library functioning in its traditional role is not subject to a National Security Letter. You promised to respond in writing to this question. Please do so.

**Response**

**[PENDING]**

*Derived from: The AG's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection, October 31, 2003  
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**Responses of the Federal Bureau of Investigation  
Based Upon the April 5, 2005 Hearing Before  
The Senate Judiciary Committee  
Regarding "Oversight of the USA PATRIOT Act"**

**Questions Posed By Senator Feingold**

**34. In your testimony, you called for broad administrative subpoena authority for terrorism investigations because National Security Letters (NSLs) and Section 215 orders are inadequate or take too long to implement.**

**a. Has the FBI had significant trouble with recipients of NSLs not promptly complying, or not complying at all? If so, what actions has the FBI taken in response?**

**Response:**

In the FBI's experience, recipients of National Security Letters (NSLs) sometimes respond quickly and completely, sometimes respond slowly and incompletely, and sometimes do not respond at all. We believe there are several reasons for this. First, an NSL is a letter; it does not look like and is not a subpoena or court order. That appearance of informality apparently leads some recipients to treat an NSL differently than they would an instrument that comes from a court or that has a clear enforcement mechanism, like a subpoena. Additionally, there is no statutorily created enforcement mechanism for NSLs. Historically, the absence of a statutory enforcement mechanism led the FBI to make efforts to obtain the cooperation of those who do not respond rather than bringing an enforcement action against a recalcitrant or tardy NSL recipient.

**b. I understand that in the usual case, it might take several weeks or even months to complete a FISA application, get the appropriate signatures, and have the court review it. But I also understand that there are several internal procedures, aside from the emergency provisions, for expediting an application in a case where it is critical that the FBI obtain a FISA order quickly. Why are those procedures inadequate? Shouldn't they address the problem that you have outlined?**

**Response:**

FISA business orders under section 215 of the USA PATRIOT Act cannot currently be obtained on an emergency basis. If such authority were granted, or if DOJ were to implement procedures under which section 215 orders could be expedited, the FBI would be able to obtain such orders more quickly than is currently possible. Neither solution, however, would be as desirable as obtaining administrative subpoena authority.

First, any process that requires case agents to submit requests for documents through FBIHQ and then through DOJ will necessarily be slower, more cumbersome, and more manpower intensive than the process for issuing administrative subpoenas. Second, in order to obtain a section 215 order, resources of DOJ's Office of Intelligence Policy and Review and the Foreign Intelligence Surveillance Court must be used. Those resources are limited and currently quite strained. It is our judgment that those limited resources are better used with respect to electronic surveillance, which implicates significant privacy interests, than with respect to orders to obtain documents, which will generally not implicate Constitutionally protected privacy interests. Third, orders obtained under section 215 are classified, whereas administrative subpoenas would not be. The fact that the 215 order is classified means that it is subject to special handling requirements by both the agent who serves it and the recipient. Frequently, recipients are not cleared to handle classified documents, necessitating the use of a "trust receipt," further slowing the process. In short, for a variety of reasons, however efficient the process to obtain an order under section 215, an administrative subpoena would be superior.



MEMORANDUM FOR THE ATTORNEY GENERAL

THROUGH: THE DEPUTY ATTORNEY GENERAL

FROM: DIRECTOR, FBI

SUBJECT: ANNUAL REPORT OF TOTAL NATIONAL SECURITY LETTER REQUESTS FOR INFORMATION CONCERNING DIFFERENT U.S. PERSONS (EXCLUDING NATIONAL SECURITY LETTERS FOR SUBSCRIBER INFORMATION) MADE PURSUANT TO THE USA PATRIOT IMPROVEMENT AND REAUTHORIZATION ACT OF 2005, PUBLIC LAW 109-177

The USA PATRIOT Improvement and Reauthorization Act of 2005, Public Law 109-177, which President Bush signed on March 9, 2006, established among other things a new reporting requirement. Specifically, under Section 118, the Attorney General is now required to report annually, in April, the total number of National Security Letter (NSL) requests (excluding NSLs for subscriber information) for information concerning different U.S. persons. The report is to be UNCLASSIFIED.

To assist the Attorney General in satisfying this requirement, the FBI submits the following:

**TOTAL CY 2005 NSL REQUESTS (EXCLUDING NSLS FOR SUBSCRIBER INFORMATION) FOR INFORMATION CONCERNING DIFFERENT U.S. PERSONS: 3,501**

During the same time frame, the total number of NSL requests (excluding NSLs for subscriber information) for information concerning U.S. persons totaled 9,254. In other words, there were 3,501 *different* U.S. persons involved in the total 9,254 NSLs that related to U.S. persons.

|                          |                         |
|--------------------------|-------------------------|
| 1 -                      | 1 -                     |
| 1 - Mr. Pistole Rm. 7142 | 1 - Ms. Thomas Rm. 7947 |
| 1 - Ms. Caproni Rm. 7427 | 1 - [REDACTED] Rm. 7176 |
| 1 - Mr. Bald Rm. 7116    | 1 - NSLB Rm. 7947       |

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Memorandum for the Attorney General  
Re: Annual Report of Total NSL Requests

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These numbers differ from previous reports to the Attorney General for CY 2005. They reflect the FBI's good-faith effort to provide the most accurate numbers possible. Nevertheless, certain important points should be emphasized. Because compilation of the above numbers, in this context, could not be fully accomplished by computer, FBI personnel personally reviewed each NSL for CY 2005, confirming to the extent possible that any given U.S. person was not reported more than once. That effort was necessary because many names appear in the NSLs in a variety of forms or styles (e.g., John Doe and Johnny Doe; Elizabeth Roe, Liz Roe, and Betty Roe; or a person who uses one or more aliases). As a result, it is possible, despite the best efforts of FBI personnel, that the total number set forth above could include circumstances in which one person is reported multiple times.

Secondly, four statutes authorize the FBI's use of NSLs. The FBI has traditionally tracked NSL totals, separately, within each of those four categories. Currently, the FBI does not cross-reference those four separate databases so as to determine different U.S. persons. Furthermore, the inability to cross-reference is exacerbated by the variety of forms and styles in names, discussed above. As a result, it is possible, despite the best efforts of FBI personnel, that the total number set forth above could include circumstances in which one person is reported multiple times.

Thirdly, as it relates to NSLs involving the identity of financial institutions and those related to consumer identifying information, the FBI was not previously required to distinguish U.S. person numbers versus non-U.S. person numbers. Therefore, to compile the above numbers with as much accuracy as possible, FBI personnel accomplished the task by hand count and deconfliction.

Should your staff require additional information regarding the FBI's compilation of this report, please contact [redacted] Office of the General Counsel, at

(202) 324-[redacted]

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National Security Law Policy and Training Unit

Unit Chief [redacted]  
Room 7947 JEH  
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1 November 2005

Re: NSL Talking Points for General Counsel

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

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

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

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

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

The standard for issuing an NSL is **relevance** to an authorized investigation to protect against international terrorism or clandestine intelligence activities provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the First Amendment of the Constitution of the United States. (The 1681v NSL standard is slightly different to reflect that it applies only to international terrorism investigations.)

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

2. NY NSL Litigation - ACLU Lawsuit Regarding NSLs:

Talking Points attached (POC )

Large portions of the NY district court case are still under seal, but the district court's decision and order are not and can be discussed. Some information in the appellate briefs is also under seal. The type of information that cannot be discussed publicly includes the name of and specific details (e.g., location) regarding the NSL recipient, as well as the facts underlying the investigation giving rise to the NSL. We have also been keeping the identity and FO of the agent who served the NSL confidential.

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### 3. Connecticut Litigation regarding NSL:

POCs:

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- John Doe, ACLU, American Civil Liberties Union Foundation v. Alberto Gonzales, in his official capacity as AG of the US; Robert Mueller, in his official capacity as Director of the FBI, and John Roe, FBI, in his official capacity. CIVIL ACTION NO. 3.05-cv-1256 (JCH) D. Conn [Doe v. Gonzales]

- Challenge to service of an ECPA NSL on a library consortium.

• District of Proceeding: District Court, Connecticut (Hartford)

• Stage of Proceeding:

- On September 9, 2005, District Court issued preliminary injunction against defendants enforcing non-disclosure provision; Defendants appealed.
- On September 20, 2005, Second Circuit (No. 05-4896) issued stay of that order pending appeal.
- On September 22, 2005, plaintiffs filed emergency motion to vacate Second Circuit's stay pending appeal.
- On September 29, 2005, Second Circuit denied plaintiffs' emergency motion to vacate stay.
- On October 7, 2005, Supreme Court (Circuit Justice Ginsburg) denied plaintiffs' motion to vacate stay.
- On November 2, 2005, merits of expedited appeal by defendants from preliminary injunction to be argued before Second Circuit (along with the Southern District of New York case where the court found the ECPA NSL statute unconstitutional).
- On November 10, 2005, government answer to complaint due in district court (expect government will move for further stay of proceedings pending disposition of Second Circuit appeal).



National Security Law Policy and Training Unit

Unit Chief   
Room 7947 JEH  
202-324

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1 November 2005

Re: USA PATRIOT Act Talking Points for General Counsel

1. FBI Office of Congressional Affairs:

- House passed version H.R. 3199 on July 21, 2005.
- Senate passed version of H.R. 3199 on July 29, 2005 (Please note that the Senate substituted its language for that of H.R. 3199).
- Status October 5, 2005 (OCA's predictions):

The House / Senate Patriot Act Conference is expected to become active in October. Senate Conferees were selected in July. House Conferees are expected to be announced on or before October 17th.

The Senate Conferees are Senators **Specter** (R-PA, Chair of Judiciary), **Roberts** (R-KS, Chair of SSCI), **Sessions** (R-AL, Judiciary), **DeWine** (R-OH, Judiciary and SSCI), **Kyl** (R-AZ, Judiciary), **Hatch** (R-UT, Judiciary), **Leahy** (D-VT, Ranking Member of Judiciary), **Kennedy** (D-MA, Judiciary), **Rockefeller** (D-WV, Ranking Member of SSCI) and **Levin** (D-MI, SSCI and Homeland Security/Govt Affairs).

Staff meetings will occur over the first two weeks in October to attempt to resolve differences between the House-passed bill (see H.R. 3199, below) and the Senate-passed bill (see S. 1389, below). It is anticipated that the first meeting of the Conferees will occur the week of October 17th. Reauthorization is expected by the end of October.

- Status October 31, 2005:

- House has yet to appoint conferees.
- House and Senate staff (not members) currently negotiating language of the USA PATRIOT Act reauthorization. Sec. 215 is actively being discussed. No current estimate on when it will be ready - moving toward the sunset date of December 31<sup>st</sup> and planned Congressional recess for the Holidays.

- Background:

- Between April 5, 2005 and June 10, 2005, Congress held 18 hearings concerning the USA PATRIOT Act reauthorization. Hearing held by —

- SSCI - Senate Select Committee on Intelligence
- SJC - Senate Judiciary Committee
- HJC - House Judiciary Committee
- HPSCI - House Permanent Select Committee on Intelligence

- Witnesses have included 20 different DOJ witnesses who testified a

total of 32 times:

- Attorney General
- FBI Director
- FBI General Counsel
- FBI Assistant Director of Counterterrorism Division
- EAD Baginski, AD Martinez and DAD Joe Billy
- NSA and CIA employees

2. USA PATRIOT Act Provisions Scheduled to “Sunset” on December 31, 2005:

The following provisions from Title II of the USAPA (Enhanced Surveillance Procedures) are scheduled to sunset:

| Section | Title  | Purpose  |
|---------|--|--|
| 201     | Authority to intercept wire, oral, and electronic communications relating to terrorism.  | Expanded Title III predicates.   |
| 202     | Authority to intercept wire, oral, and electronic communications relating to computer fraud and abuse offenses.                        | Expanded Title III predicates.   |
| 203*    | Authority to share criminal investigative information.   | (b) & (d) allowed sharing of foreign intelligence information obtained in Title III and criminal investigation with intelligence side. |
| 204     | Clarification of intelligence exceptions from limitations on interception and disclosure of wire, oral, and electronic communications. |  |
| 206*    | Roving surveillance authority under the Foreign Intelligence Surveillance Act of 1978.   | Roving FISA surveillance.  |



|      |   |   |
|------|---|---|
| 207* | Duration of FISA surveillance of non-United States persons who are agents of a foreign power. | Extended duration of certain FISA orders.   |
| 209  | Seizure of voice-mail messages pursuant to warrants.  |   |
| 212* | Emergency disclosure of electronic communications to protect life and limb.                   | Voluntary disclosure by carrier if emergency related to death or serious injury.  |
| 214  | Pen register and trap and trace authority under FISA.   | Eliminated "specific and articulable facts" standard. For USP, FBI certifies information is "relevant" to a national security investigation (not solely upon 1 <sup>st</sup> Amendment activities). |
| 215* | Access to records and other items under the Foreign Intelligence Surveillance Act.            | Business records provision.<br>New standard = "relevance"<br>May be used to obtain "any tangible things" (including books, records, papers, documents, and other items).                            |
| 217  | Interception of Computer Trespasser Communications.   | Victims of computer attacks may invite law enforcement into a protected computer to monitor the trespasser's communications.  |
| 218* | Foreign Intelligence Information.   | Change in "primary purpose" standard of FISA to "a significant purpose."  |
| 220  | Nationwide service of search warrants for electronic evidence.                                | Court with jurisdiction over investigation may issue a search warrant with nationwide jurisdiction.   |
| 223  | Civil liability for certain unauthorized disclosures.   |   |
| 225  | Immunity for compliance with FISA wiretap.  | Immunity to service providers who assist U.S. with FISA orders.   |

3. Proposed USA PATRIOT Act:

Both the House and Senate versions make the following sunset provisions permanent:

| Section | Title  | H.R. 3199  | Senate version of H.R. 3199 |
|---------|--|------------|-----------------------------|
| 201     | Authority to intercept wire, oral, and electronic communications relating to terrorism.  | Permanent. | Permanent.                  |
| 202     | Authority to intercept wire, oral, and electronic communications relating to computer fraud and abuse offenses.  | Permanent. | Permanent.                  |
| 203(d)  | Authority to share criminal investigative information.<br>(d) allowed sharing of foreign intelligence information obtained in criminal investigation with intelligence side. | Permanent. | Permanent.                  |
| 204     | Clarification of intelligence exceptions from limitations on interception and disclosure of wire, oral, and electronic communications.                                       | Permanent. | Permanent.                  |
| 209     | Seizure of voice-mail messages pursuant to warrants.   | Permanent. | Permanent.                  |
| 217     | Interception of Computer Trespasser Communications.  | Permanent. | Permanent.                  |
| 218*    | Foreign Intelligence Information.  | Permanent. | Permanent.                  |
| 220     | Nationwide service of search warrants for electronic evidence.   | Permanent. | Permanent.                  |
| 223     | Civil liability for certain unauthorized disclosures.  | Permanent. | Permanent.                  |
| 225     | Immunity for compliance with FISA wiretap.   | Permanent. | Permanent.                  |

The House and Senate versions provide different fixes to the other sunset provisions:

| Section | Title   | H.R. 3199  | Senate version of H.R. 3199   |
|---------|---|--|---|
| 203(b)  | Authority to share criminal investigative information.<br>(b) allowed sharing of foreign intelligence information obtained in Title III with intelligence side. | <ul style="list-style-type: none"> <li>•Permanent.</li> <li>•Notice to authorizing Court.</li> </ul>   | <ul style="list-style-type: none"> <li>•Permanent.</li> </ul>   |
| 206     | Roving surveillance authority under the Foreign Intelligence Surveillance Act of 1978.  | <ul style="list-style-type: none"> <li>•New sunset of 12/31/2015.</li> <li>•"Specific facts" re target's actions.</li> <li>•15 day notice to FISC.</li> </ul>                  | <ul style="list-style-type: none"> <li>•New sunset of 12/31/2009.</li> <li>•Target must be described with particularity.</li> <li>•10 day notice to FISC.</li> <li>•Reporting requirement to Intel Committees and to Judiciary Committees.</li> </ul> |
| 207     | Duration of FISA surveillance of non-United States persons who are agents of a foreign power.   | <ul style="list-style-type: none"> <li>•Permanent.</li> <li>•Extend the 120-day initiation/1 yr renewal of ELSUR and Search to agents of a foreign power (non USP).</li> </ul> | <ul style="list-style-type: none"> <li>•Permanent.</li> <li>•Extend the 120-day initiation/1 yr renewal of ELSUR and Search to agents of a foreign power (non USP).</li> </ul>  |
| 212     | Emergency disclosure of electronic communications to protect life and limb.   | <ul style="list-style-type: none"> <li>•Permanent.</li> <li>•Annual report.</li> </ul>   | <ul style="list-style-type: none"> <li>•Permanent.</li> <li>•Annual report.</li> <li>•Removes immediate danger standard.</li> </ul>   |

|     |  |   |  |
|-----|--|---|--|
| 214 | Pen register and trap and trace authority under FISA.                              | •Permanent.   | •Permanent.<br>•Orders may direct carriers to supply customer info.<br>•AG report to Judiciary Committees.   |
| 215 | Access to records and other items under the Foreign Intelligence Surveillance Act. | •New sunset of 12/31/2015.<br>•FBI Director approval for library or book store.<br>•Recipients may challenge in FISC. | •New sunset of 12/31/2009.<br>•Order must describe with particularity.<br>•FBI Dir. or DD approval for library, book store, firearms sales, or medical records.<br>•Recipients may challenge in FISC.<br>•Adds Judiciary Committees for reporting. |

4. Other Provisions of Interest in the USA PATRIOT Reauthorization Act:

| Section | Title  | H.R. 3199  | Senate version of H.R. 3199  |
|---------|--|--|--|
| 213     | USA PATRIOT Act - Delayed Notice search warrants. This was a permanent provision.                | •180 day notice with 90 day extensions.<br>•U.S. Courts report annually to Judiciary Committees. | •7 day notice with extensions of 90 days.<br>•U.S. Courts report to Congress annually. |
| 6001    | “Lone Wolf” provision of Intelligence Reform and Terrorism Prevention Act expires on 12/31/2005. | •New sunset.<br>•12/31/2015  | •New sunset.<br>•12/31/2009  |

|                    |                           |   |   |
|--------------------|---------------------------|---|---|
| Multiple sections. | National Security Letters | <ul style="list-style-type: none"> <li>•New 18-3511 authorizes judicial enforcement.</li> <li>•Disclosure to attorney.</li> <li>•Judicial review of NSLs.</li> <li>•Reporting requirement to include Judiciary Committees.</li> </ul> | <ul style="list-style-type: none"> <li>•Amends 18-2709 to permit judicial enforcement.</li> <li>•Disclosure to attorney.</li> <li>•Amends 18-2709 to allow judicial challenge.</li> </ul> |
|--------------------|---------------------------|---|---|

5. Future Legislation?:

- Administrative Subpoenas:
  - Not contained in either version of Bill (HR 3199; S 1389).
  - FBI wanted them included in USA PATRIOT Act reauthorization.
  - Time tested law enforcement tool.
  - Over 300 grants of administrative subpoena authority in federal government.
  - Examples: Used in health care fraud, and child exploitation cases.
  - Not available in terrorism investigation.
  - Would like to see them addressed in future legislation.



## National Security Law Policy and Training Unit

Unit Chief

Room 7947 JEH

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### ADMINISTRATIVE SUBPOENAS

1. The Administration supports granting the FBI the ability to use administrative subpoenas. The Attorney General, however, indicated to Senator Specter that he did not want debate over administrative subpoenas to distract from the overarching goal of reauthorizing the USA PATRIOT Act.
2. Administrative subpoenas are a constitutional, time tested, ordinary law enforcement tool.
  - a. Like grand jury subpoenas, section 215 orders, and national security letters, administrative subpoenas are used as a building block of an investigation.
  - b. Operate under a standard of relevance.
  - c. Administrative subpoenas exist in more than 300 instances. The Office of Legal Policy's Report to Congress on the Use of Administrative Subpoena Authorities by Executive Branch Agencies and Entities indicated that 335 provisions grant administrative subpoena authorities to federal government entities in furtherance of specified statutory schemes.
  - d. They are not available to the FBI in national security investigations.
  - e. FBI has authority to issue administrative subpoenas in health care fraud investigations, drug investigations, and in certain investigations of crimes against children. In health care fraud investigations, the Attorney General delegated this authority to *U.S. Attorneys Offices* and in *drug and child pornography* investigations, authority was delegated to the management level within the FBI.
    - In 2001, DOJ issued 2102 administrative subpoenas in federal health care investigations and 1783 in child abuse and exploitation investigations.
3. Administrative subpoenas provide a mechanism for obtaining relevant information in terrorism investigations quickly and without a significant expenditure of person hours.

Administrative subpoenas compel the recipient to provide documents to the FBI, as opposed to national security letters which request documents.

- a. Even if available in the particular situation, grand jury subpoenas may cause delays when (1) an AUSA is not available, (2) a grand jury is not sitting at the moment documents are needed, or (3) a grand jury is not empaneled in the judicial district where the investigation is taking place.
- b. Section 215 orders are classified and thus more difficult for the FBI and the recipient to handle than unclassified administrative subpoenas.
4. Like grand jury subpoenas, administrative subpoenas are **subject to pre-enforcement judicial review**.
5. Safeguards are built into the system:
  - a. FBI bound by the Attorney General's Guidelines.
  - b. Administrative subpoenas would require FBI approval – SAC.
  - c. Recipient would be able to challenge in Court.
  - d. If Congress provides for reporting requirements, they should be designed to protect the identities of the people and institutions involved.
6. Congress should not limit the use of administrative subpoenas to exigent circumstances.

“With regard to exigent circumstances, terrorism cases are, by their very nature, potentially life threatening and unpredictable. Because the ultimate target and timing of a terrorist scheme may not be readily apparent, granting law enforcement the ability to respond quickly in these situations is critical. Any attempt to fashion language in the statute to cover every potential exigency is likely to fall short. This shortcoming would limit the usefulness of the statute and could result in grave consequences...”  
(Statement of Rachel Brand, Principal Deputy Assistant Attorney General, Office of Legal Policy, June 22, 2004).
7. Granting administrative subpoena authority would not make 215 superfluous. For certain types of sensitive information or quantities of documents (bulk collection), the FBI may well choose to use a 215 order.

Date: 12 January 2006

NSL VIO-13831



## USA PATRIOT Improvement and Reauthorization Act of 2006

### Expiring Provisions:

The USA PATRIOT Act ("Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism") of 2001 became law on October 26, 2001, with overwhelming bipartisan support (Senate passed it 98-1; House passed it 357-66). Significant provisions of the USA PATRIOT Act were scheduled to "sunset" on December 31, 2005, including the following: Sections 201 & 202 (expanded Title III predicates for terrorism related crimes); Section 203 (information sharing for foreign intelligence obtained in Title III and criminal investigations); Section 206 (roving FISA surveillance); Section 207 (extended duration for certain FISAs); Section 212 (emergency disclosure of e-mail and records by ISPs); Section 215 (access to business records under FISA); Section 218 (change in the "primary purpose" standard of FISA); and, Section 220 (nationwide search warrants for electronic evidence).

### Congressional Activity:

On December 14, 2005, the House passed the USA PATRIOT Improvement and Reauthorization Act of 2006 conference report. The Bill stalled when the Senate failed to invoke a cloture petition to end the debate on December 16, 2005. On December 22, 2005, Congress agreed to extend the USA PATRIOT Act until February 3, 2006. On February 2, 2006, Congress again agreed to extend the USA PATRIOT Act until March 10, 2006.

During the debate on the USA PATRIOT Act renewal (between April 5, 2005, and June 10, 2005), Congress held 18 hearings (including hearings before the Senate Select Committee on Intelligence, the Senate Judiciary Committee, the House Judiciary Committee, and the House Permanent Select Committee on Intelligence). The list of executive branch witnesses included the Attorney General (along with 22 other DOJ employees), the FBI Director, the FBI General Counsel, the Assistant Director of Counterterrorism (along with 3 other FBI employees); and officials of the NSA and the CIA.

On February 17, 2006, the Senate voted against an attempt to block the USA PATRIOT Improvement and Reauthorization Act of 2006 by a vote of 96-3. It is anticipated that the Bill will be passed before the March 10, 2006, deadline.

### Projections:

#### • Sunset Provisions:

Most of the expiring provisions will become permanent. Congress will impose new "sunsets" on some of the more controversial provisions: Section 206 (roving FISA surveillance) and Section 215 (access to business records under FISA), along with the "Lone Wolf" provision of IRTPA (Section 6001 of the Intelligence Reform and Terrorism Prevention Act of 2004) will sunset again on December 31, 2009.



- Section 206 (roving FISA surveillance):

The new Bill will require that the Government must describe the "specific" target when the target's identity is not known. The Government must notify the FISC on an ongoing basis regarding the use of the authority. Additionally, it enhances the Congressional oversight of the authority through additional reporting.

- Section 207 (duration of certain FISA surveillance):

The duration of FISA surveillance and physical search for non-US persons will be increased from the current standard of 90 day initiations and 90 renewals. ELSUR and Physical Search coverage will go to a 120 day initiation and 1 year renewal, while the pen register/trap and trace will go to a 1 year initiation. This will result in tremendous savings for DOJ OIPR and the FBI.

- Section 215 (access to business records under FISA):

There are significant changes projected for Section 215. The new Bill will apply a 3 part "presumptively relevant" test to the request for business records. The records will be presumptively relevant if they pertain to "(i) a foreign power or an agent of a foreign power, (ii) the activities of a suspected agent of a foreign power who is the subject of such authorized investigation, or (iii) an individual in contact with, or known to, a suspected agent of a foreign power who is the subject of such authorized investigation..."

Special categories of records requested under Section 215 will require special approval. The Director, Deputy Director, or the Executive Director for National Security will have to sign off on requests for library records, book sales and book customer lists, firearm sales records, tax records, educational records, and medical records.

The Bill will provide additional protection for 215 recipients, including the following: a reasonable time to produce the records; the authority to disclose the request to an attorney; the right to challenge the request in the FISC; the requirement for the Government to describe the items requested with "sufficient particularity;" and, the requirement that the Government develop special minimization procedures.

The Bill will include enhanced Congressional oversight of Section 215. DOJ will be required to report annually to the HJC, the HPSCI, the SJC, and the SSCI on the total number of 215 requests (unclassified report) and the number of requests for the special categories of business records. Additionally, the Bill directs the DOJ IG to audit the effectiveness and use of 215 for the years 2002 to 2006.

### **Data-Mining:**

Section 126 of the new Bill requires that, "not later than one year after the date of enactment," DOJ must submit a report to Congress on the DOJ's use or development of pattern-based data-mining technology.

**National Security Letters:**

The new Bill modifies the National Security Letter authorities in a number of ways. It clearly establishes the judicial review of NSLs by allowing the recipient to disclose the NSL to obtain legal advice, and by allowing the recipient to petition a District Court to modify or set aside the NSL request or the non-disclosure provision of the NSL. The Bill enhances Congressional oversight by requiring 6 month reports to the HJC, HPSCI, the House Committee on Financial Services, the SJC, SSCI, and the Senate Committee on Banking Housing, and Urban Affairs. Additionally, the DOJ IG's office is directed to audit the effectiveness and use of NSLs covering 2003 to 2006.

Information provided by:



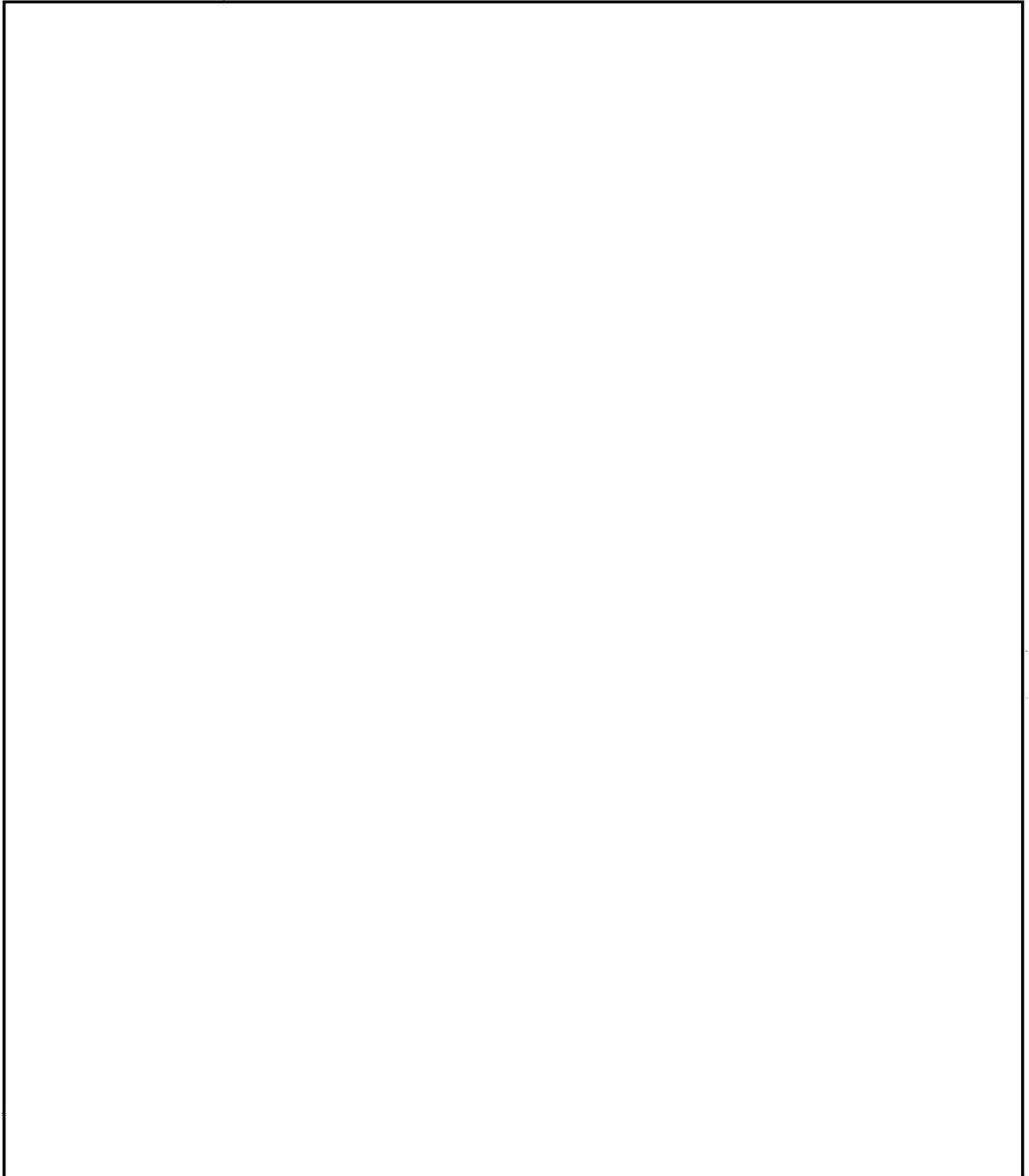
National Security Law Branch  
Office of the General Counsel

Dated: 02/21/2006

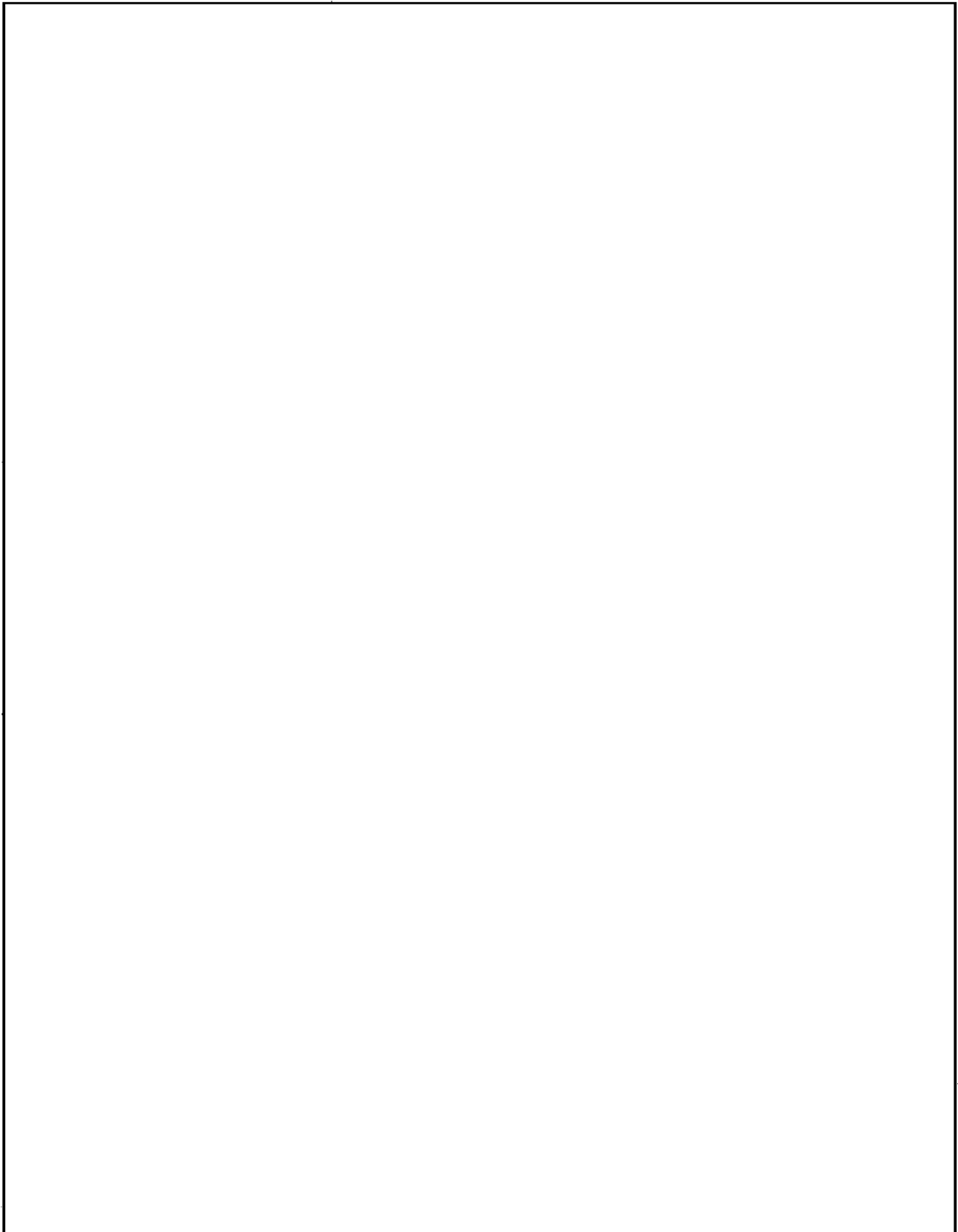
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Referral/Consult

**Comments from Justice Department Components  
on FBI Response to ODNI Request for Intelligence Authorization Proposals**



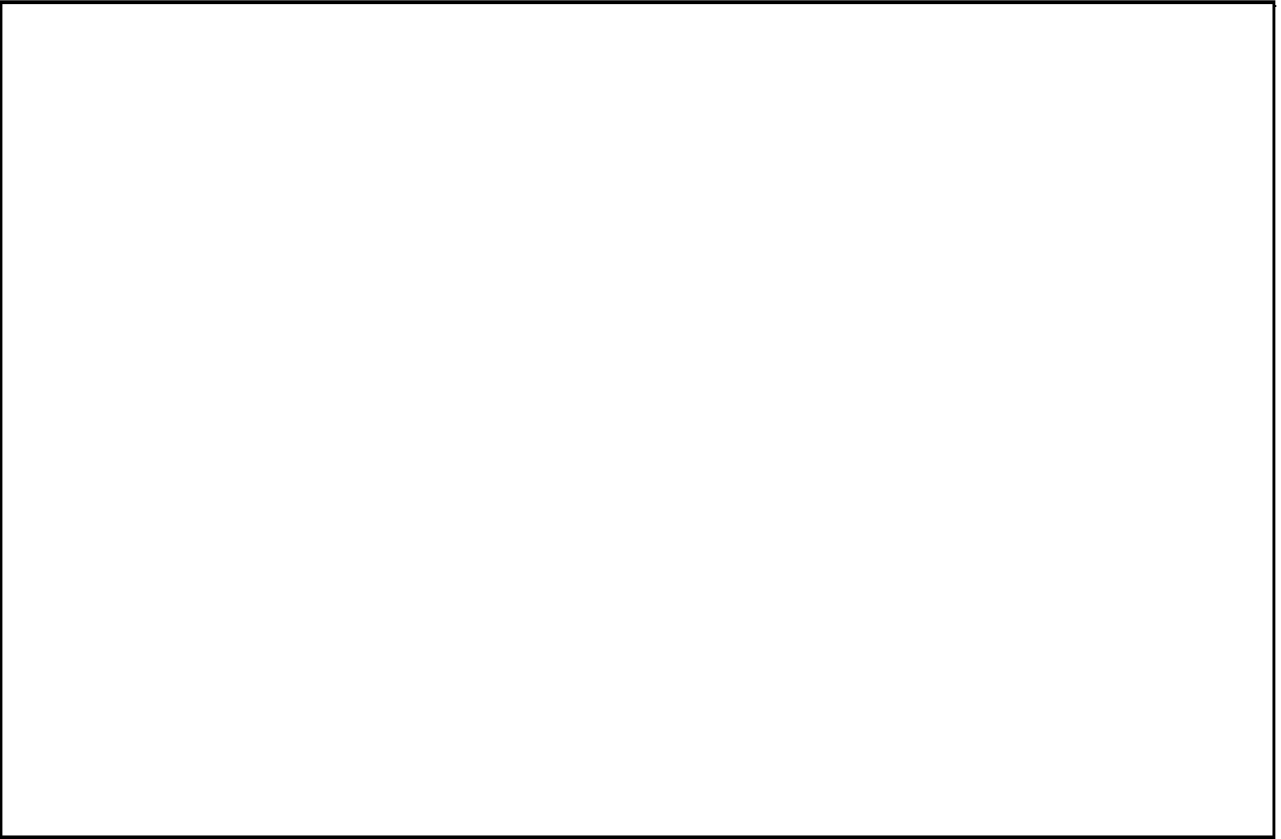
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Referral/Consult





National Security Law Policy and Training Unit

Unit Chief

Room 7947 JEH

202-324-

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8 November 2005

**NATIONAL SECURITY LETTERS**

**I. Defined:**

•National Security letters are a specific type of administrative request that allows the FBI to obtain **certain limited types of information** without court intervention:

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

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

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

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

•NSLs are used as preliminary building block of an investigation - like grand jury subpoenas and FISA section 215 business records orders.

•NSLs are limited to the described categories of records. If the information sought falls outside of these categories, the FBI must use another investigative tool (e.g., grand jury subpoena or 215 order).

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 07-23-2007 BY 65179dmh/ksr/lmf

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NSL VIO-13839

| Statute   | NSL - Use and Type of Information Obtained  | Date Available to FBI <sup>1</sup> |
|---|---|------------------------------------|
| Electronic Communications Privacy Act<br>18 U.S.C. § 2709(e)                  | <ul style="list-style-type: none"> <li>• Telephone subscriber or Electronic subscriber information (limited to name, address, and length of service).</li> <li>• Telephone local and long distance toll billing records.</li> <li>• Electronic communications transactional records (transaction/activity logs and e-mail header information).</li> </ul> | 1986                               |
| Right to Financial Privacy Act<br>12 U.S.C. § 3414(a)(5)                      | <ul style="list-style-type: none"> <li>• Financial records.</li> </ul>  | 1978                               |
| Fair Credit Reporting Act<br>15 U.S.C. § 1681u(a)<br><br>15 U.S.C. § 1681u(b) | <ul style="list-style-type: none"> <li>• Consumer identifying information.</li> <li>• Identity of financial institution.</li> </ul>   | 1996                               |
| Fair Credit Reporting Act<br>15 U.S.C. § 1681v                                | <ul style="list-style-type: none"> <li>• Full credit reports from credit bureau.</li> </ul>   | 2001                               |

**II. Relevance Standard:**

The standard for issuing an NSL is relevance:

- to an authorized investigation to protect against international terrorism; or,
- clandestine intelligence activities provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the First Amendment of the Constitution of the United States. (The 1681v NSL standard is slightly different to

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<sup>1</sup> Source: CRS Report for Congress dated April 15, 2005 - Administrative Subpoenas and National Security Letters in Criminal and Foreign Intelligence Investigations: Background and Proposed Adjustments.



reflect that it applies only to international terrorism investigations.)

Prior to the Patriot Act, the standard for issuance of an NSL was that the target or the communication was tied to a foreign power. That is no longer the case.

### III. Approval Authority:

The authority to sign NSLs has been delegated to:

- the Deputy Director and Executive Assistant Director for CT/CI;
- Assistant Directors in charge and all DADs for CT/CI/Cyber (except that CI and Cyber ADs and DADs do not have any authority with respect to 1681v NSLs);
- General Counsel;
- Deputy General Counsel for National Security Affairs;
- Assistant Directors in Charge in NY, D.C., and LA; and,
- all SACs (An acting SAC may not sign an NSL).

### IV. Dissemination:

• Information obtained through the use of an NSL may be disseminated in accordance with general standards set forth in The Attorney General's Guidelines for FBI National Security Investigation and Foreign Intelligence Collection (NSIG).

• Dissemination is further subject to specific statutory limitations:

- toll record NSL statute, ECPA, 18 U.S.C. §2709, and financial record NSL statute, RFPFA, 12 U.S.C. §3414(a)(5)(B), permit dissemination if per NSIG and information is clearly relevant to responsibilities of recipient agency;
- limited credit information NSL statute, FCRA, 15 U.S.C. §1681u, permits dissemination to other federal agencies as may be necessary for the approval or conduct of an FCI investigation; and,
- no special statutory rules for dissemination under full credit report NSL statute, FCRA, 15 U.S.C. §1681v.

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FBI OGC  
National Security Law Policy and Training Unit  
29 August 2005

Re: Senator Durbin's request to declassify NSL numbers

Aggregate annual number of NSLs:

| Year | Total NSLs. |
|------|-------------|
| 2002 |             |
| 2003 |             |
| 2004 |             |

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SECRET



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

January 27, 2006

[Redacted]

Office of the Director  
of National Intelligence  
Washington, D.C. 20511

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Dear [Redacted]

This responds to your letter dated November 18, 2005 on behalf of the Director of National Intelligence (DNI), soliciting proposals for provisions that should be included in the Administration's proposal for the Intelligence Authorization Act for Fiscal Year (FY) 2007. Your letter states that measures that would facilitate information sharing are of particular importance for this legislative cycle.

The FBI's submission is enclosed. We appreciate the DNI's efforts to coordinate and transmit the proposed FY 2007 bill to the Office of Management and Budget for interagency coordination and Administration clearance determinations.

Please do not hesitate to contact me if we can be of further assistance.

Sincerely,

Eleni P. Kalisch  
Assistant Director  
Office of Congressional Affairs

Enclosure

ALL INFORMATION CONTAINED  
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DATE 07-25-2007 BY 65179dnh/rsf/lmf

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NSL VIO-13849

## FBI Legislative Proposals

### 1. Buckley Amendment (Educational Records)

The FBI proposes changing the definition of "educational records" under Buckley. Rather than being "any record in the possession of the institution which relates to a student," the definition should exclude records which would have to be produced pursuant to a National Security Letter (NSL) were the records in the possession of any other entities (e.g., telephone and internet service provider (ISP) records). When schools provide services normally provided by private carriers, the records should be available to the same extent they are available under the NSL statutes from private carriers.

#### Suggested Buckley Amendment Changes

References: The Family Educational Rights and Privacy Act (FERPA)  
Title 20, U.S.C. § 1232g

Regulations governing the Act  
Title 34, C.F.R. § 99.3

Amend 1232g(a)4(A):

"For purposes of this section, the term "educational records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which -

i) contain information directly related to a student,

ii) are maintained by an educational agency or institution or by a person acting for such agency or institution, *and*

*iii) directly relate to the student's academic performance at the educational agency or institution. including, but not limited to the student's school application. current and past school curriculum, current and past school grades, current and past membership in school academic clubs and organizations, current and past participation in tutoring programs, list of current and past teachers/professors, current and past participation in employment programs for academic credit.*

Amend 1232g(a)4(B):

"The term "educational records" does not include -

[i, ii, iii - leave as is]

*iv) records maintained by an educational agency or institution or by a person or entity acting for such agency or institution that relate to the student's name, permanent residential*

address, school residential address, date and place of birth, immigration status, social security number, photographs, dates of attendance at the agency or institution, present or past participation in non-academic clubs, sports, and organizations, major fields of study, degrees and awards received from the educational agency or institution, and most recent previous educational agency or institution attended by the student.

v) records maintained by an educational agency or institution or by a person acting for such agency or institution that relate to a) services provided by the educational agency or institution or by a person or entity acting for such agency or institution which are commonly performed by financial institutions, as defined in 31 U.S.C. § 5312(a)(2) and (c)(1), as incorporated by reference in 12 U.S.C. § 3414, including but not limited to financial aid, grant, or loan services, 2) wire communication services, as defined in 18 U.S.C. § 2510(1), provided by the educational agency or institution or by a person or entity acting for such agency or institution, including but not limited to telephone service, and 3) electronic communication services, as defined in 18 U.S.C. § 1510(12), provided by the educational agency or institution or by a person or entity acting for such agency or institution, including but not limited to internet services.

vi) records maintained by an educational agency or institution or by a person or entity acting for such agency or institution that relate to tuition and expense payments.

vii) records maintained by an educational agency or institution or by a person or entity acting for such agency or institution that relate to employment of a student for which the student is not given academic credit.

viii) educational records, as defined in 1232g(A)(4) above, that relate to a former student who has not been enrolled at the educational agency or institution within three calendar years.

Amend 1232g(j)(1) to provide:

**In general - Notwithstanding subsections (a) through (i) or any provision of State law, the Attorney General (or any Federal officer or employee, in a position not lower than an Assistant Attorney General, designated by the Attorney General) or any United States attorney may submit a written application to a court of competent jurisdiction, including the Foreign Intelligence Surveillance Court, for an ex parte order requiring an educational agency or institution to permit the Attorney General (or his designee) to . . . [collect education record]**

Amend 1232g(j) (2) (A) to provide:

(A) In general

An application under paragraph (1) shall certify that there are specific and articulable facts giving reason to believe that the education records are likely to contain information described in paragraph (1)(A).

*Further, an application under paragraph (1) may contain a certification by the Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director that there is reason to believe that disclosure of the request may endanger the national security of the United States, interfere with a criminal, counterterrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of any person.*

**Amend 1232g(j)(B) to provide:**

**(B) The court shall issue an order described in paragraph (1) if the court finds that the application for the order includes the certification described in subparagraph (A).**

*Further, if the application includes the non-disclosure certification set forth in subparagraph (A) above, the order shall contain a non-disclosure provision directing that no educational agency or institution, or officer, employee or agent thereof, shall disclose to any person (other than those to whom such disclosure is necessary in order to comply with the request or an attorney to obtain legal advice with respect to the production of records in response to the order) that the Federal Bureau of Investigation has sought or obtained access to information or records under this section.*

**Add 1232g(j)(C)**

*The recipient of the order for records under subparagraph (B) may petition the court for an order modifying or setting aside the nondisclosure requirement imposed in connection with such a request. Any such petition shall be filed with the court under seal. The court may modify or set aside such a nondisclosure requirement if there is no reason to believe that the disclosure would endanger the national security of the United States, interfere with a criminal, counterterrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of any person. If the court denies the petition to modify or set aside the nondisclosure requirement the recipient shall be precluded for a period of five years from filing another petition to modify or set aside the nondisclosure requirement.*

**ELIMINATE:**

**1232g(a)(5)(A) and (B) relating to directory information**

**ADD, instead, at a new section 1232g(5):**

*Nothing in this statute is intended to supplant or limit the authority of the Federal Bureau of Investigation to carry out investigations and other activities, including obtaining non-educational records, as defined in subparagraphs 4(A) and 4(B) above, from an educational agency or institution, under the Electronic Communications Privacy Act, 18 U.S.C. § 2709, and the Right to Financial Privacy Act, 12 U.S.C. § 3414(a)(5).*

2. Conform existing authorities governing access to stored wire and electronic communications and transactional records. (Coordinated with DOJ)

18 U.S.C. 2709 (b) (1) and (2) enumerate the categories of records that wire or electronic communication service providers have a duty to provide in response to a request from the FBI in an intelligence investigation pursuant to a National Security Letter (NSL). 18 U.S.C. 2703 (c)(2) enumerates the categories of records that wire or electronic communications providers are required to disclose to a government entity in connection with a criminal investigation pursuant to an administrative subpoena or other legal process. The categories enumerated in 18 U.S.C. 2709 (b) are not the same as the categories enumerated in 18 U.S.C. 2703(c). As a result of this inconsistency, fewer categories of records are provided to the FBI in intelligence investigation than in traditional criminal investigation. Among other differences, 18 U.S.C. 2709 does not permit the FBI to receive payment information from service providers in connection with an intelligence investigation.

The FBI proposes substituting the text of 2703(c)(2) for the categories enumerated in 18 U.S.C. 2709(b)(1) and (2) as follows:

**§2709 Counterintelligence access to telephone toll and transactional records**

(a) Duty to provide - A wire or electronic communication service provider shall comply with a request for subscriber information and toll billing records information, or electronic communication transactional records in its custody or possession made by the Director of the Federal Bureau of Investigation under subsection (b) of this section.

(b) Required certification - The Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in charge in a Bureau field office designated by the Director may -

(1) ~~make a request the name, address, length of service, and local and long distance toll billing records of a person or entity for records~~ if the Director (or his designee) certifies in writing to the wire or electronic communication service provider to which the request is made that the ~~name, address, length of service, and toll billing records~~ are [information sought is] relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment to the Constitution of the United States; and,

(2) ~~make a request the name, address, and length of service of a person or entity for records~~ if the Director (or his designee) certifies in writing to the wire or electronic communication service provider to which the request is made that the information sought is relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment of the Constitution of the United States.

*(3) Upon receipt of a request for records and appropriate certification, a provider of wire or electronic communication service shall disclose to the FBI the*

*(A) name;*

*(B) address;*

*(C) local and long distance telephone connection records, or records of session times and durations;*

*(D) length of service (including start date) and types of service utilized;*

*(E) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and*

*(F) means and source of payment for such service (including any credit card or bank account number).*

*of a subscriber to or customer of such service.*



b6  
b7C

**From:** CAPRONI, VALERIE E. (OGC) (FBI)  
**Sent:** Monday, October 23, 2006 6:07 PM  
**To:** BEERS, ELIZABETH RAE (OCA) (FBI); [redacted] (DO) (FBI)  
**Cc:** [redacted] (OGC) (FBI); THOMAS, JULIE F. (OGC) (FBI);  
[redacted] (OGC) (FBI)  
**Subject:** FW: QUESTION RE "NSLB Legislative Proposals (FY08 Intelligence Authorization Act)"

**Importance:** High  
~~SECRET~~  
**RECORD FISA**

Our proposals.

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

b6  
b7C

**From:** [redacted] (OGC) (FBI)  
**Sent:** Monday, October 23, 2006 2:57 PM  
**To:** THOMAS, JULIE F. (OGC) (FBI); CAPRONI, VALERIE E. (OGC) (FBI)  
**Subject:** FW: QUESTION RE "NSLB Legislative Proposals (FY08 Intelligence Authorization Act)"  
**Importance:** High

~~SECRET~~  
**RECORD FISA**

Julie and Valerie:

Did you forward this to OCA, or are you still reviewing?

[redacted]

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b7C  
b2

**Unit Chief**  
**National Security Law Policy and Training Unit**  
**FBI HQ Room 7975**  
**STU III: (202) 324-[redacted]**  
**Unclassified Fax: (202) 324-[redacted]**  
**Secure Fax: (202) 324-[redacted]**

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

**From:** [redacted] (OGC) (FBI)  
**Sent:** Monday, October 23, 2006 2:35 PM  
**To:** [redacted] (OGC) (FBI)  
**Subject:** QUESTION RE "NSLB Legislative Proposals (FY08 Intelligence Authorization Act)"  
**Importance:** High

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~~SECRET~~  
**RECORD FISA**

[redacted]

Based on our discussions today, I understand that Julie made a few changes to the attached and then forwarded it to GC Caproni.

As you'll recall, the **deadline is today**. Am I correct that GC Caproni will forward it to OCA after her review?

[Redacted]

b6  
b7C

-----Original Message-----  
**From:** [Redacted] (OGC) (FBI)  
**Sent:** Friday, October 20, 2006 4:28 PM  
**To:** [Redacted] (OGC) (FBI)  
**Subject:** FW: NSLB Legislative Proposals (FY08 Intelligence Authorization Act)  
**Importance:** High

~~**SECRET**~~  
**RECORD FISA**

[Redacted]

b6  
b7C  
b2

**Unit Chief**  
**National Security Law Policy and Training Unit**  
**FBI HQ Room 7975**  
**STU III: (202) 324-[Redacted]**  
**Unclassified Fax: (202) 324-[Redacted]**  
**Secure Fax: (202) 324-[Redacted]**

-----Original Message-----  
**From:** [Redacted] (OGC) (FBI)  
**Sent:** Friday, October 20, 2006 4:27 PM  
**To:** THOMAS, JULIE F. (OGC) (FBI)  
**Subject:** FW: NSLB Legislative Proposals (FY08 Intelligence Authorization Act)  
**Importance:** High

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~~**SECRET**~~  
**RECORD FISA**

This legislative wish list is not due until COB Monday now.

We farmed this out to all NSLB Unit Chiefs who were to farm it out to their clients.

We have compiled all responses, and [Redacted] has made all the changes I asked for.

Most of the list is not new and has been submitted before.

I think this just needs a quick review before forwarding to Valerie. This is a just a preliminary submission to get started.

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b7C  
b2

[Redacted]

**Unit Chief**  
**National Security Law Policy and Training Unit**  
**FBI HQ Room 7975**  
**STU III: (202) 324-[Redacted]**  
**Unclassified Fax: (202) 324-[Redacted]**

NSL VIO-13856

Secure Fax: (202) 324-

b2

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

**From:**  (OGC) (FBI) b6  
**Sent:** Friday, October 20, 2006 4:22 PM b7C  
**To:**  (OGC) (FBI)  
**Subject:** NSLB Legislative Proposals (FY08 Intelligence Authorization Act)  
**Importance:** High

**SECRET**  
**RECORD FISA**

b6  
b7C

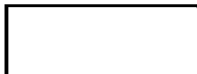


Below, you'll find a compilation of the legislative proposals submitted by NSLB attorneys and certain entities whom they serve. **Recommend** that you forward them to GC Caproni, requesting her approval to submit to OCA.

Important points regarding this submission:

1. OCA would like to receive our proposals **NLT COB** on Monday, 23 October.
2. The attached list does **NOT** represent all OGC proposals--merely NSLB's submission. OCA can expect to receive other submissions from STLU, TSC, et al.
3. OCA does **NOT** expect final legislative proposals in conjunction with this submission. Instead, attendees at the 10 October meeting were asked merely to submit their respective lists of topics for proposals. (OCA did, however, state that any additional information that would could provide at this point would, of course, be helpful and appreciated.)

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**(U) NSLB's legislative proposals for the FY08 Intelligence Authorization Act are as follows:**

**1. (U) Electronic Communications Privacy Act (18 U.S.C. 2709); Buckley Amendments (20 U.S. C. 1232g)**

(U) NSLB submitted proposals that were similar to the attached during last year's legislative cycle. The attached WORD document sets forth the final proposals that DOJ adopted in that regard. Although somewhat different from the proposals that we submitted, the attached would accomplish the same basic purposes that we intended.

NSL VIO-13857

(U) Regarding ECPA, the attached proposal would, among other things, clarify "toll billing" so as to remove the unnecessary limitation we have experienced in many cases. As discussed in the attached, it would replace the "toll billing and transactional record" reference with "records and non-content information pertaining to a subscriber or customer." See the "Analysis" section of the attached for a more detailed discussion.

(U) Regarding Buckley, the attached proposal would, as discussed more fully within the "Analysis" section, amend 20 U.S.C. 1232(g) to expand the statutory provision providing for governmental access to educational records through a reference intended to encompass NSLs. It would permit service of a NSL on an educational institution that meets the definition of "wire or electronic service provider" under ECPA or "financial institution" under the Right to Financial Privacy Act. The proposed amendment would also permit an educational institution to voluntarily provide to the FBI, upon written request, certain items of information, including--but not limited to--directory information, without the restrictions that currently exist for access to such records.

(U) We now renew our request regarding these attached proposals. [NOTE: The attached DOJ document contains mistakes in its headings. Other than the minor administrative matter of correcting those paragraph titles, the attached still represents the "DOJ-blessed" version.]



intel59 doc.doc (35  
KB)

## 2. (U) Administrative Subpoenas

(U) The FBI should be granted the ability to use administrative subpoenas in national security investigations, and their use should not be limited to exigent circumstances. This proposal is certainly not new, and it has already been the subject of much Congressional testimony on the FBI's behalf. (During the recent reauthorization of the USA PATRIOT Act, however, Senator Specter indicated that he did not want this particular debate to distract from the overarching goal of reauthorizing the Act.)

## 3. (U) FISA's Definition of "Agent of a Foreign Power" [50 U.S.C. 1801(b)(1)(A)]

(U) In 50 U.S.C. 1801(b)(1)(A), FISA sets forth as one aspect of the definition of "agent of a foreign power" as follows: "any person other than a United States person, who...acts in the United States as an officers or employee of a foreign power, or as a member of a foreign power...." (Emphasis added)

NSL VIO-13858

(U)

~~(S)~~ This definition addresses a non-USPER who acts as an officer or employee of a foreign power or as a member of a foreign power, so long as he or she "acts in the United States"--in other words, according to OIPR's interpretation, acting while physically present in the United States. [redacted]

[redacted]

OIPR advised that the coverage could no longer be continued under this provision because [redacted]

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[redacted]

(U) We recommend [redacted]

[redacted]

**4. (U) Broadening of "Section 811 Reporting Requirements" (50 U.S.C. 402a)**

(U) Within CD, Counterespionage Section (CD-4) asked that we include the attached among our recommendations.

(U) Currently, the requirement to report immediately to the FBI any indication of an unauthorized disclosure of classified information to a foreign power or agent of a foreign power applies only to departments and agencies within the Executive Branch. (That reporting requirement is generally known as the "811 reporting requirement," based on its origin in Section 811 of the Intelligence Authorization Act of 1995, following the Aldrich Ames case.) The attached proposal would extend that reporting requirement to include certain government contractors, certain Federal judges, and certain members of Congress.



811.legislative.revisions.nslb...

**5. (U) Miscellaneous FISA Amendments**

(U) FISA should be amended to permit the FISC to rule on the "Programs" of other agencies, thereby dramatically reducing the number of FISAs on which we

work.

(U)

[Redacted]

[Redacted]

(U)

[Redacted]

[Redacted]

(U)

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(U)

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[Redacted]

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(U)

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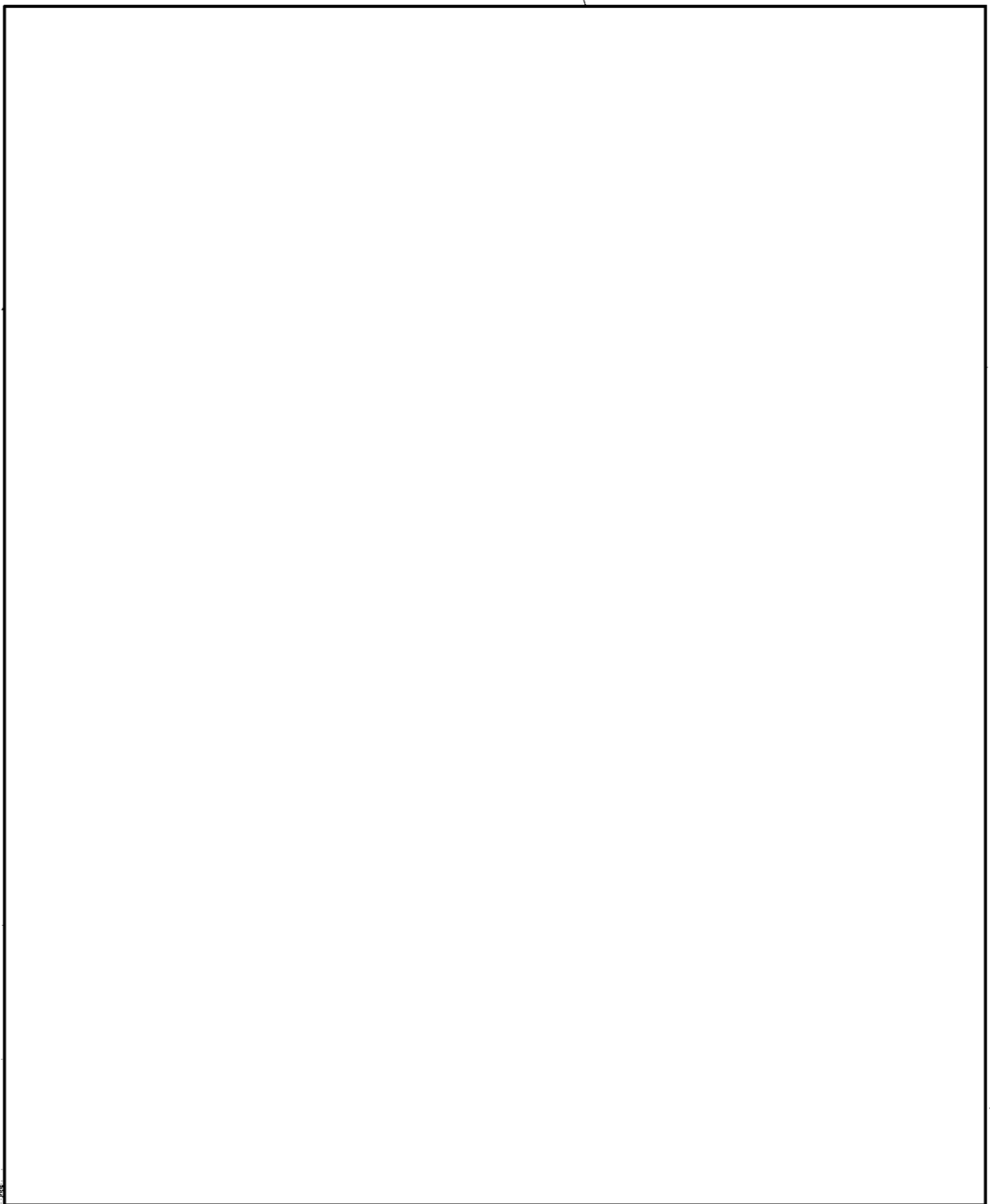
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NSL VIO-13861

Referral/Direct

**Justice Department Proposed Legislative Provisions for Inclusion in the Draft  
Intelligence Authorization Bill for Fiscal Year 2007**

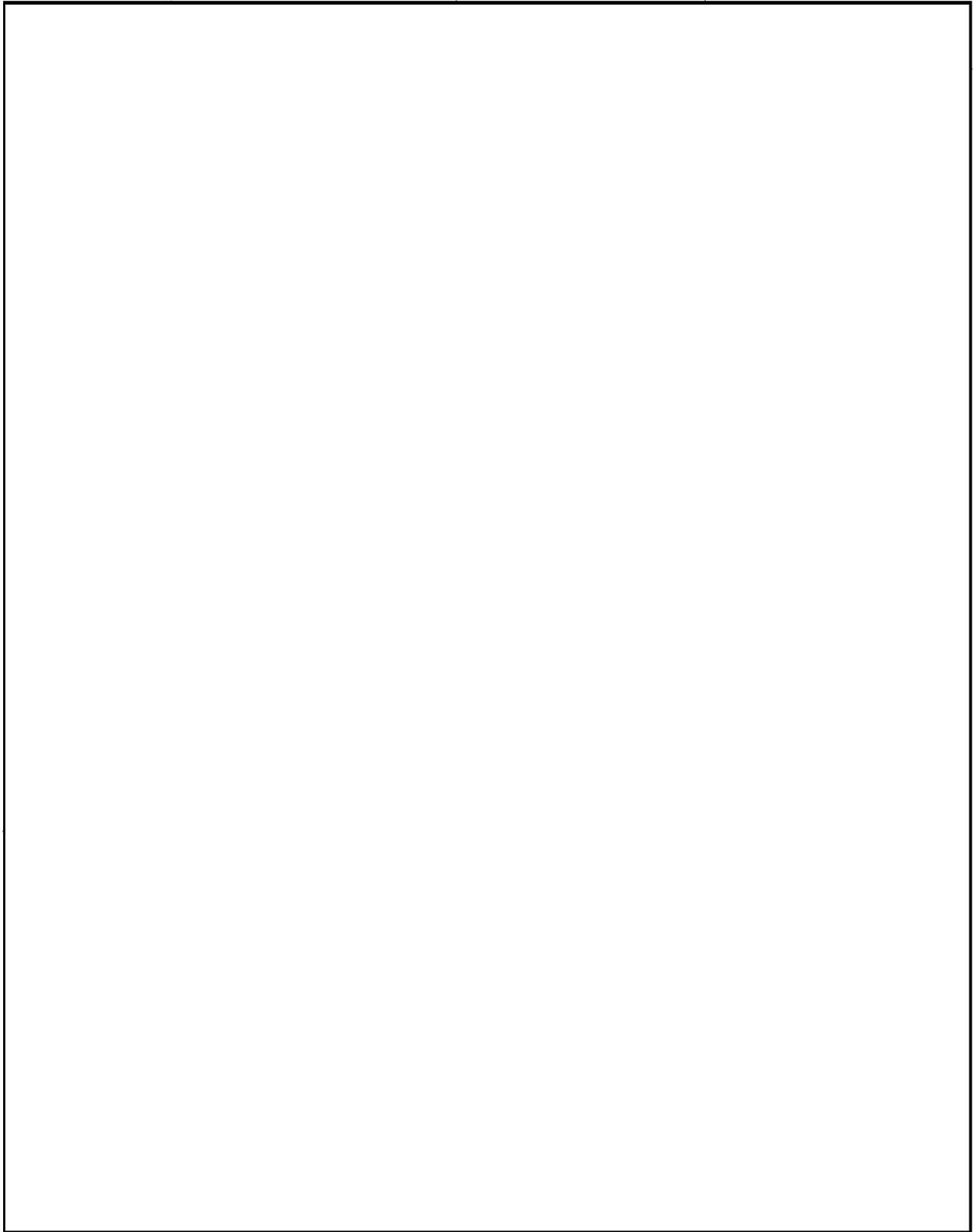


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HEREIN IS UNCLASSIFIED  
DATE 07-26-2007 BY 65179dnh/ksr/lmf

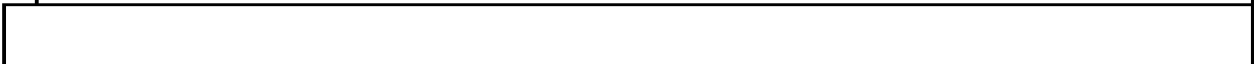
NSL VIO-13862

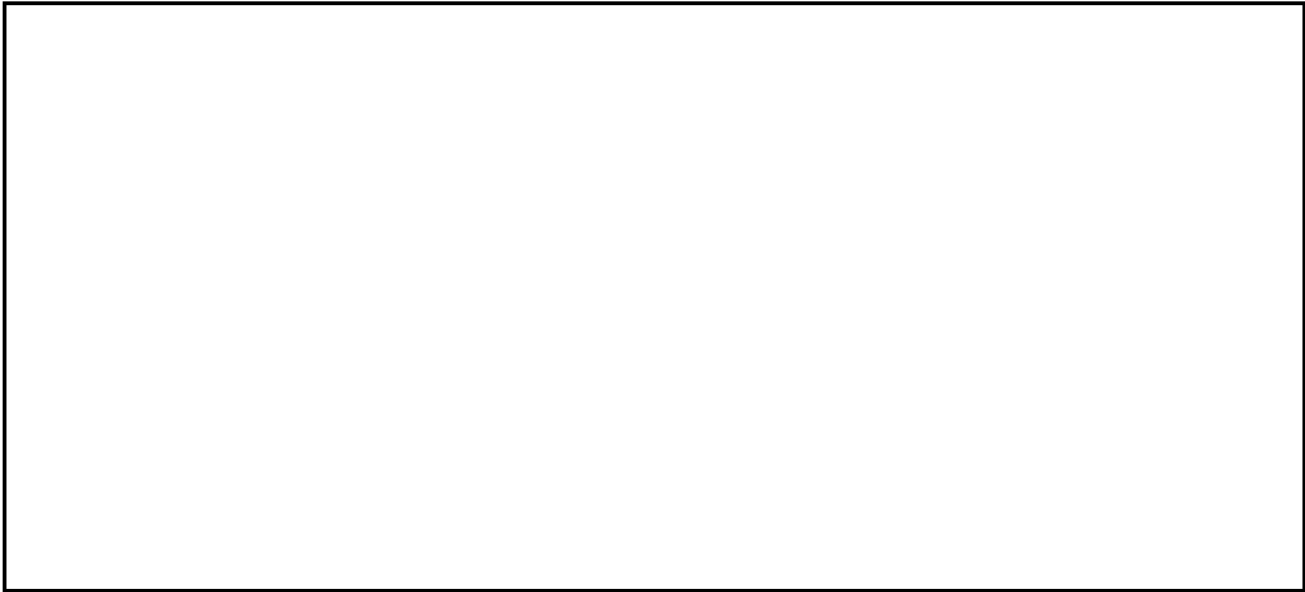


Referral/Direct



Referral/Direct





Referral/Direct.

~~SECRET~~

**From:** [redacted] (OGC) (FBI)  
**Sent:** Thursday, March 30, 2006 10:58 AM  
**To:** [redacted] (OGC) (FBI)  
**Subject:** FYI: FBI Legislative Proposals  
**UNCLASSIFIED**  
**NON-RECORD**

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[redacted]

Per your request at this morning's NSLPTU Meeting, I'm attaching the FBI's legislative proposals and DOJ's comments regarding them.

Also, in the e-mail below, you'll see answers to two of the follow-on questions posed by [redacted] in ODNI's OGC.

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FYI.

[redacted]



FBI Rsp to ODNI DOJ comments re  
datacall.pdf (... fbi proposals....

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

**From:** [redacted] (OGC) (FBI)  
**Sent:** Wednesday, March 29, 2006 5:02 PM  
**To:** BEERS, ELIZABETH RAE (OCA) (FBI)  
**Cc:** THOMAS, JULIE E. (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)  
**Subject:** ODNI Questions re FBI Legislative Proposals

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**UNCLASSIFIED**  
**NON-RECORD**

Beth --

As you requested, I'm responding to [redacted] of ODNI's OGC regarding two of her questions involving the FBI's legislative proposals.

As you and I discussed this afternoon, I've information on two different computer systems--my FBI Intranet account and my Internet Cafe account. With a view toward consolidating it in one answer on one account, I'm sending the answers to you FYI. Then, I intend to FAX a hard copy to [redacted] at ODNI to respond to her

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DATE: 07-26-2007  
CLASSIFIED BY 65179dmh/ksr/mf  
REASON: 1.4 (C)  
DECLASSIFY ON: 07-26-2032

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WHERE SHOWN OTHERWISE  
NSL VIO #13866

questions.

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[redacted] questions and NSLB's answers follow:

**Question No. 1**

**Do we know why 2703 and 2709 evolved differently?**

**Answer No. 1**

Although I seriously doubt that one could find it in the legislative history, our corporate knowledge recalls that it was not by happenstance that the two provisions evolved differently. In other words, Congress intended that we be somewhat more restricted on the intelligence side than on the criminal side. Congress was concerned about our ability to acquire things in secret by what they at least perceived as a lower threshold for intelligence purposes. They wanted that ability held in check to some extent.

**Question No. 2**

**[T]his is going to sound really obvious--how would providing the 2703 information on 2709 targets be beneficial to a counterintell investigation? The first thing that comes to my mind is following the money, but would you please articulate FBI's reasons for seeking the additional information against counterintell targets? I don't want to leave any stones unturned.**

**Answer No. 2**

Thanks to [redacted] who provided the comments below.

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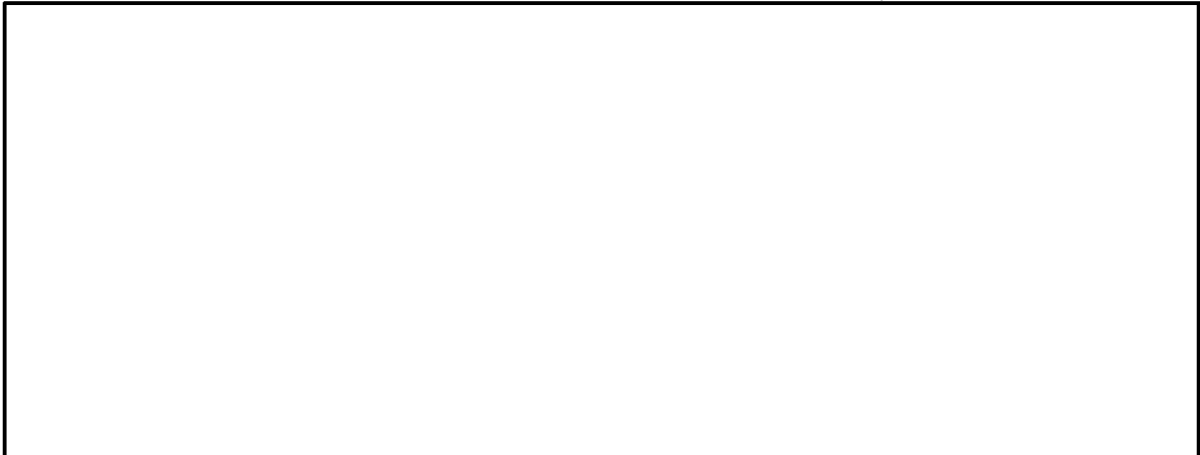
*Caveats:* (1) We understand the above use of the term "counterintell" to be counterintelligence in a very broad, generic sense so as to include all national security investigations. (2) Given the nature of the field work involved, we cannot provide statistical analyses or other hard data to support many of the assertions below. In this case, we are relying on comments from the field over a period of time--in other words, more "corporate knowledge."

The information in 2703 that is lacking is the numerous categories of information. [redacted]


[redacted]

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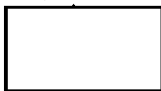
We get "electronic communications transactional records" for ISPs. But, we are much more limited in the "toll billing records" information from telephone companies, because 



 But, if the statute were to make it explicit, then we wouldn't have all these problems with carriers.

I trust the above will assist. But, if additional information is needed, we'll be glad to give it another shot.

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March 2006

(S)

|  | 2001 | 2002 | 2003 | 2004 | 2005 | TOTAL |
|--|------|------|------|------|------|-------|
| <b>Toll Records 18 USC 2709(b)(1)</b>            |      |      |      |      |      |       |
| Total USPER NSLs                                 |      |      |      |      |      |       |
| Different USPER                                  |      |      |      |      |      |       |
| Total Non USPER NSLs                             |      |      |      |      |      |       |
| Different Non USPER                              |      |      |      |      |      |       |
| Total NSLs                                       |      |      |      |      |      |       |
| <b>Subscriber Records 18 USC 2709(b)(2)</b>      |      |      |      |      |      |       |
| Total USPER NSLs                                 |      |      |      |      |      |       |
| Different USPER                                  |      |      |      |      |      |       |
| Total Non USPER NSLs                             |      |      |      |      |      |       |
| Different Non USPER                              |      |      |      |      |      |       |
| Total NSLs                                       |      |      |      |      |      |       |
| <b>Financial Records 12 USC 3414(a)(5)</b>       |      |      |      |      |      |       |
| Total USPER NSLs                                 |      |      |      |      |      |       |
| Different USPER                                  |      |      |      |      |      |       |
| Total Non USPER NSLs                             |      |      |      |      |      |       |
| Different Non USPER                              |      |      |      |      |      |       |
| Total NSLs                                       |      |      |      |      |      |       |
| <b>Financial Institutions 15 USC 1681u(a)</b>    |      |      |      |      |      |       |
| Total USPER NSLs                                 |      |      |      |      |      |       |
| Different USPER                                  |      |      |      |      |      |       |
| Total Non USPER NSLs                             |      |      |      |      |      |       |
| Different Non USPER                              |      |      |      |      |      |       |
| Total NSLs                                       |      |      |      |      |      |       |
| <b>Consumer Identifying Info 15 USC 1681u(b)</b> |      |      |      |      |      |       |
| Total USPER NSLs                                 |      |      |      |      |      |       |
| Different USPER                                  |      |      |      |      |      |       |
| Total Non USPER NSLs                             |      |      |      |      |      |       |
| Different Non USPER                              |      |      |      |      |      |       |
| Total NSLs                                       |      |      |      |      |      |       |
| <b>Court Order Info 15 USC 1681u(c)</b>          |      |      |      |      |      |       |
| Total USPER NSLs                                 |      |      |      |      |      |       |
| Different USPER                                  |      |      |      |      |      |       |
| Total Non USPER NSLs                             |      |      |      |      |      |       |
| Different Non USPER                              |      |      |      |      |      |       |
| Total NSLs                                       |      |      |      |      |      |       |

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NSL VIO-13869



## National Security Law Policy and Training Unit

Unit Chief   
Room 7947 JEH  
202-324-

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12 January 2006

### I. NSL Information:

#### A. Statutory Authority:

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

- 1) Under the **Electronic Communications Privacy Act, 18 U.S.C. § 2709**, the FBI can obtain telephone and email communication records from telephone companies and internet service providers.
- 2) Under the **Right to Financial Privacy Act, 12 U.S.C. § 3414(a)(5)(A)**, the FBI can obtain the records of financial institutions (which is very broadly defined).
- 3) Under the **Fair Credit Reporting Act, 15 U.S.C. §§ 1681u(a) and (b)**, the FBI can obtain a list of financial institutions and consumer identifying information from a credit reporting company.
- 4) Under the **Fair Credit Reporting Act, 15 U.S.C. § 1681v**, the FBI can obtain a full credit report in a counterterrorism case. This provision was created by the 2001 USA Patriot Act.



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

**B. FBI's Use of NSLs Post-USA PATRIOT Act:**

- The standard for issuing an NSL is **relevance** to an authorized investigation to protect against international terrorism or clandestine intelligence activities provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the First Amendment of the Constitution of the United States. (The 1681v NSL standard is slightly different to reflect that it applies only to international terrorism investigations.)

- The new "relevance" standard resulted in the increase in the number of NSLs issued by the FBI to further its investigations.

- NSLs are used as preliminary building block of an investigation - like grand jury

subpoenas and FISA section 215 business records orders.

- NSLs are limited to the described categories of records. If the information sought falls outside of these categories, the FBI must use another investigative tool (e.g., grand jury subpoena or 215 order).

**C. Process:**

- A request for an NSL has two parts. One is the NSL itself, and one is the EC approving issuance of the NSL.

- The cover EC serves four functions. It documents the predication for the NSL by stating why the information sought is relevant to an authorized investigation. It documents the approval of the NSL by field supervisors. It contains information needed to fulfill Congressional reporting requirements for each type of NSL (subject's USP status, type of NSL issued, and the number of phone numbers, email addresses, account numbers or individual records being requested in the NSL). Lastly, it transmits the NSL to NSLB for reporting requirements, to CTD, CD, or Cyber for informational purposes, and, in the case of personal service, to the requesting squad or delivering field division for delivery.

**II. Comparison of National Security Letters pre and post-USA PATRIOT Act:**

**A. Standard:**

| Pre-USA PATRIOT Act  | Post-USA PATRIOT Act  |
|--|---|
| <p><b>Specific and articulable facts standard</b></p> <ul style="list-style-type: none"> <li>•The pre-USA PATRIOT Act standard for the issuance of an NSL required the records be <b>relevant to an authorized foreign counterintelligence investigation</b> and that the FBI have <b>specific and articulable facts</b> that the requested records <b>related to an agent of a foreign power or a foreign power</b>.</li> <li>•Put differently, the FBI had to have reached a defensible position that the person was a terrorist or spy before the FBI could gather the base information it needed to determine whether the person was a terrorist or spy.</li> <li>•The standard was unreasonably high. An NSL is clearly analogous to a grand jury subpoena, which can be issued during a criminal investigation to obtain relevant information. It would be anomalous if it were easier to obtain these sorts of record in a routine criminal investigation than in an investigation to protect the national security.</li> </ul> | <p><b>Relevance Standard (Section 505)</b></p> <p>The standard for issuing an NSL is <b>relevance</b> to an authorized investigation—</p> <ul style="list-style-type: none"> <li>•to protect against international terrorism; or,</li> <li>•clandestine intelligence activities; and</li> <li>•provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the First Amendment of the Constitution of the United States.</li> </ul> |

**B. Approval Authority for NSLs:**

| Pre-USA PATRIOT Act  | Post-USA PATRIOT Act  |
|--|---|
| <p>Approval authority could be no lower than Deputy Assistant Director</p> | <p>The authority to sign NSLs has been <u>delegated</u> to:</p> <ul style="list-style-type: none"><li>• the Deputy Director and Executive Assistant Director for CT/CI;</li><li>• Assistant Directors in charge and all DADs for CT/CI/Cyber (except that CI and Cyber ADs and DADs do not have any authority with respect to 1681v NSLs);</li><li>• General Counsel;</li><li>• Deputy General Counsel for National Security Affairs;</li><li>• Assistant Directors in Charge in NY, D.C., and LA; and,</li><li>• all SACs (An acting SAC may not sign an NSL).</li></ul> |

**C. Retention/Dissemination of NSL Information:**

| Pre-USA PATRIOT Act   | Post-USA PATRIOT Act   |
|---|--|
| <ul style="list-style-type: none"> <li>•As stated, FBI Policy pre and post USA PATRIOT Act has been to maintain the information derived from NSLs regardless of whether it turns out to be relevant (for example - FBI determines that a target is not a threat). CTD mandates that all telephone information go into Telephone Applications.</li> <br/> <li>•Dissemination is further subject to specific statutory limitations:</li> <br/> <li>•Privacy Act regarding U.S. Person information;</li> <br/> <li>• toll record NSL statute, ECPA, 18 U.S.C. §2709, and financial record NSL statute, RFPA, 12 U.S.C. §3414(a)(5)(B), permit dissemination if per NSIG and information is clearly relevant to responsibilities of recipient agency;</li> <br/> <li>•limited credit information NSL statute, FCRA, 15 U.S.C. §1681u, permits dissemination to other federal agencies as may be necessary for the approval or conduct of an FCI investigation; and,</li> <br/> <li>•no special statutory rules for dissemination under full credit report NSL statute, FCRA, 15 U.S.C. §1681v.</li> </ul> | <ul style="list-style-type: none"> <li>•Information obtained through the use of an NSL may be retained and disseminated in accordance with general standards set forth in The Attorney General's Guidelines for FBI National Security Investigation and Foreign Intelligence Collection (NSIG).</li> <br/> <li>•FBI Policy pre and post USA PATRIOT Act has been to maintain the information derived from NSLs regardless of whether it turns out to be relevant (for example - FBI determines that a target is not a threat). CTD mandates that all telephone information go into Telephone Applications.</li> <br/> <li>•Dissemination is further subject to specific statutory limitations:</li> <br/> <li>•Privacy Act regarding U.S. Person information;</li> <br/> <li>• toll record NSL statute, ECPA, 18 U.S.C. §2709, and financial record NSL statute, RFPA, 12 U.S.C. §3414(a)(5)(B), permit dissemination if per NSIG and information is clearly relevant to responsibilities of recipient agency;</li> <br/> <li>•limited credit information NSL statute, FCRA, 15 U.S.C. §1681u, permits dissemination to other federal agencies as may be necessary for the approval or conduct of an FCI investigation; and,</li> <br/> <li>•no special statutory rules for dissemination under full credit report NSL statute, FCRA, 15 U.S.C. §1681v.</li> </ul> |

### III. Congressional Reporting? What? When?:

| Statute  | Reporting Requirement   |
|--|---|
| <p><b>Electronic Communications Privacy Act</b><br/>18 U.S.C. §2709(e)</p> | <p>Semiannual Reporting:</p> <p>For toll billing/electronic communication transactional records the FBI reports –</p> <ul style="list-style-type: none"> <li>•Total NSLs re Non-US Persons.</li> <li>•Total # of investigations of different Non-USPs.</li> <li>•Total NSLs re US Persons.</li> <li>•Total # of investigations of different USPs.</li> </ul> <p>For subscriber information, the FBI only reports # of NSLs.</p> |
| <p><b>Right to Financial Privacy Act</b><br/>12 U.S.C. § 3414(a)(5)</p>    | <p>Semiannual Reporting:</p> <p>For requests for financial records, the FBI reports –</p> <ul style="list-style-type: none"> <li>•Total NSLs re Non-US Persons.</li> <li>•Total # of investigations of different Non-USPs.</li> <li>•Total NSLs re US Persons.</li> <li>•Total # of investigations of different USPs.</li> </ul>  |
| <p><b>Fair Credit Reporting Act</b><br/>15 U.S.C. § 1681u(a) &amp; (b)</p> | <p>Semiannual Reporting</p> <p>For requests for financial institution and consumer identifying information, and consumer credit reports, the FBI reports–</p> <ul style="list-style-type: none"> <li>•NSLs re Non-US Persons.</li> <li>•NSLs re USPs.</li> </ul>  |
| <p><b>Fair Credit Report Act</b><br/>15 U.S.C. § 1681v</p>                 | <p>No reporting requirement under the Fair Credit Reporting Act.</p>  |

The FBI does not have a reporting requirement for full credit reports under the Fair Credit Reporting Act (15 U.S.C. § 1681v). For the other NSLs, the FBI complies with semiannual reporting requirement as required by statute.

#### **IV. Problems with NSLs:**

- NSLs limited to specific categories of information (limited by statute).
- NSLs can be unreliable in time-sensitive investigations since the FBI often encounters delays in the process.

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## National Security Letters (NSLs)

### I. (U) Four statutes authorizing the FBI to issue National Security Letters:

#### **Electronic Communications Privacy Act 18 U.S.C. §2709(e)**

- Telephone Subscriber or Electronic Subscriber information (limited to name, address, and length of service).
- Telephone local and long distance toll billing records.
- Electronic Communication Transactional Records (e.g. transaction/activity logs and e-mail header information).

#### **Right to Financial Privacy Act 12 U.S.C. § 3414(a)(5)**

- Financial Records

#### **Fair Credit Reporting Act 15 U.S.C. § 1681u(a) & (b)**

- Consumer identifying Information.
- Identity of Financial Institution.

#### **Fair Credit Report Act 15 U.S.C. § 1681v**

- Full credit reports from credit bureau.

### II. (U) FBI's Use of NSLs Post-USA PATRIOT Act:

**Relevance Standard** -- The standard for issuing an NSL is **relevance** to an authorized investigation--

- to protect against international terrorism; or,
- clandestine intelligence activities; and
- provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the First Amendment of the Constitution of the United States.

The new "relevance" standard resulted in the increase in the number of NSLs issued by the FBI to further its investigations.

DATE: 07-26-2007  
CLASSIFIED BY: 65179dmh/ksl/lmf  
REASON: 1.4 (C)  
DECLASSIFY ON: 07-26-2032

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NSL VIO-13878

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED EXCEPT  
WHERE SHOWN OTHERWISE



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**III. (U) Approval Level:**

The authority to sign NSLs has been delegated to:

- the Deputy Director and Executive Assistant Director for CT/CI; Assistant Directors in charge and all DADs for CT/CI/Cyber (except that CI and Cyber ADs and DADs do not have any authority with respect to 1681v NSLs); General Counsel; Deputy General Counsel for National Security Affairs; Assistant Directors in Charge in NY, D.C., and LA; and, all SACs (An acting SAC may not sign an NSL).

**IV. (U) Retention/Dissemination of NSL Information:**

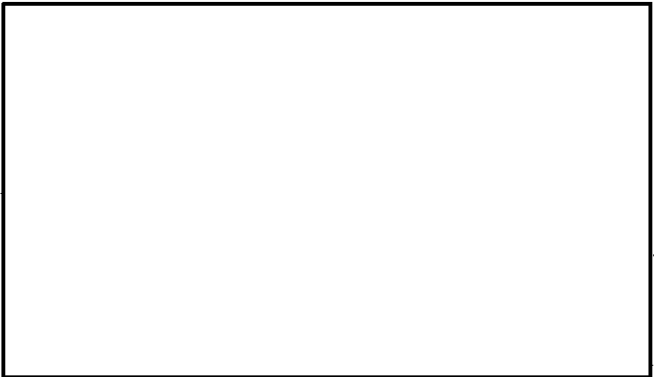
Information obtained through the use of an NSL may be retained and disseminated in accordance with general standards set forth in The Attorney General's Guidelines for FBI National Security Investigation and Foreign Intelligence Collection (NSIG) (10/31/2003).

**V. (U) Problems with NSLs:**

- NSLs limited to specific categories of information (limited by statute).
- NSLs can be unreliable in time-sensitive investigations since the FBI often encounters delays in the process.

**VI. (S) Numbers of NSLs issued -- 2000 v. 2004 (full 2005 data not available yet):**

- (U) ~~(S)~~ Toll Records
- (U) ~~(S)~~ Subscriber Records
- (U) ~~(S)~~ Financial Records
- (S) ~~(S)~~ Financial Institutions
- (U) ~~(S)~~ Consumer Identifying Info



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Information provided by:   
Assistant General Counsel  
Office of the General Counsel

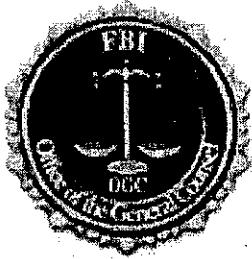
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Dated: 01/17/2006

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NSL VIO-13879

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National Security Law Policy and Training Unit

Unit Chief [redacted]  
Room 7947 JEH  
202-324-[redacted]

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b7C  
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12 January 2006

**I. NSL Information:**

**A. Statutory Authority:**

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

- 1) Under the **Electronic Communications Privacy Act, 18 U.S.C. § 2709**, the FBI can obtain telephone and email communication records from telephone companies and internet service providers.
- 2) Under the **Right to Financial Privacy Act, 12 U.S.C. § 3414(a)(5)(A)**, the FBI can obtain the records of financial institutions (which is very broadly defined).
- 3) Under the **Fair Credit Reporting Act, 15 U.S.C. §§ 1681u(a) and (b)**, the FBI can obtain a list of financial institutions and consumer identifying information from a credit reporting company.
- 4) Under the **Fair Credit Reporting Act, 15 U.S.C. § 1681v**, the FBI can obtain a full credit report in a counterterrorism case. This provision was created by the 2001 USA Patriot Act.

DATE: 07-26-2007  
CLASSIFIED BY: 65179DMH/KSR/LMF  
REASON: 1.4 (C)  
DECLASSIFY ON: 07-26-2032

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

**B. FBI's Use of NSLs Post-USA PATRIOT Act:**

- The standard for issuing an NSL is **relevance** to an authorized investigation to protect against international terrorism or clandestine intelligence activities provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the First Amendment of the Constitution of the United States. (The 1681v NSL standard is slightly different to reflect that it applies only to international terrorism investigations.)

- The new "relevance" standard resulted in the increase in the number of NSLs issued by the FBI to further its investigations.

- NSLs are used as preliminary building block of an investigation - like grand jury

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subpoenas and FISA section 215 business records orders.

- NSLs are limited to the described categories of records. If the information sought falls outside of these categories, the FBI must use another investigative tool (e.g., grand jury subpoena or 215 order).

**C. Process:**

- A request for an NSL has two parts. One is the NSL itself, and one is the EC approving issuance of the NSL.

- The cover EC serves four functions. It documents the predication for the NSL by stating why the information sought is relevant to an authorized investigation. It documents the approval of the NSL by field supervisors. It contains information needed to fulfill Congressional reporting requirements for each type of NSL (subject's USP status, type of NSL issued, and the number of phone numbers, email addresses, account numbers or individual records being requested in the NSL). Lastly, it transmits the NSL to NSLB for reporting requirements, to CTD, CD, or Cyber for informational purposes, and, in the case of personal service, to the requesting squad or delivering field division for delivery.

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NSL VIO-13882

**II. Comparison of National Security Letters pre and post-USA PATRIOT Act:**

**A. Standard:**

| Pre-USA PATRIOT Act  | Post-USA PATRIOT Act  |
|--|---|
| <p><b>Specific and articulable facts standard</b></p> <ul style="list-style-type: none"><li>•The pre-USA PATRIOT Act standard for the issuance of an NSL required the records be <b>relevant to an authorized foreign counterintelligence investigation</b> and that the FBI have <b>specific and articulable facts</b> that the requested records <b>related to an agent of a foreign power or a foreign power</b>.</li><li>•Put differently, the FBI had to have reached a defensible position that the person was a terrorist or spy before the FBI could gather the base information it needed to determine whether the person was a terrorist or spy.</li><li>•The standard was unreasonably high. An NSL is clearly analogous to a grand jury subpoena, which can be issued during a criminal investigation to obtain relevant information. It would be anomalous if it were easier to obtain these sorts of record in a routine criminal investigation than in an investigation to protect the national security.</li></ul> | <p><b>Relevance Standard (Section 505)</b></p> <p>The standard for issuing an NSL is <b>relevance</b> to an authorized investigation-</p> <ul style="list-style-type: none"><li>•to protect against international terrorism; or,</li><li>•clandestine intelligence activities; and</li><li>•provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the First Amendment of the Constitution of the United States.</li></ul> |

**B. Approval Authority for NSLs:**

| Pre-USA PATRIOT Act   | Post-USA PATRIOT Act  |
|---|---|
| Approval authority could be no lower than Deputy Assistant Director | <p>The authority to sign NSLs has been <u>delegated</u> to:</p> <ul style="list-style-type: none"><li>• the Deputy Director and Executive Assistant Director for CT/CI;</li><li>• Assistant Directors in charge and all DADs for CT/CI/Cyber (except that CI and Cyber ADs and DADs do not have any authority with respect to 1681v NSLs);</li><li>• General Counsel;</li><li>• Deputy General Counsel for National Security Affairs;</li><li>• Assistant Directors in Charge in NY, D.C., and LA; and,</li><li>• all SACs (An acting SAC may not sign an NSL).</li></ul> |

**C. Retention/Dissemination of NSL Information:**

| Pre-USA PATRIOT Act  | Post-USA PATRIOT Act  |
|--|---|
| <ul style="list-style-type: none"><li>•As stated, FBI Policy pre and post USA PATRIOT Act has been to maintain the information derived from NSLs regardless of whether it turns out to be relevant (for example - FBI determines that a target is not a threat). CTD mandates that all telephone information go into Telephone Applications.</li><br/><li>•Dissemination is further subject to specific statutory limitations:</li><br/><li>•Privacy Act regarding U.S. Person information;</li><br/><li>• toll record NSL statute, ECPA, 18 U.S.C. §2709, and financial record NSL statute, RFPA, 12 U.S.C. §3414(a)(5)(B), permit dissemination if per NSIG and information is clearly relevant to responsibilities of recipient agency;</li><br/><li>• limited credit information NSL statute, FCRA, 15 U.S.C. §1681u, permits dissemination to other federal agencies as may be necessary for the approval or conduct of an FCI investigation; and,</li><br/><li>•no special statutory rules for dissemination under full credit report NSL statute, FCRA, 15 U.S.C. §1681v.</li></ul> | <ul style="list-style-type: none"><li>•Information obtained through the use of an NSL may be retained and disseminated in accordance with general standards set forth in The Attorney General's Guidelines for FBI National Security Investigation and Foreign Intelligence Collection (NSIG).</li><br/><li>•FBI Policy pre and post USA PATRIOT Act has been to maintain the information derived from NSLs regardless of whether it turns out to be relevant (for example - FBI determines that a target is not a threat). CTD mandates that all telephone information go into Telephone Applications.</li><br/><li>•Dissemination is further subject to specific statutory limitations:</li><br/><li>•Privacy Act regarding U.S. Person information;</li><br/><li>• toll record NSL statute, ECPA, 18 U.S.C. §2709, and financial record NSL statute, RFPA, 12 U.S.C. §3414(a)(5)(B), permit dissemination if per NSIG and information is clearly relevant to responsibilities of recipient agency;</li><br/><li>• limited credit information NSL statute, FCRA, 15 U.S.C. §1681u, permits dissemination to other federal agencies as may be necessary for the approval or conduct of an FCI investigation; and,</li><br/><li>•no special statutory rules for dissemination under full credit report NSL statute, FCRA, 15 U.S.C. §1681v.</li></ul> |

**III. Congressional Reporting? What? When?:**

| Statute  | Reporting Requirement  |
|--|--|
| <b>Electronic Communications Privacy Act</b><br>18 U.S.C. §2709(e) | Semiannual Reporting:<br><br>For toll billing/electronic communication transactional records the FBI reports –<br><br><ul style="list-style-type: none"> <li>•Total NSLs re Non-US Persons.</li> <li>•Total # of investigations of different Non-USPs.</li> <li>•Total NSLs re US Persons.</li> <li>•Total # of investigations of different USPs.</li> </ul> For subscriber information, the FBI only reports # of NSLs. |
| <b>Right to Financial Privacy Act</b><br>12 U.S.C. § 3414(a)(5)    | Semiannual Reporting:<br><br>For requests for financial records, the FBI reports –<br><br><ul style="list-style-type: none"> <li>•Total NSLs re Non-US Persons.</li> <li>•Total # of investigations of different Non-USPs.</li> <li>•Total NSLs re US Persons.</li> <li>•Total # of investigations of different USPs.</li> </ul>   |
| <b>Fair Credit Reporting Act</b><br>15 U.S.C. § 1681u(a) & (b)     | Semiannual Reporting<br><br>For requests for financial institution and consumer identifying information, and consumer credit reports, the FBI reports–<br><br><ul style="list-style-type: none"> <li>•NSLs re Non-US Persons.</li> <li>•NSLs re USPs.</li> </ul>   |
| <b>Fair Credit Report Act</b><br>15 U.S.C. § 1681v                 | No reporting requirement under the Fair Credit Reporting Act.  |

The FBI does not have a reporting requirement for full credit reports under the Fair Credit Reporting Act (15 U.S.C. § 1681v). For the other NSLs, the FBI complies with semiannual reporting requirement as required by statute.



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**IV. Problems with NSLs:**

- NSLs limited to specific categories of information (limited by statute).
- NSLs can be unreliable in time-sensitive investigations since the FBI often encounters delays in the process.

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NSL VIO-13887

National Security Letters  
Numbers Reported to Congressional Oversight Committees

|  | July - Dec<br>2000 | Jan - June<br>2001 | July - Dec<br>2001 | Jan - June<br>2002 | July - Dec<br>2002 | Jan - June<br>2003 | July - Dec<br>2003 | Jan - June<br>2004 | July - Dec<br>2004 | TOTAL |
|--|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|-------|
| <b>Toil Records (18 USC 2709)</b>                      |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| Total USPER  |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| Different USPER  |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| Total Non USPER  |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| Different Non USPER                                    |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| Total  |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| <b>Subscriber Records (18 USC 2709)</b>                |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| Total USPER  |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| Different USPER  |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| Total Non USPER  |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| Different Non USPER                                    |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| Total  |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| <b>Financial Records (12 USC 3414)</b>                 |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| Total USPER  |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| Different USPER  |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| Total Non USPER  |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| Different Non USPER                                    |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| Total  |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| <b>Financial Institutions (15 USC 1681u)</b>           |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| Total USPER  |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| Different USPER  |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| Total Non USPER  |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| Different Non USPER                                    |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| Total  |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| <b>Consumer Identifying Information (15 USC 1681u)</b> |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| Total USPER  |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| Different USPER  |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| Total Non USPER  |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| Different Non USPER                                    |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| Total  |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| <b>Court Order Information (15 USC 1681u)</b>          |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| Total USPER  |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| Different USPER  |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| Total Non USPER  |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
| Different Non USPER                                    |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
|  |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |
|  |                    |                    |                    |                    |                    |                    |                    |                    |                    |       |

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\*\* Numbers for Financial Records July - Dec 2000 are different than Internal OGC numbers. Data provided is data reported to Congress.

|   | 2000 | 2001 | 2002 | 2003 | 2004 | TOTAL |
|---|------|------|------|------|------|-------|
| <b>Toll Records</b>                     |      |      |      |      |      |       |
| Total USPER                             |      |      |      |      |      |       |
| Different USPER                         |      |      |      |      |      |       |
| Total Non USPER                         |      |      |      |      |      |       |
| Different Non USPER                     |      |      |      |      |      |       |
| Total                                   |      |      |      |      |      |       |
| <b>Subscriber Records</b>               |      |      |      |      |      |       |
| Total USPER                             |      |      |      |      |      |       |
| Different USPER                         |      |      |      |      |      |       |
| Total Non USPER                         |      |      |      |      |      |       |
| Different Non USPER                     |      |      |      |      |      |       |
| Total                                   |      |      |      |      |      |       |
| <b>Financial Records</b>                |      |      |      |      |      |       |
| Total USPER                             |      |      |      |      |      |       |
| Different USPER                         |      |      |      |      |      |       |
| Total Non USPER                         |      |      |      |      |      |       |
| Different Non USPER                     |      |      |      |      |      |       |
| Total                                   |      |      |      |      |      |       |
| <b>Financial Institutions</b>           |      |      |      |      |      |       |
| Total USPER                             |      |      |      |      |      |       |
| Different USPER                         |      |      |      |      |      |       |
| Total Non USPER                         |      |      |      |      |      |       |
| Different Non USPER                     |      |      |      |      |      |       |
| Total                                   |      |      |      |      |      |       |
| <b>Consumer Identifying Information</b> |      |      |      |      |      |       |
| Total USPER                             |      |      |      |      |      |       |
| Different USPER                         |      |      |      |      |      |       |
| Total Non USPER                         |      |      |      |      |      |       |
| Different Non USPER                     |      |      |      |      |      |       |
| Total                                   |      |      |      |      |      |       |
| <b>Court Order Information</b>          |      |      |      |      |      |       |
| Total USPER                             |      |      |      |      |      |       |
| Different USPER                         |      |      |      |      |      |       |
| Total Non USPER                         |      |      |      |      |      |       |
| Different Non USPER                     |      |      |      |      |      |       |

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NSL Data 2005

~~SECRET~~

November 9, 2005

|  | Jan - Jun 2005 |                    |   | July - Nov 9, 2005 |                    |   |
|--|----------------|--------------------|---|--------------------|--------------------|---|
|  | # NSLs         | # diff USP/non-USP | % | # NSLs             | # diff USP/non-USP | % |
| <b>Total Records: 18 USC 2709(b)(1)</b>          |                |                    |   |                    |                    |   |
| Total USPER NSLs                                 |                |                    |   |                    |                    |   |
| Total Non USPER NSLs                             |                |                    |   |                    |                    |   |
| Total NSLs                                       |                |                    |   |                    |                    |   |
| <b>Subscriber Records 18 USC 2709(b)(2)</b>      |                |                    |   |                    |                    |   |
| Total USPER NSLs                                 |                |                    |   |                    |                    |   |
| Total Non USPER NSLs                             |                |                    |   |                    |                    |   |
| Total NSLs                                       |                |                    |   |                    |                    |   |
| <b>Financial Records 12 USC 3414(a)(5)</b>       |                |                    |   |                    |                    |   |
| Total USPER NSLs                                 |                |                    |   |                    |                    |   |
| Total Non USPER NSLs                             |                |                    |   |                    |                    |   |
| Total NSLs                                       |                |                    |   |                    |                    |   |
| <b>Financial Institutions 15 USC 1681u(e)</b>    |                |                    |   |                    |                    |   |
| Total USPER NSLs                                 |                |                    |   |                    |                    |   |
| Total Non USPER NSLs                             |                |                    |   |                    |                    |   |
| Total NSLs                                       |                |                    |   |                    |                    |   |
| <b>Consumer Identifying Info 15 USC 1681u(b)</b> |                |                    |   |                    |                    |   |
| Total USPER NSLs                                 |                |                    |   |                    |                    |   |
| Total Non USPER NSLs                             |                |                    |   |                    |                    |   |
| Total NSLs                                       |                |                    |   |                    |                    |   |
| <b>Court Order Information 15 USC 1681u(c)</b>   |                |                    |   |                    |                    |   |
| Total USPER NSLs                                 |                |                    |   |                    |                    |   |
| Total Non USPER NSLs                             |                |                    |   |                    |                    |   |
| Total NSLs                                       |                |                    |   |                    |                    |   |
| <b>Total NSLs (All categories)</b>               |                |                    |   |                    |                    |   |

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**From:** [redacted] (OGC) (FBI)  
**Sent:** Tuesday, April 11, 2006 9:18 AM  
**To:** CAPRONI, VALERIE E. (OGC) (FBI)  
**Cc:** THOMAS, JULIE E. (OGC) (FBI); [redacted] (OGC) (FBI);  
[redacted] (OGC) (FBI); [redacted] (OGC) (FBI);  
[redacted] (OGC) (FBI)  
**Subject:** NSLB Response - NSL Question for Dir's Visits to LR & DN  
**UNCLASSIFIED**  
**NON-RECORD**

Ms. Caproni --

This e-mail is to back-brief you regarding action I took yesterday at COB to respond to DRG's request in preparation for the Director's upcoming trips to Little Rock and Denver.

Specifically, DRG needed us to address one more NSL-related Q&A for the Director's travel book. They needed the answer "first thing this morning." Initially, as reflected in my e-mail, below, I looked for previously approved language in our recently published EC. However, in a subsequent telephone conference with DRG, we found more appropriate language in the Director's Briefing Paper that we provided him on 21 March. Since that language had likewise been previously approved, I directed DRG to run with that.

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The result is set forth in [redacted] e-mail, below. (The question to which it responds is in [redacted] initial e-mail at the bottom of the string.) I hope that you'll find the result satisfactory, especially under the circumstances.

FYI.

[redacted]

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b7C

-----Original Message-----  
**From:** [redacted] (DO)(FBI)  
**Sent:** Monday, April 10, 2006 5:26 PM  
**To:** [redacted] (OGC) (FBI)  
**Subject:** RE: NSLB Response - NSL Question for Dir's Visit to LR & DN

**UNCLASSIFIED**  
**NON-RECORD**

As we discussed, I cut and pasted the bolded portion of the following answer from the briefing paper furnished by OGC in march 2006. As the language was already approved, I presumed that it could be used in this answer.

Yes, NSLs will remain a viable tool. **A recipient has the right to**

challenge, in U.S. District court, a NSL for which the recipient believes compliance would be either "unreasonable, oppressive, or otherwise unlawful." The recipient may also challenge, in U.S. District court, any applicable nondisclosure provisions. For nondisclosure challenges, the Court must treat as conclusive a certification by either the Attorney General, Deputy Attorney General, an Assistant Attorney General, or the FBI Director that disclosure may endanger U.S. national security or interfere with diplomatic relations—*unless* the Court finds that such certification was made in bad faith. In other words, unless the Court finds certification in bad faith, the law leaves these determinations regarding U.S. national security and diplomatic relations to the Executive Branch.

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[Redacted]  
202-324-[Redacted]

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

**From:** [Redacted] (OGC) (FBI)  
**Sent:** Monday, April 10, 2006 5:15 PM  
**To:** [Redacted] (DO)(FBI)  
**Subject:** NSLB Response - NSL Question for Dir's Visit to LR & DN

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**UNCLASSIFIED**  
**NON-RECORD**

Karlton --

It's COB, and you've posed a question for which you need an *approved* answer "first thing tomorrow morning." Under the circumstances, I believe this is the best we can do:

**SHORT ANSWER:** Yes, NSLs will remain not merely a viable tool but a very important tool available to us in National Security Investigations. Recent changes resulting from the USA PATRIOT Act's reauthorization will not diminish this tool's importance at all.

**BACKGROUND INFO:** I've attached relevant materials, excerpted from OGC's EC (approved by GC Caproni and published on 7 April), that discuss the recent changes to which the question refers. I don't think they'll be needed. But, I defer to you in that regard.

<< File: USAPA Renewal EC.wpd >>

Please advise ASAP as to whether this response will suffice. If not, I'll re-engage.

NSL VIO-13912

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b7C

Thanks.

[Redacted]

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

**From:** [Redacted] (DO)(FBI)  
**Sent:** Monday, April 10, 2006 4:41 PM  
**To:** THOMAS, JULIE F. (OGC) (FBI); [Redacted] (OGC) (FBI)  
**Subject:** Director's visit to Little Rock and Denver

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**UNCLASSIFIED**  
**NON-RECORD**

**You answered the following question (see the February reference), could you please provide an update by first thing tomorrow Morning?**

**Does the Director believe that National Security Letters (NSLs) will remain a viable tool, given the opportunity to object and challenge them that is now offered to the recipients?**

Yes, NSLs will remain a viable tool. There is no need for any changes in this regard. [NOTE: As of 10 February, the FBI had not received the most recently revised language of the USA PATRIOT Act's amendments. However, today's published news accounts indicate that we'll not be able to serve NSLs on libraries that function in their traditional capacities—but only on libraries where there is evidence to show they are acting as Internet Service Providers.]

Thanks,

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b7C  
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[Redacted]  
202-324-[Redacted]

**UNCLASSIFIED**

NSL VIO-13913

**National Security Letters  
Statutory Reporting Requirements**

| Statute   | Reporting Requirement  | Committees  |
|---|--|---|
| <p style="text-align: center;"><b>Electronic Communications Privacy Act</b><br/>18 U.S.C. §2709(e)</p>    | <p>Semiannual Reporting:<br/>For toll billing/electronic communication transactional records the FBI reports –</p> <ul style="list-style-type: none"> <li>•Total NSLs re Non-US Persons.</li> <li>•Total # of investigations of different Non-USPs.</li> <li>•Total NSLs re US Persons.</li> <li>•Total # of investigations of different USPs.</li> </ul> <p>For subscriber information, the FBI only reports # of NSLs.</p> | <p>Senate Judiciary<br/>House Judiciary<br/>Senate Select Committee on Intelligence<br/>House Permanent Select Committee on Intelligence</p>                            |
| <p style="text-align: center;"><b>Right to Financial Privacy Act</b><br/>12 U.S.C. § 3414(a)(5)</p>       | <p>Semiannual Reporting:<br/>For requests for financial records, the FBI reports –</p> <ul style="list-style-type: none"> <li>•Total NSLs re Non-US Persons.</li> <li>•Total # of investigations of different Non-USPs.</li> <li>•Total NSLs re US Persons.</li> <li>•Total # of investigations of different USPs.</li> </ul>  | <p>Senate Select Committee on Intelligence<br/>House Permanent Select Committee on Intelligence</p>   |
| <p style="text-align: center;"><b>Fair Credit Reporting Act</b><br/>15 U.S.C. § 1681u(a), (b) and (c)</p> | <p>Semiannual Reporting<br/>For requests for financial institution and consumer identifying information, and consumer credit reports, the FBI reports–</p> <ul style="list-style-type: none"> <li>•NSLs re Non-US Persons.</li> <li>•NSLs re USPs.</li> </ul>  | <p>Senate Select Committee on Intelligence<br/>House Permanent Select Committee on Intelligence<br/>House Financial Services Committee<br/>Senate Banking Committee</p> |
| <p style="text-align: center;"><b>Fair Credit Report Act</b><br/>15 U.S.C. § 1681v</p>                    | <p>No reporting requirement under the Fair Credit Reporting Act.</p>   | <p>Not applicable</p>   |



**National Security Letters  
Reports to Congress**

| <b>Semi-Annual Period</b> | <b>FBI Report to DOJ</b>                               | <b>DOJ Report to Congress</b> |
|---------------------------|--|-------------------------------|
| 7/1/2004 - 12/31/2004     | 3/23/2005  | 4/28/2005                     |
| 1/1/2004 - 6/30/2004      | 11/9/2004  | 4/28/2005                     |
| 7/1/2003 - 12/31/2003     | 4/6/2004   | 6/29/2004                     |
| 1/1/2003 - 6/30/2003      | 10/23/2004   | 6/29/2004                     |
| 7/1/2002 - 12/31/2002     | 4/2/2003   | 6/29/2004                     |
| 1/1/2002 - 6/30/2002      | 4/2/2003   | 12/16/2003                    |
| 7/1/2001 - 12/31/2001     | 11/26/2002   | 9/10/2003                     |
| 1/1/2001 - 6/30/2001      | 3/6/2002   | 10/18/2002                    |
| 7/1/2000 - 12/31/2000     | 3/29/2001 (RFPA), 8/31/2001 (FCRA),<br>4/8/2002 (ECPA) | 10/18/2002                    |



## National Security Letters

- I. (U) There are four statutes authorizing the FBI to issue National Security Letters (NSLs)
  - A. Electronic Communications Privacy Act
    1. Telephone Subscriber or Electronic Subscriber information (limited to name, address, and length of service).
    2. Telephone local and long distance toll billing records.
    3. Electronic Communication Transactional Records (e.g. transaction/activity logs and e-mail header information).
  - B. Right to Financial Privacy Act
    1. Financial Records
  - C. Fair Credit Reporting Act
    1. Consumer identifying Information.
    2. Identity of Financial Institution.
  - D. Fair Credit Report Act
    1. Full credit reports from credit bureau.
- II. (U) FBI's Use of NSLs Post-USA PATRIOT Act
  - A. Relevance Standard
    1. The standard for issuing an NSL is relevance to an authorized investigation, as in the following instances:
      - a. To protect against international terrorism; or,
      - b. Clandestine intelligence activities; and
      - c. Provided that such an investigation of a United States person is not conducted solely based on activities protected

**Draft: 1 September 2005**

**41. Do you agree that if Congress were to grant the FBI the administrative subpoena authority that you sought at the hearing, the FBI would be highly unlikely to seek a Section 215 order or a National Security Letter ever again? If your answer is no, please describe the circumstances under which the FBI would seek a Section 215 order or an NSL rather than issue an administrative subpoena.**

No, we do not agree. Generally, the FBI will use the most effective and time efficient tool available for an investigation. Administrative subpoenas would provide a mechanism for obtaining relevant information in terrorism investigations quickly, without a significant expenditure of personnel hours. However, it is too early to predict whether administrative subpoenas would become the FBI's tool of choice. Certainly the FBI's experience with criminal administrative subpoenas shows that criminal investigators will not limit themselves to one tool, but will use whatever tool most effectively obtains the needed information. We expect our agents handling national security investigations to exhibit the same zeal in their fight against our enemies.

The FBI needs more, not less, tools at its disposal. The FBI sought administrative subpoena authority to overcome the limitations presented by National Security Letters and Section 215 orders. For example, NSLs may be used only to obtain certain information from wire and electronic communications service providers, financial institutions, and credit reporting companies. NSLs are unreliable in time-sensitive investigations since the FBI often encounters significant delays in the process.

Additionally, though FISA business orders under section 215 can be used to obtain "any tangible things" (including books, records, papers, and documents), they have limits on their effectiveness. Section 215 orders cannot be obtained on an expedited basis since the FBI must submit the request through FBI HQ and then through DOJ OIPR, making the process slow, cumbersome and personnel intensive. The process is further slowed down because Section 215 orders are classified, making them more difficult for the FBI and the recipient to handle than unclassified administrative subpoenas. It is for these reasons the FBI must have administrative subpoenas in national security investigations.

NSL VIO-13917

**22. Director Mueller, it was reported in the press last month that the Bureau had demanded library records from a library in Bridgeport, Connecticut using the expanded "national security letter" authority given by the PATRIOT Act. I understand that you cannot comment on the specifics of this case, but would you please detail what internal guidelines the Bureau has in place to ensure that this investigative power is used only when absolutely necessary?**

We can provide you with the following information regarding the Bridgeport, Connecticut, matter. On July 13, 2005, the FBI served a National Security Letter (NSL) on Library Connections, Inc. (located in Windsor, Connecticut), a consortium of 26 public and academic libraries in Connecticut. The NSL, dated May 19, 2005, requested "any and all subscriber information, billing information and access logs of any person or entity" related to a particular, named Internet Protocol (IP) address. On August 9, 2005, Library Connection and the ACLU filed a complaint (currently under seal) for declaratory and injunctive relief for the disclosure of a wide range of information, including the identity of a person who has borrowed particular books from a public library or who has engaged in anonymous speech on the Internet.

The FBI uses NSLs when it needs information from a business entity that falls within the purview of the relevant statutes, namely wire and electronic communications service providers (Electronic Communications Privacy Act - 18 U.S.C. § 2709(e)), financial institutions (Right to Financial Privacy Act - 12 U.S.C. § 3414(a)(5)), and credit reporting companies (Fair Credit Report Act - 15 U.S.C. §1681u(h)). Some have suggested that the FBI should be forbidden to use NSLs to request the production of records from libraries. This, however, would be a serious mistake.

Libraries cannot be safe havens for criminals. Grand jury subpoenas have long been used to obtain relevant records from libraries and bookstores in criminal investigations. In fact, law enforcement used this authority in investigating the Gianni Versace murder case as well as the case of the Zodiac gunman to determine who checked out particular books from public libraries that were relevant in those murder investigations. If libraries are not safe havens for criminals, neither should they be safe havens for international terrorists and spies, especially since we know that terrorists and spies have used libraries' Internet service to plan and carry out activities that threaten our national security. The Justice Department, for instance, has confirmed that, as recently as the Winter and Spring of 2004, a member of a terrorist group closely affiliated with al Qaeda used Internet service provided by a public library to communicate with his confederates.

The FBI's National Security investigations are governed by safeguards to ensure the privacy of law-abiding Americans. The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection ("NSI Guidelines"), dated October 31, 2003, provide the framework for the conduct of FBI National Security investigations. The NSI Guidelines allow the FBI to use all lawful investigative techniques to protect the United States from international terrorism and espionage. The NSI Guidelines direct that all FBI investigative activities must conform with the Constitution and all applicable statutes, executive orders, and

NSL VIO-13918

regulations.

The NSI Guidelines authorize three levels of FBI investigative activity: (1) threat assessments, (2) preliminary investigations, and (3) full investigations. The NSI Guidelines set forth clear and concise predicates that are necessary for each level of authorized FBI investigative activity. Those specific predicates are found in the classified portions of the NSI Guidelines, because they relate to intelligence activities, sources or methods. NSLs are an important tool used in FBI National Security investigations.

Additional safeguards exist to protect against any potential abuse of investigative techniques, such as NSLs. The FBI's Office of General Counsel has issued FBI-wide guidance notifying FBI investigators of the standards, procedures, and forms for issuing NSLs. The guidance makes it clear that NSLs may be issued only when the information sought is relevant to a National Security investigation. An NSL must be approved by a senior FBI official, who generally is the Special Agent in Charge (SAC) of an FBI field office.

The dissemination of information obtained through the use of NSLs is also governed by the NSI Guidelines. Dissemination is further subject to the specific statutory limitations of the Electronic Communications Privacy Act, the Right to Financial Privacy Act, and the Fair Credit Report Act.

The FBI is subject to Department of Justice and Congressional oversight. For example, all FBI terrorism-related cases are subject to in-progress review by the Department of Justice's Office of Intelligence Policy and Review. As part of this function, the FBI tracks and reports to Congress semiannually the total number of NSLs issued by the FBI.

To: FBI National Security Branch

Gary Bald

Attn:

b6  
b7C

From: FBI OGC National Security Law Branch  
National Security Law Policy and Training Unit

Date: 2 September 2005

Re: National Security Letters - Talking Points

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 07-27-2007 BY 65179dmh/ksr/lmf

NSL VIO-13920

## NATIONAL SECURITY LETTERS

### I. Defined:

•National Security letters are a specific type of administrative request that allows the FBI to obtain **certain limited types of information** without court intervention:

- 1) Under the **Electronic Communications Privacy Act, 18 U.S.C. §2709**, the FBI can obtain telephone and email communication records from telephone companies and internet service providers.
- 2) Under the **Right to Financial Privacy Act, 12 U.S.C. §3414(a)(5)(A)**, the FBI can obtain the records of financial institutions (which is very broadly defined).
- 3) Under the **Fair Credit Reporting Act, 15 U.S.C. §§1681u(a) and (b)**, the FBI can obtain a list of financial institutions and consumer identifying information from a credit reporting company.
- 4) Under the **Fair Credit Reporting Act, 15 U.S.C. §1681v**, the FBI can obtain a full credit report in an international terrorism case. This provision was created by the 2001 USA Patriot Act.

•NSLs are used as preliminary building block of an investigation - like grand jury subpoenas and FISA section 215 business records orders.

•NSLs are limited to the described categories of records. If the information sought falls outside of these categories, the FBI must use another investigative tool (e.g., grand jury subpoena or 215 order).

| Statute   | NSL - Use and Type of Information Obtained  | Date Available to FBI <sup>1</sup> |
|---|---|------------------------------------|
| Electronic Communications Privacy Act<br>18 U.S.C. § 2709(e)                  | <ul style="list-style-type: none"> <li>• Telephone subscriber or Electronic subscriber information (limited to name, address, and length of service).</li> <li>• Telephone local and long distance toll billing records.</li> <li>• Electronic communications transactional records (transaction/activity logs and e-mail header information).</li> </ul> | 1986                               |
| Right to Financial Privacy Act<br>12 U.S.C. § 3414(a)(5)                      | <ul style="list-style-type: none"> <li>• Financial records.</li> </ul>  | 1978                               |
| Fair Credit Reporting Act<br>15 U.S.C. § 1681u(a)<br><br>15 U.S.C. § 1681u(b) | <ul style="list-style-type: none"> <li>• Consumer identifying information.</li> <li>• Identity of financial institution.</li> </ul>   | 1996                               |
| Fair Credit Reporting Act<br>15 U.S.C. § 1681v                                | <ul style="list-style-type: none"> <li>• Full credit reports from credit bureau.</li> </ul>   | 2001                               |

## II. Relevance Standard:

The standard for issuing an NSL is relevance:

- to an authorized investigation to protect against international terrorism; or,
- clandestine intelligence activities provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the First Amendment

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<sup>1</sup> Source: CRS Report for Congress dated April 15, 2005 - Administrative Subpoenas and National Security Letters in Criminal and Foreign Intelligence Investigations: Background and Proposed Adjustments.



of the Constitution of the United States. (The 1681v NSL standard is slightly different to reflect that it applies only to international terrorism investigations.)

Prior to the Patriot Act, the standard for issuance of an NSL was that the target or the communication was tied to a foreign power. That is no longer the case.

### III. Approval Authority:

The authority to sign NSLs has been delegated to:

- the Deputy Director and Executive Assistant Director for CT/CI;
- Assistant Directors in charge and all DADs for CT/CI/Cyber (except that CI and Cyber ADs and DADs do not have any authority with respect to 1681v NSLs);
- General Counsel;
- Deputy General Counsel for National Security Affairs;
- Senior Counsel for National Security Affairs;
- Assistant Directors in Charge in NY, D.C., and LA; and,
- all SACs (An acting SAC may not sign an NSL).

### IV. Dissemination:

• Information obtained through the use of an NSL may be disseminated in accordance with general standards set forth in The Attorney General's Guidelines for FBI National Security Investigation and Foreign Intelligence Collection (NSIG).

• Dissemination is further subject to specific statutory limitations:

- toll record NSL statute, ECPA, 18 U.S.C. §2709, and financial record NSL statute, RFPA, 12 U.S.C. §3414(a)(5)(B), permit dissemination if per NSIG and information is clearly relevant to responsibilities of recipient agency;
- limited credit information NSL statute, FCRA, 15 U.S.C. §1681u, permits dissemination to other federal agencies as may be necessary for the approval or conduct of an FCI investigation; and,
- no special statutory rules for dissemination under full credit report NSL statute, FCRA, 15 U.S.C. §1681v.

## **V. Response to NSLs and Enforcement:**

•Field Division Chief Division Counsels (CDCs) have reported delays and non-compliance problems with NSLs.

- Until recently, NSL did not carry a return date. The FBI has started putting return dates on NSLs, which may decrease delays.

- NSL statutes do not have a built-in judicial enforcement mechanism.

•U.S. appealed district court ruling which struck down the NSL statute (18 U.S.C. § 2709) because of the statute's non-disclosure provision and lack of any mechanism for judicial review.

•USA PATRIOT Act renewal - DOJ supports changes to the NSL statutes which would clarify that a recipient may disclose receipt of an NSL to an attorney and to persons necessary for compliance, and would provide judicial review and enforcement.

[Redacted] (OGC) (FBI)

**From:** BEERS, ELIZABETH RAE (OCA) (FBI)

b6  
b7C

**Sent:** Tuesday, November 08, 2005 6:58 PM

**To:** [Redacted] (OGC) (FBI); THOMAS, JULIE F. (OGC) (FBI); CAPRONI, VALERIE E. (OGC) (FBI)

**Cc:** [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI)

**Subject:** RE: NSL Question

**UNCLASSIFIED  
NON-RECORD**

During this afternoon's briefing for Senate Judiciary and Intelligence committee staff, we were asked to provide the copies with blank NSLs and any explanatory attachments that accompany the actual letters. Attached are the NSLs that I pulled from the NSLB intranet website. I noted that only 3 (toll record, transactional record, and right to financial privacy letters) included attachments.

Are these current versions of the NSL 'ponies'? Are the attachments for any of the other types of letters? Once we have the complete package, is there any reason that we cannot/should not provide blank copies of these documents to these oversight committees and/or is there any special marking/handling caveat that should accompany them?

We hope to provide this to the Committee quickly - this week if possible - to assist in ongoing negotiations re Patriot Act reauthorization. Please call if you have questions. Thanks,

Beth Beers  
Special Counsel  
Office of Congressional Affairs  
202-324-[Redacted] b2

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

**From:** [Redacted] (OGC) (FBI)

**Sent:** Tuesday, November 08, 2005 5:04 PM

**To:** BEERS, ELIZABETH RAE (OCA) (FBI); THOMAS, JULIE F. (OGC) (FBI); Caproni, Valerie E. (OGC) (FBI)

**Cc:** [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI)

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b7C

**Subject:** RE: NSL Question

**UNCLASSIFIED  
NON-RECORD**

Beth,

What do you need for the bullets on the reporting to Congress issue? In the talking points on NSLs, we included a chart with reporting information (See, pp. 2 & 7). Let me know if this is sufficient for your task.

Thank you,

[Redacted]

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b7C

NSL VIO-13925

Assistant General Counsel  
National Security Law Policy and Training Unit  
FBI HQ Room 7975  
STU III: (202) 324-  
Unclassified Fax: (202) 324-  
Secure Fax: (202)

b2

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

**From:** BEERS, ELIZABETH RAE (OCA) (FBI)  
**Sent:** Tuesday, November 08, 2005 8:57 AM  
**To:** THOMAS, JULIE F. (OGC) (FBI); Caproni, Valerie F. (OGC) (FBI)  
**Cc:** (OGC) (FBI); (OGC) (FBI); (OGC)(FBI);  
**Subject:** RE: NSL Question  
**Importance:** High

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**UNCLASSIFIED**  
**NON-RECORD**

See attached material prepared in response to Director's query re what NSL information was reported to Congress. The info in these docs is taken directly from the reports to the Hill (provided to me by DOJ).

Please review these charts and identify any information/data that is inconsistent with data that we maintain. Of particular note, see entry on in WP doc re our submission of data to DOJ for the two 2003 reports. Per DOJ's paper, the reports are based on a Director to AG Memo dated 4/2/2003, but that doesn't make sense given the time frames. I'd like to correct this with NSLB data.

The totals on the Excel chart do not match up exactly with the totals on the OGC prepared chart because it's missing the first half of 2000 - don't know if NSLB is able to confirm the accuracy of these #/totals.

The Director has also asked for bullets on the reporting to Congress issue. I'll draft something based on this data unless OGC has already done it or would like to. Let me know. Thanks,

Beth Beers  
Special Counsel  
Office of Congressional Affairs  
202-324-

b2

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

**From:** (OGC) (FBI)  
**Sent:** Monday, November 07, 2005 3:58 PM  
**To:** BEERS, ELIZABETH RAE (OCA) (FBI)  
**Cc:** THOMAS, JULIE F. (OGC) (FBI); (OGC) (FBI);  
**Subject:** RE: NSL Question

b6  
b7C

**UNCLASSIFIED**  
**NON-RECORD**

Beth,

No reporting requirements for 1681v.



Assistant General Counsel  
National Security Law Policy and Training Unit  
FBI HQ Room 7975  
STU III: (202) 324-  
Unclassified Fax: (202) 324-  
Secure Fax: -

b6  
b7C  
b2

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

**From:** BEERS, ELIZABETH RAE (OCA) (FBI)

**Sent:** Monday, November 07, 2005 3:47 PM

**To:** (OGC) (FBI); (OGC) (FBI); (OGC) (FBI);

(OGC) (FBI)

**Subject:** NSL Question

**Importance:** High

b6  
b7C

**UNCLASSIFIED**  
**NON-RECORD**

I know that everyone is scrambling to respond to Wash Post write-up, but I have a pretty straight-forward question and need a quick response. Per NSBL intranet site, there are four authorities that permit issuance of NSLs as follows -

1. Under the Electronic Communications Privacy Act, 18 U.S.C. §2709, the FBI can obtain telephone and email communication records from telephone companies and internet service providers.
2. Under the Right to Financial Privacy Act, 12 U.S.C. §3414(a)(5)(A), the FBI can obtain the records of financial institutions (which is very broadly defined).
3. Under the Fair Credit Reporting Act, 15 U.S.C. §§1681u(a) and (b), the FBI can obtain a list of financial institutions and consumer identifying information from a credit reporting company.
4. Under the Fair Credit Reporting Act, 15 U.S.C. §1681v, the FBI can obtain a full credit report in an international terrorism case. This provision was created by the 2001 USA Patriot Act.

I'm reviewing the DOJ reports to Congress and find reporting on 18 USC 2709, 12 USC 3414(a)(5)(C), 15 USC 1681u(a)(b)(c) and (h). I don't see any reports that link directly to 15 USC 1681v - Are the 1681v reports part of what's reported in 1681u? Thanks,

Beth Beers  
Special Counsel  
Office of Congressional Affairs  
202-324-

b2

**UNCLASSIFIED**

UNCLASSIFIED

UNCLASSIFIED

UNCLASSIFIED

UNCLASSIFIED

[DRAFTING DIVISION]  
[STREET ADDRESS]  
[CITY, STATE, ZIP CODE]  
[MONTH, DAY, YEAR]

[MR./MRS./MS.] [COMPLETE NAME OF POC]  
[TITLE, IF AVAILABLE]  
[NAME OF COMPANY]  
[PHYSICAL STREET ADDRESS - NO P.O. BOX]  
[CITY, STATE - NO ZIP CODE]

DEAR [MR./MRS./MS.] [LAST NAME]:

Under the authority of Executive Order 12333, dated December 4, 1981, and pursuant to Title 15, United States Code (U.S.C.), Section 1681u(a) (the Fair Credit Reporting Act, as amended), you are hereby requested to provide the Federal Bureau of Investigation (FBI) the names and addresses of all financial institutions (as defined in Title 12, U.S.C., Section 3401) at which the below-named consumer(s) maintains or has maintained an account:

NAME(S):

ADDRESS(ES): [if available]

DATE(S) OF BIRTH: [if available]

SOCIAL SECURITY NUMBER(S): [if available]

In accordance with Title 15, U.S.C., Section 1681u(a), I certify that such information is sought for the conduct of an authorized investigation to protect against clandestine intelligence activities, and 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.

Please be advised that Title 15, U.S.C., Section 1681u(d), prohibits any consumer reporting agency, or officer from disclosing to any person that the FBI has sought or obtained

NSL VIO-13929

access to information or records under these provisions. In addition, no consumer reporting agency, or officer, employee or agent of such consumer reporting agency, may include in any consumer report any information that would indicate that the FBI has sought or obtained such information.

You are requested to provide records responsive to this request **[personally to a representative of the [DELIVERING DIVISION] OR through use of a delivery service to [OFFICE OF ORIGIN]]** within [xxxx] business days of receipt of this request.

Any questions you have regarding this request should be directed only to the **[[DELIVERING DIVISION] OR [OFFICE OF ORIGIN], depending on whether service is personal or through a delivery service]**. Due to security considerations, you should neither send the records through routine mail service nor disclose the substance of this request in any telephone conversation.

Your cooperation in this matter is greatly appreciated.

Sincerely yours,

**[ADIC/SAC NAME]  
[ASSISTANT DIRECTOR IN CHARGE/  
SPECIAL AGENT IN CHARGE]**



[DRAFTING DIVISION]  
[STREET ADDRESS]  
[CITY, STATE, ZIP CODE]  
[MONTH, DAY, YEAR]

[MR./MRS./MS.] [COMPLETE NAME OF POC]  
[TITLE, IF AVAILABLE]  
[NAME OF COMPANY]  
[PHYSICAL STREET ADDRESS - NO P.O. BOX]  
[CITY, STATE - NO ZIP CODE]

DEAR [MR./MRS./MS.] [LAST NAME]:

Under the authority of Executive Order 12333, dated December 4, 1981, and pursuant to Title 15, United States Code (U.S.C.), Section 1681u(b) (the Fair Credit Reporting Act, as amended), you are hereby requested to provide the Federal Bureau of Investigation (FBI) the names, address, former addresses, places of employment, or former places of employment of the below-named consumer(s):

NAME(S):

ADDRESS(ES): [if available]

DATE(S) OF BIRTH: [if available]

SOCIAL SECURITY NUMBER(S): [if available]

In accordance with Title 15, U.S.C., Section 1681u(a), I certify that such information is sought for the conduct of an authorized investigation to protect against clandestine intelligence activities, and 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.

Please be advised that Title 15, U.S.C., Section 1681u(d), prohibits any consumer reporting agency, or officer from disclosing to any person that the FBI has sought or obtained access to information or records under these provisions. In

[MR./MRS./MS.] [COMPLETE NAME]

Page 2

addition, no consumer reporting agency, or officer, employee or agent of such consumer reporting agency, may include in any consumer report any information that would indicate that the FBI has sought or obtained such information.

You are requested to provide records responsive to this request **[personally to a representative of the [DELIVERING DIVISION] OR through use of a delivery service to [OFFICE OF ORIGIN]]** within [xxxx] business days of receipt of this request.

Any questions you have regarding this request should be directed only to the **[[DELIVERING DIVISION] OR [OFFICE OF ORIGIN],\_depending on whether service is personal or through a delivery service]**. Due to security considerations, you should neither send the records through routine mail service nor disclose the substance of this request in any telephone conversation.

Your cooperation in this matter is greatly appreciated.

Sincerely yours,

**[ADIC/SAC NAME]  
[ASSISTANT DIRECTOR IN CHARGE/  
SPECIAL AGENT IN CHARGE]**

NSL VIO-13932

[DRAFTING DIVISION]  
[STREET ADDRESS]  
[CITY, STATE, ZIP CODE]  
[MONTH, DAY, YEAR]

[MR./MRS./MS.] [COMPLETE NAME OF POC]  
[TITLE, IF AVAILABLE]  
[NAME OF COMPANY]  
[PHYSICAL STREET ADDRESS - NO P.O. BOX]  
[CITY, STATE - NO ZIP CODE]

Dear [MR./MRS./MS.] [LAST NAME]:

Pursuant to Executive Order 12333, dated December 4, 1981, and 15 U.S.C. § 1681v of the Fair Credit Reporting Act, you are hereby directed to provide the Federal Bureau of Investigation (FBI) with a copy of a consumer credit report and all other information contained in your files for the below-listed consumer(s):

NAME(S):  
ADDRESS(ES): [if available]  
DATE(S) OF BIRTH: [if available]  
SOCIAL SECURITY NUMBER(S): [if available]

In accordance with Title 15, U.S.C. § 1681v, I certify that I have been designated to make this request and that the requested information is necessary to conduct an authorized investigation of, or intelligence or counterintelligence activities or analysis related to, international terrorism.

Please be advised that 15 U.S.C. § 1681v(c) prohibits your consumer reporting agency or any officer, employee or agent of your agency from disclosing to any person that the FBI has sought or obtained access to information or records under these provisions. Furthermore, your agency, or any officer, employee or agent of your agency, is prohibited from including in any consumer report any information that would indicate or disclose that the FBI has sought or obtained such information.

[MR./MRS./MS.] [COMPLETE NAME]

Page 2

You are requested to provide records responsive to this request **[personally to a representative of the [DELIVERING DIVISION] OR through use of a delivery service to [OFFICE OF ORIGIN]]** within [xxxx] business days of receipt of this request.

Any questions you have regarding this request should be directed only to the **[[DELIVERING DIVISION] OR [OFFICE OF ORIGIN],\_depending on whether service is personal or through a delivery service]**. Due to security considerations, you should neither send the records through routine mail service nor disclose the substance of this request in any telephone conversation.

Your cooperation in this matter is appreciated.

Sincerely,

[ADIC/SAC NAME]  
[ASSISTANT DIRECTOR IN  
CHARGE/  
SPECIAL AGENT IN CHARGE]

[DRAFTING DIVISION]  
[STREET ADDRESS]  
[CITY, STATE, ZIP CODE]  
[MONTH, DAY, YEAR]

[MR./MRS./MS.] [Complete name]  
[TITLE, IF AVAILABLE]  
[NAME OF COMPANY]  
[PHYSICAL STREET ADDRESS - NO P.O. BOX]  
[CITY, STATE - NO ZIP CODE]

Dear [MR./MRS./MS.] [LAST NAME]:

Under the authority of Executive Order 12333, dated December 4, 1981, and pursuant to Title 18, United States Code (U.S.C.), Section 2709 (Section 201 of the Electronic Communications Privacy Act of 1986) (as amended, October 26, 2001), you are hereby requested to provide to the Federal Bureau of Investigation (FBI) the name, address, and length of service for the below-listed [e-mail/IP] address holder(s):

[E-mail/IP ADDRESS or ADDRESSES]

[ON A SPECIFIC DATE]

or

[FOR THE PERIOD FROM [SPECIFIC DATE] TO [SPECIFIC DATE]  
[PRESENT]]

or

If the time period noted above is to the "present," that term is intended to request information to the date of the processing of this request. If providing information to the date of processing is not feasible, please provide information to the date of receipt of this request.

In accordance with Title 18, U.S.C., Section 2709(b), I certify that the information sought is relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, and 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.

[MR./MRS./MS] [COMPLETE NAME]

Page 2

You are further advised that Title 18, U.S.C., Section 2709(c), prohibits any officer, employee or agent of yours from disclosing to any person that the FBI has sought or obtained access to information or records under these provisions.

You are requested to provide records responsive to this request **[personally to a representative of the [DELIVERING DIVISION] OR through use of a delivery service to [OFFICE OF ORIGIN]]** within [xxxx] business days of receipt of this request.

Any questions you have regarding this request should be directed only to the **[[DELIVERING DIVISION] OR [OFFICE OF ORIGIN], depending on whether service is personal or through a delivery service]**. Due to security considerations, you should neither send the records through routine mail service nor disclose the substance of this request in any telephone conversation.

Your cooperation in this matter is greatly appreciated.

Sincerely yours,

**[ADIC/SAC NAME]  
[ASSISTANT DIRECTOR IN CHARGE/  
SPECIAL AGENT IN CHARGE]**

NSL VIO-13936

[DRAFTING DIVISION]  
[STREET ADDRESS]  
[CITY, STATE, ZIP CODE]

[MONTH DAY, YEAR]

[MR./MRS/MS.] [COMPLETE POC NAME]  
[TITLE, IF AVAILABLE]  
[COMPANY NAME]  
[PHYSICAL STREET ADDRESS - NO P.O. BOX]  
[CITY, STATE - NO ZIP CODE]

DEAR [MR./MRS./MS.] [LAST NAME]:

Under the authority of Executive Order 12333, dated December 4, 1981, and pursuant to Title 12, United States Code (U.S.C.), Section 3414(a)(5), (as amended, December 13, 2003), you are hereby directed to produce to the Federal Bureau of Investigation (FBI) all financial records pertaining to the customer(s) and/or accounts listed below:

NAME(S) [if available]

ACCOUNT NUMBER(s): [if available]

SOCIAL SECURITY NUMBER(S): [if available]

DATE(S) OF BIRTH: [if available]

[FOR PERIOD FROM INCEPTION TO PRESENT]

OR

[FOR PERIOD FROM [SPECIFIC DATE] TO [SPECIFIC DATE]

OR [PRESENT]]

If the time period noted above is to the "present," that term is intended to request information to the date of the processing of this request. If providing information to the date of processing is not feasible, please provide information to the date of receipt of this request.

[MR./MRS./MS./ COMPLETE NAME]

Page 2

Please see the attachment following this request for the types of information that your financial institution might consider to be a financial record.

In accordance with Title 12, U.S.C. Section 3414(a)(5)(A), I certify that the requested records are sought for foreign counterintelligence investigation purposes to protect against international terrorism or clandestine intelligence activities, and 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.

In accordance with Title 12, U.S.C., Section 3403(b), I certify that the FBI has complied with all applicable provisions of the Right to Financial Privacy Act.

Please be advised that Title 12, U.S.C., Section 3414(a)(5)(D), prohibits any financial institution, or officer, employee or agent of such institution, from disclosing to any person that the FBI has sought or obtained access to a customer's or entity's financial records under this statute.

You are requested to provide records responsive to this request **[personally to a representative of the [DELIVERING DIVISION]\_OR through use of a delivery service to the [OFFICE OF ORIGIN]]** within [xxxx] business days of receipt of this request.

Any questions you have regarding this request should be directed only to the **[[DELIVERING DIVISION] OR [OFFICE OF ORIGIN],\_depending on whether service is personal or through a delivery service]**. Due to security considerations, you should neither send the records through routine mail service nor disclose the substance of this request in any telephone conversation.

Your cooperation in this matter is greatly appreciated.

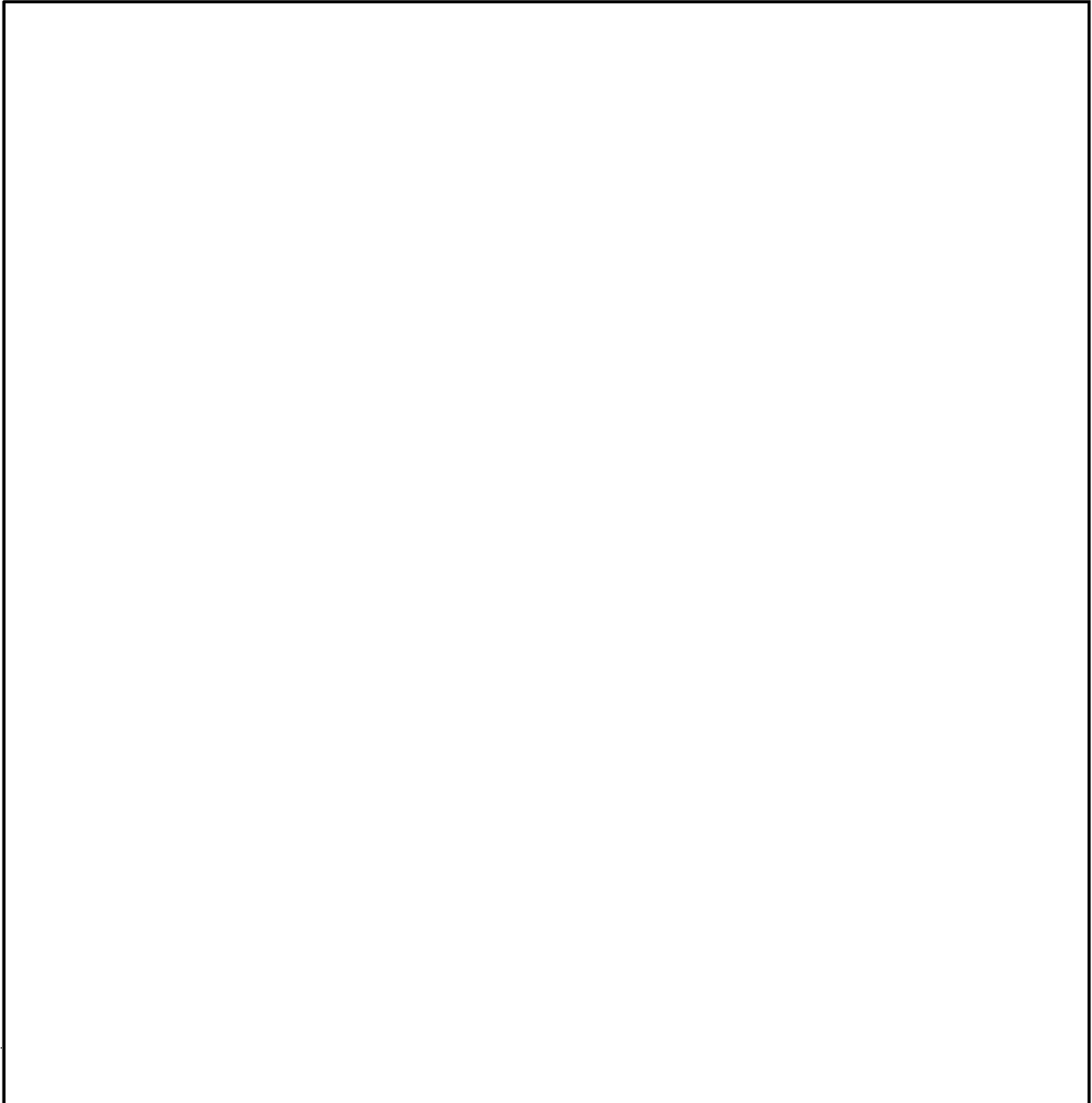
Sincerely,

**[ADIC/SAC NAME]  
[ASSISTANT DIRECTOR IN CHARGE/  
SPECIAL AGENT IN CHARGE]**



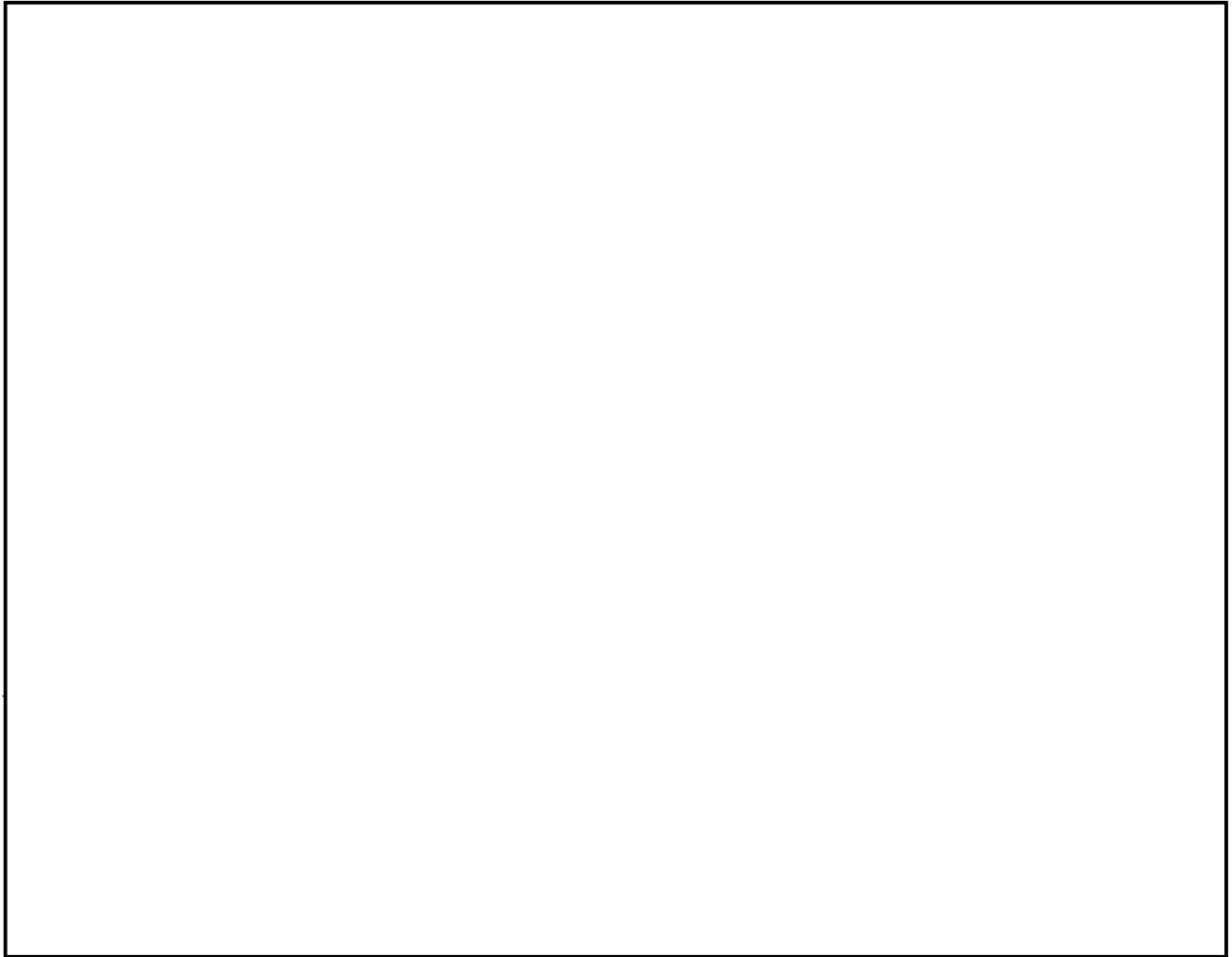
ATTACHMENT

In preparing your response to this National Security Letter, you should determine whether your company maintains the following types of information which may be considered by you to be a financial record in accordance Title 12, United States Code, Section 3401(2):



b2  
b7E

b2  
b7E



[DRAFTING DIVISION]  
[STREET ADDRESS]  
[CITY, STATE, ZIP CODE]  
[MONTH, DAY, YEAR]

[MR./MRS./MS.] [COMPLETE NAME OF POC]  
[TITLE, IF AVAILABLE]  
[NAME OF COMPANY]  
[PHYSICAL STREET ADDRESS - NO P.O. BOX]  
[CITY, STATE - NO ZIP CODE]

DEAR [MR./MRS./MS.] [LAST NAME]:

Under the authority of Executive Order 12333, dated December 4, 1981, and pursuant to Title 18, United States Code (U.S.C.), Section 2709 (Section 201 of the Electronic Communications Privacy Act of 1986) (as amended, October 26, 2001), you are hereby requested to provide to the Federal Bureau of Investigation (FBI) the name, address, and length of service of [person or entity] [persons or entities] to whom the following telephone [number is or was] [numbers are or were] registered:

[TELEPHONE NUMBER(S) (000) 000-000]:

[RELEVANT TIME PERIOD]: [ON SPECIFIC DATE]

or [FROM [SPECIFIC DATE] to [SPECIFIC DATE]]  
or [PRESENT]

If the time period noted above is to the "present," that term is intended to request information to the date of the processing of this request. If providing information to the date of processing is not feasible, please provide information to the date of receipt of this request.

In accordance with Title 18, U.S.C., Section 2709(b), I certify that the information sought is relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, and 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.

You are further advised that Title 18, U.S.C., Section 2709(c), prohibits any officer, employee or agent of yours from disclosing to any person that the FBI has sought or obtained

**[MR./MRS./MS.] [COMPLETE NAME]**

Page 2

access to information or records under these provisions.

You are requested to provide records responsive to this request **[personally to a representative of the [DELIVERING DIVISION] OR through use of a delivery service to [OFFICE OF ORIGIN]]** within [xxxx] business days of receipt of this request.

Any questions you have regarding this request should be directed only to the **[[DELIVERING DIVISION] OR [OFFICE OF ORIGIN], depending on whether service is personal or through a delivery service]**. Due to security considerations, you should neither send the records through routine mail service nor disclose the substance of this request in any telephone conversation.

Your cooperation in this matter is greatly appreciated.

Sincerely yours,

**[ADIC/SAC NAME]  
[ASSISTANT DIRECTOR IN CHARGE/  
SPECIAL AGENT IN CHARGE]**

NSL VIO-13942

[DRAFTING DIVISION]  
[STREET ADDRESS]  
[CITY, STATE, ZIP CODE]  
[MONTH, DAY, YEAR]

[MR./MRS./MS.] [COMPLETE NAME OF POC]  
[TITLE, IF AVAILABLE]  
[NAME OF COMPANY]  
[PHYSICAL STREET ADDRESS - NO P.O. BOX]  
[CITY, STATE - NO ZIP CODE]

DEAR [MR./MRS./MS.] [LAST NAME]:

Under the authority of Executive Order 12333, dated December 4, 1981, and pursuant to Title 18, United States Code (U.S.C.), Section 2709 (Section 201 of the Electronic Communications Privacy Act of 1986) (as amended, October 26, 2001), you are hereby requested to provide to the Federal Bureau of Investigation (FBI) the name, address, length of service, and local and long distance toll billing records associated with the following:

[NAME, IF KNOWN]

[TELEPHONE NUMBER(S) (000) 000-000]:

[RELEVANT TIME PERIOD]: [ON SPECIFIC DATE(S)]

or [FROM [SPECIFIC DATE] to [SPECIFIC DATE]  
or [PRESENT]

[OPTIONAL] If the time period noted above is to the "present," that term is intended to request information to the date of the processing of this request. If providing information to the date of processing is not feasible, please provide information to the date of receipt of this request.

In accordance with Title 18, U.S.C., Section 2709(b), I certify that the information sought is relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, and 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.

You are further advised that Title 18, U.S.C., Section 2709(c), prohibits any officer, employee or agent of yours from disclosing to any person that the FBI has sought or obtained

access to information or records under these provisions.

You are requested to provide records responsive to this request **[personally to a representative of the [DELIVERING DIVISION] OR through use of a delivery service to [OFFICE OF ORIGIN]]** within [xxxx] business days of receipt of this request.

Any questions you have regarding this request should be directed only to the **[[DELIVERING DIVISION] OR [OFFICE OF ORIGIN], depending on whether service is personal or through a delivery service]**. Due to security considerations, you should neither send the records through routine mail service nor disclose the substance of this request in any telephone conversation.

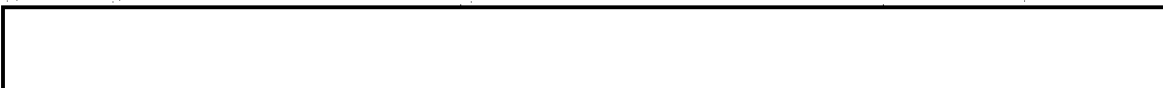
Your cooperation in this matter is greatly appreciated.

Sincerely yours,

**[ADIC/SAC NAME]  
[ASSISTANT DIRECTOR IN CHARGE/  
SPECIAL AGENT IN CHARGE]**

ATTACHMENT

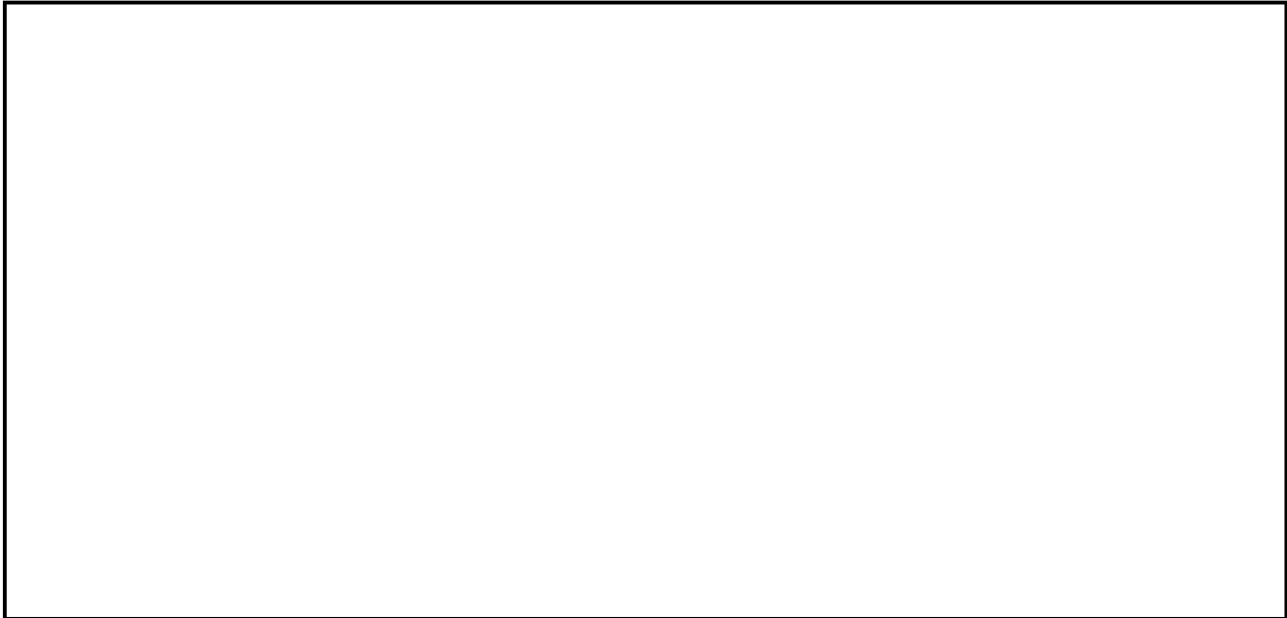
In preparing your response to this National Security Letter, you should determine whether your company maintains the following types of information which may be considered by you to be toll billing records in accordance with Title 18, United States Code, Section 2709:



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b7E

NSL VIO-13944

b2  
b7E



We are not requesting, and you should not provide, information pursuant to this request that would disclose the content of any electronic communication as defined in Title 18, United States Code, Section 2510(8).

~~SECRET~~

In accordance with Title 18, U.S.C., Section 2709(b), I certify that the information sought is relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, and 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.

DATE: 07-27-2007  
CLASSIFIED BY 65179dmh/ksx/laf  
REASON: 1.4 (C)  
DECLASSIFY ON: 07-27-2032

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED EXCEPT  
WHERE SHOWN OTHERWISE

~~SECRET~~

NSL VIO-13946



~~SECRET~~

[MR./MRS./MS. COMPLETE NAME]

Page 2

You are further advised that Title 18, U.S.C., Section 2709(c), prohibits any officer, employee or agent of yours from disclosing to any person that the FBI has sought or obtained access to information or records under these provisions.

You are requested to provide records responsive to this request **[personally to a representative of the [DELIVERING DIVISION] OR through use of a delivery service to [OFFICE OF ORIGIN]]** within [xxxx] business days of receipt of this request.

Any questions you have regarding this request should be directed only to the **[[DELIVERING DIVISION] OR [OFFICE OF ORIGIN],\_depending on whether service is personal or through a delivery service]**. Due to security considerations, you should neither send the records through routine mail service nor disclose the substance of this request in any telephone conversation.

Your cooperation in this matter is greatly appreciated.

Sincerely,

[ADIC/SAC NAME]

[ASSISTANT DIRECTOR IN CHARGE/  
SPECIAL AGENT IN CHARGE]

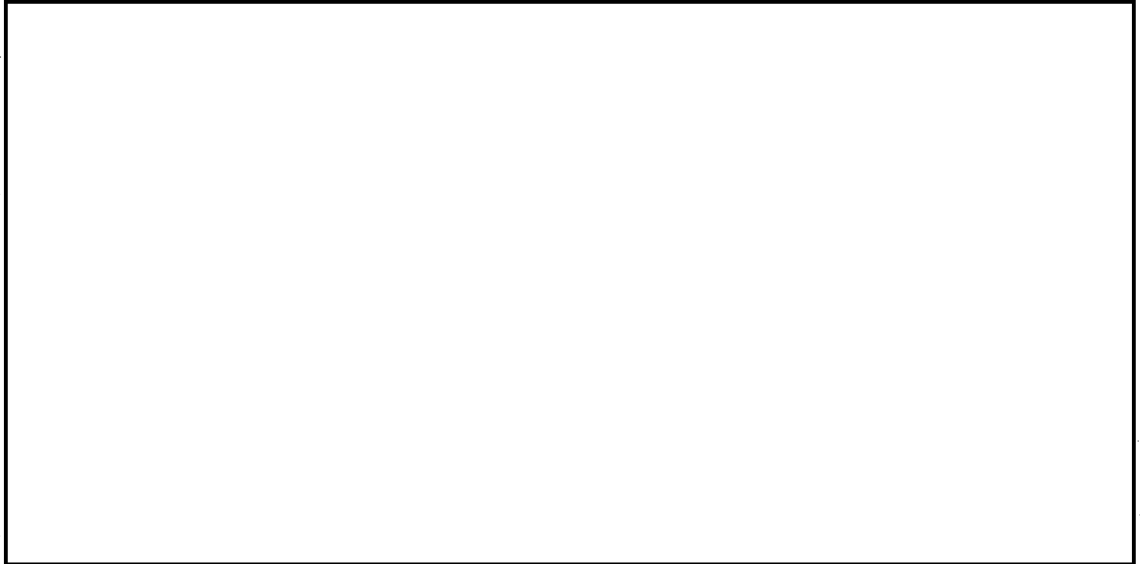
~~SECRET~~

NSL VIO-13947

~~SECRET~~

ATTACHMENT

In preparing your response to this National Security Letter, you should determine whether your company maintains the following types of information which may be considered by you to be an electronic communication transactional record in accordance with Title 18, United States Code, Section 2709:



b2  
b7E

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

~~SECRET~~

NSL VIO-13948

## 215 FISA Business Records versus National Security Letters

| 215 FISA Business Records Authority  | National Security Letters Authority                        |
|--|--|
| <b>Standard = Reasonable grounds to believe that the tangible things sought are relevant to an authorized investigation.</b> | <b>Standard = Relevant to an authorized investigation.</b> |

| Types of 215 Business Records   | Types of NSL Records:   |
|---|---|
| Very broad.   | Restricted by statute.  |
| "Any tangible things"<br>("including books, records, papers, documents, and other items") | <u>Electronic Communications Privacy Act:</u> <ul style="list-style-type: none"><li>• Telephone subscriber or electronic subscriber information (limited to name, address, and length of service.</li><li>• Telephone local and long distance toll billing records.</li><li>• Electronic communications transactional records (e.g., transaction/activity logs and email header information).</li></ul> |
|   | <u>Right to Financial Privacy Act:</u> <ul style="list-style-type: none"><li>• Financial records.</li></ul>   |
|   | <u>Fair Credit Report Act:</u> <ul style="list-style-type: none"><li>• Consumer identifying information.</li><li>• Identity of financial institution.</li><li>• Full credit report from credit bureau.</li></ul>  |

|  | 2001 | 2002 | 2003 | 2004 | 2005 | TOTAL |
|--|------|------|------|------|------|-------|
| <b>Toll Records 18 USC 2709(b)(1)</b>            |      |      |      |      |      |       |
| Total USPER NSLs                                 |      |      |      |      |      |       |
| Different USPER                                  |      |      |      |      |      |       |
| Total Non USPER NSLs                             |      |      |      |      |      |       |
| Different Non USPER                              |      |      |      |      |      |       |
| Total NSLs                                       |      |      |      |      |      |       |
| <b>Subscriber Records 18 USC 2709(b)(2)</b>      |      |      |      |      |      |       |
| Total USPER NSLs                                 |      |      |      |      |      |       |
| Different USPER                                  |      |      |      |      |      |       |
| Total Non USPER NSLs                             |      |      |      |      |      |       |
| Different Non USPER                              |      |      |      |      |      |       |
| Total NSLs                                       |      |      |      |      |      |       |
| <b>Financial Records 12 USC 3414(a)(5)</b>       |      |      |      |      |      |       |
| Total USPER NSLs                                 |      |      |      |      |      |       |
| Different USPER                                  |      |      |      |      |      |       |
| Total Non USPER NSLs                             |      |      |      |      |      |       |
| Different Non USPER                              |      |      |      |      |      |       |
| Total NSLs                                       |      |      |      |      |      |       |
| <b>Financial Institutions 15 USC 1681u(a)</b>    |      |      |      |      |      |       |
| Total USPER NSLs                                 |      |      |      |      |      |       |
| Different USPER                                  |      |      |      |      |      |       |
| Total Non USPER NSLs                             |      |      |      |      |      |       |
| Different Non USPER                              |      |      |      |      |      |       |
| Total NSLs                                       |      |      |      |      |      |       |
| <b>Consumer Identifying Info 15 USC 1681u(b)</b> |      |      |      |      |      |       |
| Total USPER NSLs                                 |      |      |      |      |      |       |
| Different USPER                                  |      |      |      |      |      |       |
| Total Non USPER NSLs                             |      |      |      |      |      |       |
| Different Non USPER                              |      |      |      |      |      |       |
| Total NSLs                                       |      |      |      |      |      |       |
| <b>Court Order Info 15 USC 1681u(c)</b>          |      |      |      |      |      |       |
| Total USPER NSLs                                 |      |      |      |      |      |       |
| Different USPER                                  |      |      |      |      |      |       |
| Total Non USPER NSLs                             |      |      |      |      |      |       |
| Different Non USPER                              |      |      |      |      |      |       |
| Total NSLs                                       |      |      |      |      |      |       |

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**OGC Responses - AG's 4/6/06 HJC QFRs**

**6. The Department had previously advised this Committee that the FBI and the Department were taking additional steps to improve the efficiency of the Foreign Intelligence Surveillance Act (FISA) process. One of these steps was the creation of a FISA unit in November 2002, at FBI Headquarters that was charged with instituting an automated tracking system that would electronically connect the field divisions, FBI Headquarters, the FBI's National Security Law Unit, and the Office of Intelligence Policy Review (OIPR).**

**a. What is the status of this automated tracking system?**

**ANSWER:** Since the last report to the Committee, improvement of the automated tracking system, called the Foreign Intelligence Surveillance Act Management System (FISAMS), has continued. FISAMS has been operating on the FBI's secret network (FBINET) since January 2004, with phased implementation leading to mandatory use by all field offices beginning in November 2004. FISAMS on FBINET has over 5,000 users and has processed over 6,000 Foreign Intelligence Surveillance Act (FISA) requests leading to the issuance of over 4,800 orders.

In April 2006, the FBI and DOJ's Office of Intelligence Policy and Review (OIPR) initiated the automated interface between FISAMS and OIPR's system (Oasis), permitting the transmission of FISA requests and draft and final FISA packages from FISAMS to Oasis. Although previously these documents had to be moved manually between the two systems (generally by printing the documents from one system and then scanning them into the other system), OIPR attorneys can now draft FISA packages and enter them into Oasis at OIPR, automatically transferring them over a network interface to FISAMS. Once in FISAMS, these packages are immediately available for verification review by the declarant at FBI Headquarters (FBIHQ) and by the FBI case agent. Also in April 2006, the FBI "stood up" FISAMS on the FBI's internal Sensitive Compartmented Information (SCI) Operational Network and initiated an automated interface with Oasis' Top Secret system, permitting the electronic exchange of Top Secret and SCI information.

FISAMS has also implemented a number of features to allow users and managers at all FBI levels to better manage the FISA process. These include automated email notifications of pending work and approaching renewal deadlines, as well as various tools to help managers prepare and use activity reports.

**b. What are the other duties of the FISA unit?**

**ANSWER:** The FISA Unit provides administrative support for the FISA process, including FISA processing and tracking. In addition, the FISA Unit compiles the FISA packages that are provided to the FBI Director for signature, and it is responsible for

transporting signed packages to DOJ for the signature of the Attorney General or Deputy Attorney General. The FISA Unit also distributes all FISA Court (FISC) orders and warrants to the appropriate field divisions for their use and for service on telecommunication carriers, Internet service providers, or other specified entities.

**c. Has operational efficiency improved since the Unit was created?**

**ANSWER:** Yes. The FBI's FISA Unit, DOJ's OIPR, and the FISC have all taken steps to improve the efficiency of the FISA process.

The FBI's FISA Unit now scans primary and secondary orders and warrants upon receipt and e-mails these files to Field Office case agents and to those responsible for serving them on carriers, service providers, and other specified persons. While raised seals are required on orders and warrants establishing initial coverage, the FBI has found that most carriers and service providers will accept a printed copy of the signed, scanned document to renew coverage on an existing target. Consequently, although the FBI previously printed and distributed "hard" copies of orders, warrants, and other communications (a process that often took up to two weeks), the FBI now uses scanned, signed copies when possible, subsequently providing documents with raised seals as follow-up.

DOJ's OIPR has designated a Docket Clerk, who is the only person authorized to receive signed dockets from the FISC Clerk of the Court. Previously, dockets were received by several different attorneys and staff at OIPR and the FBI, leading to inconsistent processing and distribution. With the designation of an OIPR Docket Clerk, the Clerk of the Court now has a single point of contact for the delivery of dockets, which has helped ensure that all dockets are processed expeditiously upon receipt.

At the direction of the FISC's Presiding Judge, the Clerk of the Court changed the post-court processing of dockets. Although previously it often took a week or more to return a docket to OIPR, the Clerk of the Court now directs the return of signed dockets to OIPR by the end of the business day after approval.

When taken together, these changes have resulted in the provision of a serviceable copy of a signed order to a carrier or service provider in two or three days rather than in two or three weeks.

**d. What other steps have been implemented to achieve optimum efficiency in the FISA application process?**

**ANSWER:** Effective 3/1/03, FBI Field Offices began using a standard "FISA Request Form" to request the initiation, renewal, or modification of FISA coverage. This single, standard form replaced a variety of communications used in the past to request coverage. The form helps ensure that those who draft FISA packages have all pertinent information

and that no time is wasted in preparing unnecessary documentation, facilitating quicker preparation of these packages. On 3/1/03, FBI Field Offices also began submitting requests to renew and amend existing FISAs directly to OIPR (previously, all requests to renew or amend existing FISAs were submitted to FBIHQ for approval before being forwarded to OIPR for drafting). This measure also resulted in time savings and the improved efficiency of the process.

In another measure to improve FISA accuracy and efficiency, the Executive Assistant Director of the FBI's National Security Branch issued a 1/24/06 communication reiterating the importance of accuracy in the FISA process, followed by a 2/2/06 directive requiring case agents to open and maintain FISA-subfiles containing written substantiation for each factual assertion contained in the FISA declaration. On 2/6/02 the FBI instituted a FISA Renewal Review Board (consisting of OIPR and FBI managers) to evaluate FISA renewal requests at regular intervals and to terminate non-productive FISAs, facilitating the more efficient use of scarce human resources.

**31. Under Executive Order 12863, the Intelligence Oversight Board (IOB) is responsible for overseeing U.S. intelligence activities. General counsel and inspectors general throughout the intelligence community must report to the IOB on at least a quarterly basis intelligence activities that they "have reason to believe may be unlawful or contrary to Executive order or Presidential directive." The IOB is required to forward to the Attorney General any reports of intelligence conduct that it "believes may be unlawful or contrary to Executive order or Presidential directive." In November 2005, the Electronic Privacy Information Center submitted a Freedom of Information Act request to the Attorney General for all reports of possible intelligence misconduct received from the Intelligence Oversight Board (IOB) since September 2001. EPIC's request also asked for documentation of any response from the Attorney General to such reports. EPIC was informed in March 2006 that the Attorney General has no records responsive to this request. Has the Attorney General received any reports of possible intelligence misconduct from the IOB since September 2001?**

**ANSWER:** It is the FBI's understanding that the IOB does not send reports to the Attorney General.

**32. If so, please name the agencies that submitted the reports to the IOB, and explain what sorts of possible misconduct the reports detailed. Please also describe any action the Attorney General has taken in response to such reports.**

**ANSWER:** Please see the response to Question 31, above.

**33. If the Attorney General has not received any reports from the IOB since September 2001, please explain how instances of possible intelligence misconduct throughout the intelligence community have been addressed during that time.**

**ANSWER:** The FBI's procedures for addressing possible intelligence misconduct are discussed in response to Question 34, below.

**34. In March 2006, the Department of Justice Inspector General issued a semiannual report to Congress on Implementation of Section 1001 of the USA PATRIOT Act. In this report, the Inspector General discussed reports of possible intelligence misconduct that the FBI made to the Intelligence Oversight Board (IOB) in FY2004-FY2005. The Inspector General characterized the possible violations as ranging from "relatively minor to significant." According to the Inspector General's report, the FBI submitted 108 reports of possible intelligence violations to the IOB in FY2004-FY2005. How were these matters addressed by the FBI, IOB, and/or Attorney General?**

**ANSWER:** The FBI is able to address only how these matters were addressed by the FBI; we defer to the IOB and the Attorney General with respect to how they addressed these matters.

Pursuant to Section 2.4 of Executive Order (EO) 12863, FBI policy requires all FBI employees, in both the field offices and headquarters divisions, to report intelligence activities that may be "unlawful or contrary to Executive order or Presidential directive." The FBI has interpreted this as including potential violations of agency procedures issued pursuant to EO 12333, including the Attorney General's Guidelines for National Security Investigations and Foreign Intelligence Collection (2003). Potential violations are reported to both the FBI's Office of the General Counsel (OGC) and Inspection Division.

Based on the requirements of EO 12863 and guidance provided by the President's Intelligence Oversight Board (IOB) and DOJ's OIPR, the FBI's OGC determines whether the potential violation is sufficiently serious to warrant reporting to the IOB. If the potential violation is determined to be reportable to the IOB, OGC prepares a written notification, which is signed by the General Counsel or the General Counsel's designee (the Deputy General Counsel, National Security Law Branch) and provided to the IOB, with copies furnished to the Attorney General and Counsel for OIPR. Copies are also forwarded to the FBI's Inspection Division for action as deemed appropriate and to the field office or headquarters division that originally reported the matter.

While generally the reportable actions of FBI employees constitute performance errors rather than willful misconduct, in rare instances this may not be the case. In such instances, the FBI's Inspection Division conducts an appropriate investigation and may refer the matter to the FBI's Office of Professional Responsibility (OPR) for adjudication. If the FBI's OGC determines that any such matters are not reportable to the IOB, that office maintains a copy of its opinion for periodic review by Counsel for the IOB.

If an IOB violation involves the acquisition of communications conducted pursuant to FISA but without appropriate authorization, that "overcollection" would be sequestered



and provided to OIPR for appropriate disposition by the FISC pursuant to FISA Section 106(i). If an IOB violation involves the unintentional acquisition of information unrelated to a FISA court order (e.g., obtaining information beyond the scope of a National Security Letter), the FBI would take appropriate remedial action to identify and address any individual or systemic issues related to the overcollection.

**35. The Inspector General's report says that in one instance of possible intelligence misconduct reported to the IOB, "the FBI received 181 full content telephone calls instead of just billing and toll records." What actions did the FBI, IOB, and/or Attorney General take in response to this report of possible misconduct?**

**ANSWER:** The FBI is able to address only the actions taken by the FBI in response to reports of possible misconduct; we defer to the IOB and the Attorney General with respect to how they responded to such reports.

The FBI's response to this question is classified and is, therefore, provided separately.

**36. According to the Inspector General's report, a number of possible violations reported to the IOB in FY2004-FY2005 involved the FBI's use of national security letter authority. Did any of these matters involve provisions of law amended by the USA PATRIOT Act?**

**ANSWER:** The USA PATRIOT Act changed the legal standard for issuing National Security Letters (NSLs) from information that is relevant and offers "specific and articulable facts" giving reason to believe that the subject is an agent of a foreign power to information that is "relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities." In addition, the USA PATRIOT Act allowed the FBI Director to delegate signature authority to Special Agents in Charge of designated field offices and to FBI managers in the Senior Executive Service at FBI Headquarters.

The IOB violations referenced in the Inspector General's report as arising from the FBI's use of NSLs did not relate to the FBI's failure to have sufficient predication to issue these NSLs. Rather, the reported violations involved errors by third parties or clerical mistakes by the FBI. For example, some IOB violations resulted when telecommunications carriers inadvertently provided the FBI with unsolicited data. In other instances, clerical errors resulted in the acquisition of information on telephone numbers that was not actually sought in an NSL. There were no instances in which NSLs were signed by a person who did not have delegated authority to do so.

**37. The Inspector General's report indicates that the vast majority of reports from the FBI to the IOB in FY2004-FY2005 involved the improper use of investigative authority under the Foreign Intelligence Surveillance Act. Did any of these matters involve provisions of law affected by the USA PATRIOT Act?**

**ANSWER:** The USA PATRIOT Act made changes to the legal standard required under FISA. As amended by the USA PATRIOT Act, FISA requires a certification that foreign intelligence is "a significant purpose" of the authority sought rather than "the" purpose or the "primary purpose." None of the IOB violations arose from this certification.

We understand this question to be asking whether any of the IOB violations referenced in the Inspector General's report related to other changes to FISA enacted as part of the PATRIOT Act, such as: (1) "roving" electronic surveillance; (2) the pen register/trap and trace (PR/TT) standard; (3) FISA business records authority; or (4) information sharing provisions. For fiscal years 2004-2005, approximately 8 percent of the 108 violations reportable to the IOB were related in some way to these provisions. Many such violations were third-party errors, such as telecommunications carriers' mistakes. All but one of these violations were errors in the implementation of PR/TTs. The one violation that did not relate to the implementation of a PR/TT involved the use of FISA-derived information in a criminal proceeding without first obtaining the Attorney General's use authority.

**38. On April 3, 2006, the Chicago Tribune published a story about the Intelligence Oversight Board (IOB) entitled "Intelligence Watchdog Slow to Bite." The article reported that President Bush did not appoint anyone to serve on the IOB until March 17, 2003. How were reports of possible intelligence misconduct from the intelligence community handled during this period when the IOB had no members?**

**ANSWER:** The fact that there was a lag in appointing IOB members had no effect on how the FBI handled reports to the IOB of potentially improper intelligence activities.



## Summary of the Joint Congressional Patriot Act Conference Report

### I. FISA DURATION

[Redacted]

OTHER outside the scope

### II. BUSINESS RECORDS

[Redacted]

### III. EMERGENCY DISCLOSURES (18 U.S.C. 2702)

Attorney General (AG) will report emergency disclosures to Senate Judiciary Committee (annually).

### IV. ROVING FISA SURVEILLANCE

[Redacted]

[Redacted] Additional reporting to Senate Judiciary Committee.

### VI. WIRETAP PREDICATES

[Redacted]

### VII. SNEAK AND PEAK WARRANTS

[Redacted]

Requires detailed annual, public reports of the use of the authority.

**VIII. NATIONAL SECURITY LETTERS (NSLs)**

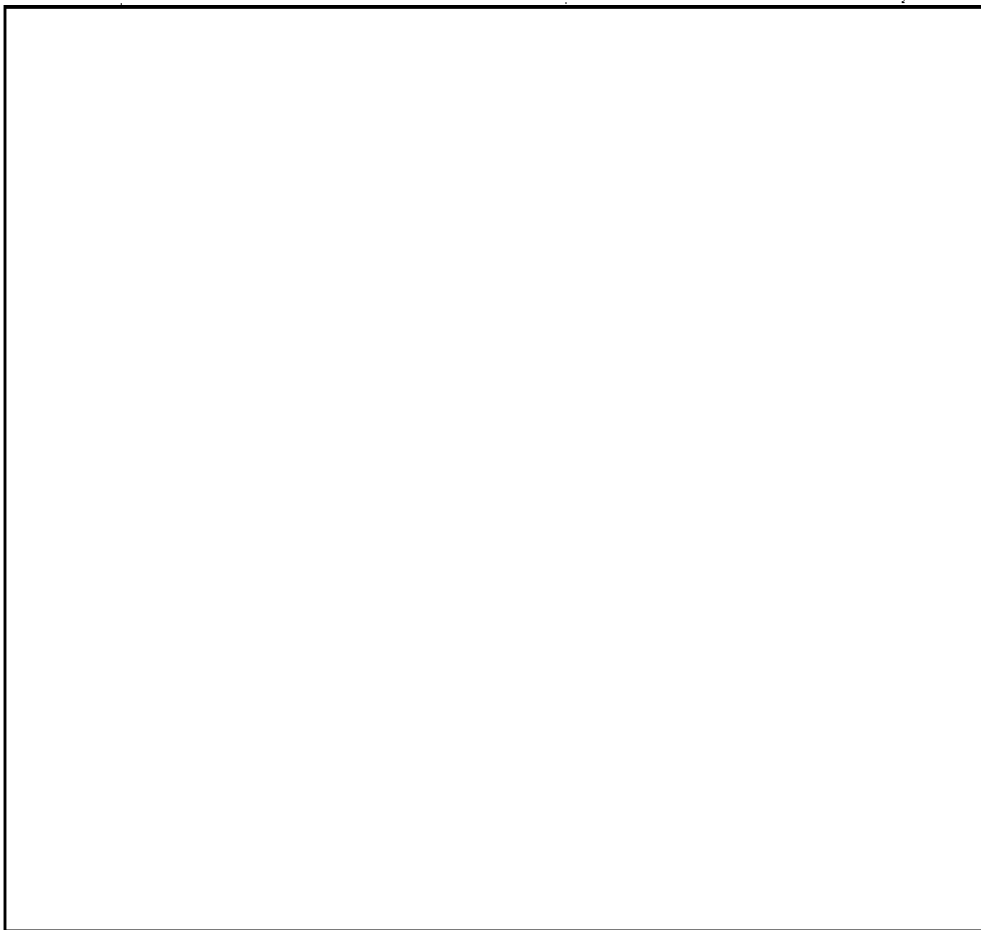
1. Authorizes judicial enforcement of NSLs. Recipient may challenge NSL in Court and may disclose to those necessary for compliance and to OTHER outside the scope for legal advice.
2. Government must provide detailed reports on use of NSLs to the Judiciary Committees and other Committees.
3. Inspector General, Department of Justice directed to conduct audit of the effectiveness and abuse of NSLs.

**IX. FISA PEN REGISTER**



**X. SUNSET PROVISIONS**

1.



2.

**XI. MATERIAL SUPPORT (18 U.S.C. § 2339B)**

[Redacted]

**XII. DRUG TRAFFICKING**

[Redacted]

**XIII. DATA MINING**

[Redacted]

OTHER outside the scope

POC:

[Redacted]

Director's Research Group  
(202) 324-[Redacted]

Information from:

[Redacted]

Assistant General Counsel  
Office of the General Counsel

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Approved by: DGC Julie F. Thomas

Dated: 01/18/2006

NSL VIO-13959



National Security Law Policy and Training Unit

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Potential Q&As re Washington Post article of November 6, 2005.

**NSL QUESTIONS & ANSWERS**

1. What, if any, negative impact would there on the FBI's counterterrorism efforts if the law and accompanying rules regarding NSL's returned to their pre-PATRIOT Act state?

**ANSWER:** The investigative value of NSL's would be dramatically reduced. Furthermore, especially in light of the exponential growth in counterterrorism cases since 9/11, the negative impact on the efficiency with which the FBI could employ NSL's would be devastating. The pre-PATRIOT Act standard was unreasonably high. It required a certification of specific and articulable facts giving reason to believe that the information sought pertains to a foreign power or an agent of a foreign power. The investigation of potential terrorist cases is not unlike the gathering of building blocks. We need NSL's to obtain such facts; whereas, the pre-PATRIOT Act standard presupposed that we already had such facts. Furthermore, NSL's seek only that information as to which there is no constitutionally protected expectation of privacy. NSL's should not require a standard nearly so high as that required for the far more intrusive electronic surveillance and physical searches.

2. What analysis is applied for approval of a NSL? What test or standard must be satisfied?

**ANSWER:** The heart of the analysis for all NSL's is relevance. Each NSL must be based upon a certification of relevance to an authorized investigation to protect against international terrorism or clandestine intelligence activities. The relevance requirement ties the requested records to the appropriate investigation. Another important aspect of the analysis is to ensure that NSL's, as they relate to U.S. persons, are not conducted solely on the basis of activities protected by the First Amendment.

3. How many proposed NSL's have been rejected?

**ANSWER:** We don't keep records of those that were not authorized. Likewise, records are not maintained regarding grand jury subpoenas that are not approved. Simply put,

it is our practice to keep records of things that we do rather than things that we don't do. 4. Regarding the roughly five dozen FBI officials who are authorized to approve NSL's:

a. What, if any, training has been provided them regarding the legal constraints on their authority?

**ANSWER:** First, let's address who these authorizing officials actually are. They are extremely high-ranking persons within the Bureau: the Deputy Director; the Executive Assistant Director for CT and CI; the Assistant Directors in charge and all DAD's for CT, CI, and Cyber; the General Counsel; the Deputy General Counsel for the National Security Law Branch; the Assistant Directors in charge in NY, DC, and LA; and all SAC's. That's it. Even those high-ranking officials who sometimes serve as Acting SAC's aren't authorized to approve NSL's. As for their training, each new SAC receives a personal briefing on NSL's from either the General Counsel or NSLB's Deputy General Counsel. Furthermore, on March 2, at this year's Chief Division Counsel conference, a NSLB attorney trained the attendees on NSL's. During the last year, NSLB attorneys traveled to eight Field Offices to provide training on a wide variety of national security topics, including the predicates for issuing NSL's. In addition, NSLB offers a free-standing presentation on NSL's. That presentation has been used at various Field Offices, and it has also been used at many FBI conferences in the field.

b. What, if any, inspections or audits have been conducted to ensure that the applicable laws and rules are being followed?

**ANSWER:** We have not seen a need to conduct any formal audits or investigations focused on NSL's. Therefore, formal audits and investigations have not been conducted. However, the use of NSL's is routinely reviewed by supervisors and in the context of file reviews. I'll also emphasize that we've discovered no history of abuse regarding NSL's.

c. What, if any, negative impact would there be on the FBI's counterterrorism efforts if the approval authority were no longer so widely dispersed (for example, if it were withheld to only a few very senior officials at FBIHQ)?

**ANSWER:** The current level of dispersal actually isn't all that wide. Remember that, in each Field Office, there is only one person--who is a very senior FBI official--authorized to approve NSL's. And, given the high volume of counterterrorism cases since 9/11, we should avoid anything that would reduce the speed and efficiency with which we investigate these cases--especially when, as in this instance, there would be no good reason to do so.

5. We understand that, when he was employed within the FBI's Office of General Counsel, Michael J. Woods was a highly regarded and well respected attorney with extensive expertise in national security law. Why, then, did FBI personnel disregard his November 21, 2001, Electronic Communication that cautioned against potential NSL abuses, not using the "least intrusive means," etc.?

**ANSWER:** That Electronic Communication was actually published on December 12, 2001, and it reflects the fact that I approved it. It provided some extremely useful information that needed to be distributed to the field as soon as possible following the implementation of the USA PATRIOT Act. Furthermore, I always agree with those, like Mr. Woods, who recommend a judicious approach to the way we do business. That's a good policy regarding our use of NSL's and any other investigative tool we employ. On October 31, 2003, the Attorney General published new National Security Guidelines that are directly on point. From that point forward, our focus was on following those guidelines rather than the previous guidance in our own internal Electronic Communication. In each case, the Office of General Counsel and the Chief Division Counsel who are stationed in our Field Offices ensure that the statutory NSL standard is followed, and they continue to take a very judicious approach to the use of NSL's.

6. Regarding the general law-abiding public, once having been made aware of NSL's and the data bases that result from them:

a. Isn't it fair to conclude that they will be less likely to visit certain websites or to read certain types of library books?

**ANSWER:** I certainly don't reach that conclusion. It's far too speculative. I wish that members of the public truly understood the predicates and the rigorous checks and balances that we employ prior to authorizing a NSL and that NSL's don't, for example, list for us the websites that people visit or the books that they read. Recall that, regarding NSL's on U.S. persons, we are continually and specifically ensuring that we are not conducting them solely on the basis of activities protected by the First Amendment. Simply put, no one should hesitate to conduct his or her private affairs in the same manner as always.

b. If so, then please articulate for us why this chilling effect is not an undue infringement on First Amendment rights.

**ANSWER:** As previously stated, I don't accept that there is a chilling effect. And, I certainly don't see any undue infringement on First Amendment rights.

7. Regarding data mining:

a. Please define for us the term "data mining."



**ANSWER:** There is no universally approved definition of "data mining." We have learned that it means many different things to different people--depending, in large measure, on whether one is dealing with lay persons or those having technical expertise. Specifically, lay persons are more likely to think of data mining in very broad terms; whereas, experts tend to think in terms of narrow technical definitions that focus on their own specific technical backgrounds. In a classified setting, I would certainly be glad to discuss in detail any FBI tool and how it's employed, leaving it to others to determine whether it fits their own definition of data mining.

b. To what extent, if any, does data mining differ from "contact chaining" and "link analysis"?

**ANSWER:** As previously discussed, it would be counterproductive at this point to engage in such a discussion of definitions, especially to compare and contrast definitions that are not well settled.

**[COMMENT RE DATA MINING: On September 16, 2005, Senators Brownback and Feingold sent a letter to the Director, seeking information regarding data mining in light of recent GAO government-wide reviews. The Director's proposed response, which includes a brief discussion of a data mining definition, is currently being staffed.]**

8. How do you recommend that we, as the elected representatives of the American people, assure our constituents that the FBI is not abusing NSL's and the various data bases involved?

**ANSWER:** Please tell them that the FBI ensures that each and every prerequisite is met and that sufficient legal review occurs before a NSL is issued. Specifically, before a NSL is issued, the requisite investigation must be opened and at least one FBI attorney must review the request before it is presented to a high-level FBI official for review, signature, and issuance. Furthermore, please remind your constituents that, since 9/11, the number of terrorism investigations has grown exponentially. To evaluate these investigations in the preliminary phases to determine whether to expand the investigation or to close it, information from tools such as NSL's has proved to be absolutely invaluable.

ANSWER:

If the standard for issuance of an NSL were rolled back to Pre-Patriot Act standards, the change in their investigative value would be dramatically reduced. As indicated above, the prior standard required the FBI to have specific and articulable facts that the person to whom the records sought relate is an agent of a foreign power or a foreign power. That standard was unreasonably high, both when compared to the standard necessary to use a grand jury subpoena and when compared to the standard necessary to obtain court-ordered FISA electronic surveillance and physical search. An NSL is clearly analogous to a grand jury subpoena, which can be issued during a criminal investigation to obtain any relevant information. It would be anomalous if it were easier to obtain these sorts of records in a routine criminal investigation than in an investigation to protect the national security. Further, it makes little sense to set the standard for NSLs near the level necessary for full content FISAs. NSLs, which seek only information as to which there is no constitutionally protected expectation of privacy, should clearly be available with a much lower showing than is necessary for the considerably more intrusive electronic surveillance and physical searches. Moreover, there are clearly circumstances where information is needed and yet there are not specific and articulable facts suggesting the person to whom the records relate is a terrorist or spy. For example, suppose agents observe a suspected spy having dinner with another individual, who, the investigation reveals, made the reservation. It would be entirely appropriate for the FBI to use an NSL to obtain subscriber information on the telephone number he left when making the reservation, even though there is not yet any reason to believe he is either a terrorist or a spy. If the standard were to revert to the pre-Patriot Act standard, that very basic investigative step could not be taken expeditiously.

Question 8:

The FBI's National Security investigations are governed by safeguards to ensure the privacy of law-abiding Americans and that all FBI investigative activities conform with the Constitution and all applicable statutes, executive orders, and regulations.

NSLs are an important tool used in FBI National Security investigations. Additional safeguards exist to protect against any potential abuse of NSLs. The FBI's Office of General Counsel has issued FBI-wide guidance notifying FBI investigators of the standards, procedures, and forms for issuing NSLs. An NSL must be approved by a senior (seasoned) FBI official, who generally is the Special Agent in Charge (SAC) of an FBI field office.

Sharing of this NSL information is further subject to the specific statutory limitations of the Electronic Communications Privacy Act, the Right to Financial Privacy Act, the Fair Credit Report Act, and the Privacy Act.

Finally, the FBI is subject to Department of Justice oversight and Congressional reporting.



## National Security Law Policy and Training Unit

Unit Chief [redacted]

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GC's Talking Points re Washington Post article of November 6, 2005.

### I. General NSL Information:

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

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

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

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

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

- The standard for issuing an NSL is **relevance** to an authorized investigation to protect against international terrorism or clandestine intelligence activities provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the First Amendment of the Constitution of the United States. (The 1681v NSL standard is slightly different to reflect that it applies only to international terrorism investigations.)

- The new "relevance" standard resulted in the increase in the number of NSLs issued by the FBI to further its investigations.

•NSLs are used as preliminary building block of an investigation - like grand jury subpoenas and FISA section 215 business records orders.

•NSLs are limited to the described categories of records. If the information sought falls outside of these categories, the FBI must use another investigative tool (e.g., grand jury subpoena or 215 order).

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

## **II. Process and Standard for National Security Letters post-USA PATRIOT Act:**

### **A. Relevance Standard (Section 505 of the USA PATRIOT Act):**

The standard for issuing an NSL is relevance to an authorized investigation-

- to protect against international terrorism; or,
- clandestine intelligence activities; and
- provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the First Amendment of the Constitution of the United States.

### **B. Approval Authority for NSLs:**

The authority to sign NSLs has been delegated to:

- the Deputy Director and Executive Assistant Director for CT/CI;
- Assistant Directors in charge and all DADs for CT/CI/Cyber (except that CI and Cyber ADs and DADs do not have any authority with respect to 1681v NSLs);
- General Counsel;
- Deputy General Counsel for National Security Affairs;
- Assistant Directors in Charge in NY, D.C., and LA; and,
- all SACs (An acting SAC may not sign an NSL).

### **C. Retention/Dissemination of NSL Information:**

• Information obtained through the use of an NSL may be retained and disseminated in accordance with general standards set forth in The Attorney General's Guidelines for FBI National Security Investigation and Foreign Intelligence Collection (NSIG).

• FBI Policy pre and post USA PATRIOT Act has been to maintain the information derived from NSLs regardless of whether it turns out to be relevant (for example - FBI determines that a target is not a threat). CTD mandates that all telephone information go into Telephone Applications.

•Dissemination is further subject to specific statutory limitations:

- Privacy Act regarding U.S. Person information;
- toll record NSL statute, ECPA, 18 U.S.C. §2709, and financial record NSL statute, RFPA, 12 U.S.C. §3414(a)(5)(B), permit dissemination if per NSIG and information is clearly relevant to responsibilities of recipient agency;
- limited credit information NSL statute, FCRA, 15 U.S.C. §1681u, permits dissemination to other federal agencies as may be necessary for the approval or conduct of an FCI investigation; and,
- no special statutory rules for dissemination under full credit report NSL statute, FCRA, 15 U.S.C. §1681v.

### III. Process and Standard for National Security Letters pre-USA PATRIOT Act:

#### A. Standard:

- The pre-USA PATRIOT Act standard for the issuance of an NSL required the records be **relevant to an authorized foreign counterintelligence investigation** and that the FBI have **specific and articulable facts** that the requested records **related to an agent of a foreign power or a foreign power.**
- Put differently, the FBI had to have reached a defensible position that the person was a terrorist or spy before the FBI could gather the base information it needed to determine whether the person was a terrorist or spay.
- The standard was unreasonably high. An NSL is clearly analogous to a grand jury subpoena, which can be issued during a criminal investigation to obtain relevant information. It would be anomalous if it were easier to obtain these sorts of record in a routine criminal investigation than in an investigation to protect the national security.

#### B. Retention/Dissemination of pre-USA PATRIOT Act NSL information:

- As stated, FBI Policy pre and post USA PATRIOT Act has been to maintain the information derived from NSLs regardless of whether it turns out to be relevant (for example - FBI determines that a target is not a threat). CTD mandates that all telephone information go into Telephone Applications.

#### **IV. Problems with NSLs:**

- NSLs limited to specific categories of information (limited by statute).
- NSLs can be unreliable in time-sensitive investigations since the FBI often encounters delays in the process.

#### **V. Congressional Reporting? What? When?:**

See chart above. The FBI's reporting on NSLs is included under a tab in the binder.

The FBI does not have a reporting requirement for full credit reports under the Fair Credit Reporting Act (15 U.S.C. § 1681v). For the other NSLs, the FBI complies with semiannual reporting requirement as required by statute.

#### **VI. NSL Statistics:**

The FBI's NSL statistics for 2000 - 2004 are included under a tab in the binder. I have hand-written the most up-to-date gross numbers for 2005. The final 2005 numbers will not be available until after the close of the calendar year.



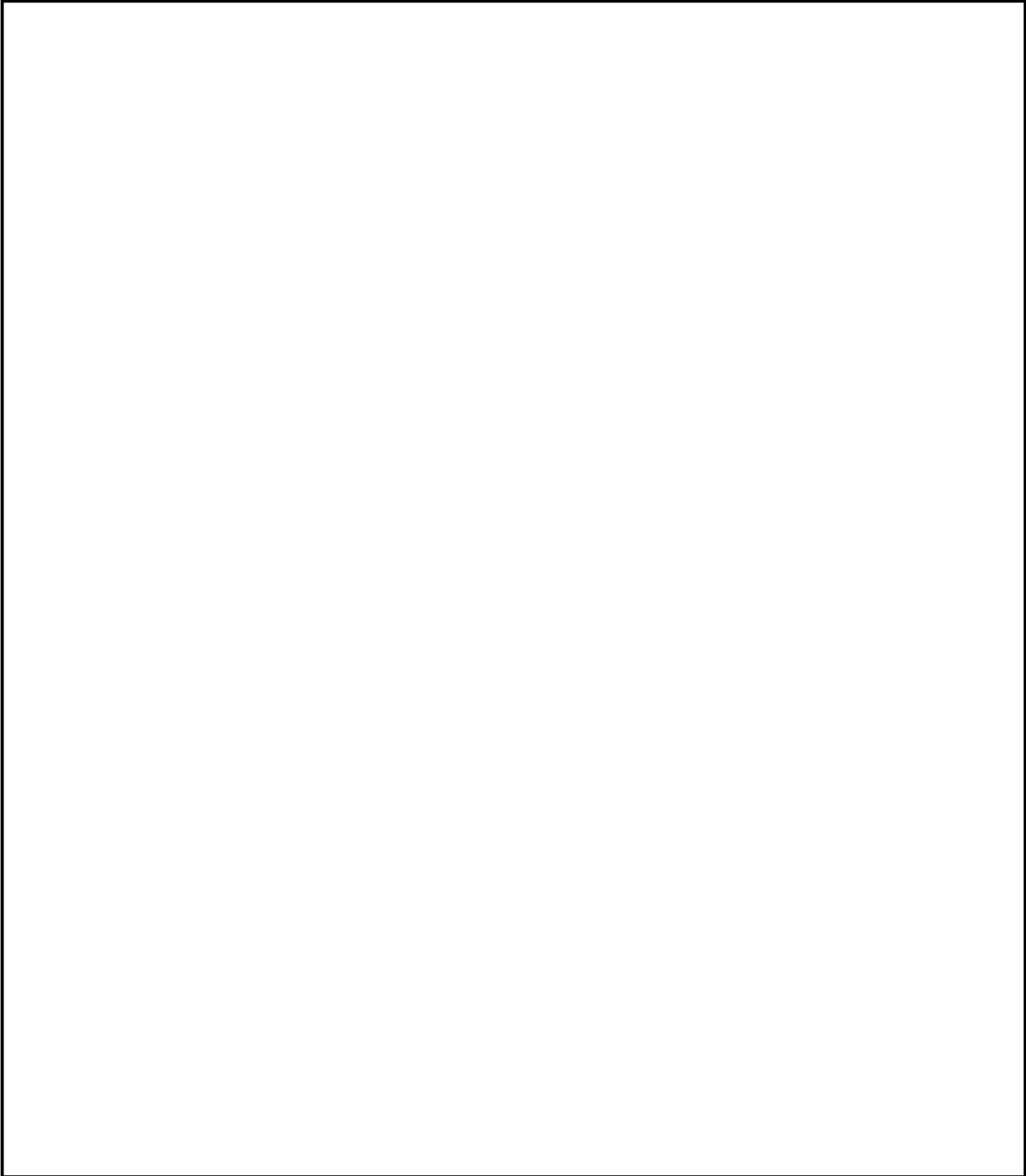
FBI News Briefing November 7, 2005:

**FBI Use Of National Security Letters Has Risen Dramatically To 30,000 Each Year.** In a lengthy front-page story, the Washington Post (11/6, Gellman, 744K) notes the details of the FBI national security letter requesting library records from Library Connection Inc. in Windsor, Conn., and reports, "The FBI now issues more than 30,000 national security letters a year, according to government sources, a hundredfold increase over historic norms. The letters...are extending the bureau's reach as never before into the telephone calls, correspondence and financial lives of ordinary Americans." The Post adds, "Senior FBI officials acknowledged in interviews that the proliferation of national security letters results primarily from the bureau's new authority to collect intimate facts about people who are not suspected of any wrongdoing. ... 'If you have a list of, say, 20 telephone numbers that have come up . . . on a bad guy's telephone,' said Valerie E. Caproni, the FBI's general counsel, 'you want to find out who he's in contact with.'" Caproni added, "Congress has given us this tool to obtain basic telephone data, basic banking data, basic credit reports. The fact that a national security letter is a routine tool used, that doesn't bother me." Deputy Assistant Director for Counterterrorism Joseph Billy Jr. "said he understands that 'merely being in a government or FBI database . . . gives everybody, you know, neck hair standing up.' Innocent Americans, he said, 'should take comfort at least knowing that it is done under a great deal of investigative care, oversight, within the parameters of the law.'" The Post notes, "As the Justice Department prepared congressional testimony this year, FBI headquarters searched for examples that would show how expanded surveillance powers made a difference." Assistant Director Michael Mason "found no ready answer. ... 'I'd love to have a made-for-Hollywood story, but I don't have one,' Mason said. ... What national security letters give his agents, Mason said, is speed. 'I have 675 terrorism cases,' he said. 'Every one of these is a potential threat. And anything I can do to get to the bottom of any one of them more quickly gets me closer to neutralizing a potential threat.'" The story goes on to examine the details of the 2003 FBI's "audacious effort" to gather information on Las Vegas visitors amid concern about a possible New Year's Eve terror attack, as well as the July national security letter request to North Carolina State University for information about London bombing suspect Magdy Nashar. "A high-ranking FBI official, who spoke on the condition of anonymity, acknowledged that the field office erred in attempting to use a national security letter" in Nashar case. "Investigators, he said, 'were in a big hurry for obvious reasons' and did not approach the university 'in the exact right way.'"

**Senators From Both Parties Express Concern About Report.** On NBC's Meet The Press (11/6, Russert), Sen. Edward Kennedy said, "Many of those kinds of violations that have been listed in the paper this morning have been addressed in our Judiciary Committee, the idea that you'd be going through library records, other kinds of private records, and not have the kind of review -- not have the kind of requirement for court-ordered approval for those kinds of activities in the Senate bill have effectively been remedied. But this is a clear -- should be a matter of clear concern. This is why Americans are so concerned about their own privacy issues. ... And what has been illustrated in the abuses which have been illustrated clearly show why."

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OTHER outside the scope



**ADDITIONAL TOOLS TO FIGHT TERRORISM**

-10-

DATE: 07-30-2007  
CLASSIFIED BY: 65179dmb/ksr/lmf  
REASON: 1.4 (C)  
DECLASSIFY ON: 07-30-2032

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED EXCEPT  
WHERE SHOWN OTHERWISE

~~SECRET~~ NSL VIO-14029

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OTHER outside the scope



### Administrative Subpoenas

Planning, funding, supporting and committing acts of terrorism all are federal crimes. For many years, the FBI has had administrative subpoena authority for investigations of crimes ranging from drug trafficking to health care fraud to child exploitation. Yet, when it comes to terrorism investigations, the FBI has no such authority.

Instead, we rely on two tools – National Security Letters (NSLs) and orders for FISA business records. Although both are useful and important tools in our national security investigations, administrative subpoena power would greatly enhance our abilities to obtain information. Information that may be obtained through an NSL is limited in scope and enforcement is difficult. FISA business record requests require the submission of an application for an order to the FISA Court. In investigations where there is a need to obtain information expeditiously, Section 215, which does not contain an emergency provision, may not be the most effective process to undertake. The administrative subpoena power would be a valuable complement to these tools and provide added efficiency to the FBI's ability to investigate and disrupt terrorism operations and our intelligence gathering efforts. It would provide the government with an enforcement mechanism which currently does not exist with NSLs. Moreover, it would bring the authorities of agents and analysts investigating terrorism into line with the authorities the FBI already has to combat other serious crimes. I would like to stress that the administrative subpoena power proposal should provide the recipient the ability to quash the subpoena on the same grounds as a grand jury subpoena.

NSLs

### CONCLUSION

Mr. Chairman and Members of the Committee, the importance of the provisions of the USA Patriot Act I have discussed today in the war against terrorism cannot be overstated. They are crucial to our present and future successes. By responsibly using the statutes provided by Congress, the FBI has made substantial progress in its ability to proactively investigate and prevent terrorism and protect lives, while at the same time protecting civil liberties. In renewing those provisions scheduled to "sunset" at the end of this year, Congress will ensure that the FBI will continue to have the tools it needs to combat the very real threat to America posed by terrorists and their supporters. In addition, by giving the FBI administrative subpoena authority, Congress will enable the FBI to be more efficient in its Counterterrorism efforts. Thank you for your time today. I am happy to answer any of your questions.

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NSL VIO-14030

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OTHER outside the scope

Responses from OGC



23. As you know, a National Security Letter (“NSL”) is basically an FBI request for information in national security investigations. Several newspapers and critics of the USA PATRIOT Act suggested last fall that a federal court in New York had held section 505 of the Act, which amended existing NSL authorities, unconstitutional on First and Fourth Amendment grounds. However, isn’t it the case that it was not section 505, but rather 18 U.S.C. § 2709, the pre-existing NSL authority established by the Electronic Communications Privacy Act of 1986, which the court invalidated? Moreover, isn’t it true that the Department urged an interpretation of section 2709 which would have expanded NSL recipients’ rights in order to save the statute’s constitutionality, and has appealed the judge’s decision?

NSL

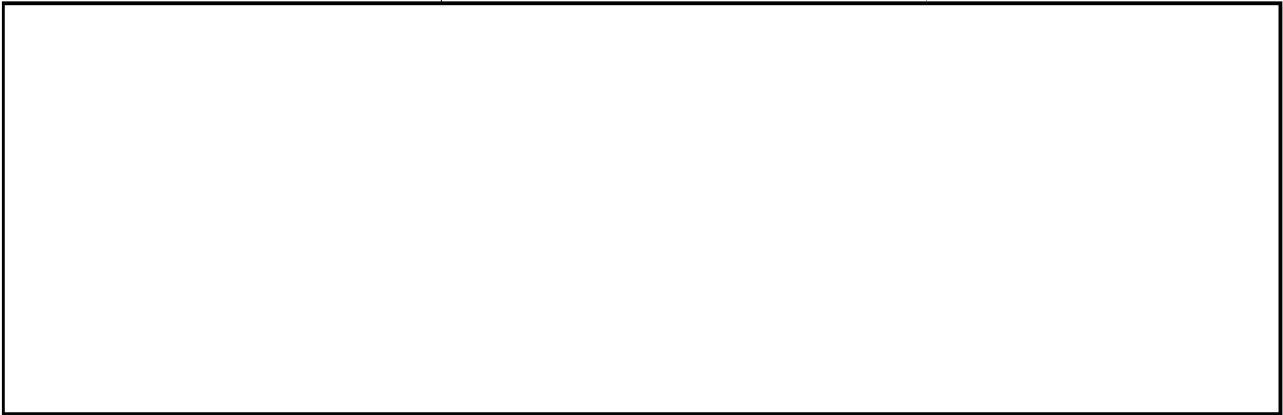
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Response to 23:

Yes, that is correct. The changes to NSL statutes made by the PATRIOT Act were not among the issues implicated in the District Court's decision. The District Court found that the procedures set forth in the statutes authorizing NSL's, which provisions predated the PATRIOT Act, were inadequate to protect recipients of NSL's. DOJ argued that some of the procedures the District Court found lacking were in fact procedures that were implicit in the statute and consistent with DOJ's interpretation of the statute. For instance, the District Court suggested that the statute should affirmatively provide for a mechanism by which it could be challenged. DOJ argued that in fact there was no doubt that even under the existing wording of the statute, the recipient could challenge the statute and, in fact, had done so in that very litigation. Also, the District Court found that among the flaws in the non-disclosure provision was the absence of a provision for consultation with an attorney. DOJ argued that its policy was to allow the recipient to consult with its attorney and that DOJ did not have nor did it ever have any objection to a recipient's disclosing the NSL to its attorney. Nonetheless, the District Court found that those procedures should be written into the statute rather than simply being a matter of interpretation by DOJ. DOJ has appealed the decision, but, at the same time, is working to craft an amendment to the enabling statutes that would satisfy the District Court's concerns.

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34. In your testimony, you called for broad administrative subpoena authority for terrorism investigations because National Security Letters (NSLs) and Section 215 orders are inadequate or take too long to implement.

NSLs

a. Has the FBI had significant trouble with recipients of NSLs not promptly complying, or not complying at all? If so, what actions has the FBI taken in response?

b. I understand that in the usual case, it might take several weeks or even months to complete a FISA application, get the appropriate signatures, and have the court review it. But I also understand that there are several internal procedures, aside from the emergency provisions, for expediting an application in a case where it is critical that the FBI obtain a FISA order quickly. Why are those procedures inadequate? Shouldn't they address the problem that you have outlined?

Response to 34:

(a) Compliance with NSL's generally is not as complete or as timely as in the case of grand jury subpoenas. There is no provision for a definitive return date for an NSL, as there is for a grand jury subpoena. In addition, there is no compliance mechanism for NSL's, so that if a recipient does not respond or does not respond promptly, the FBI's recourse is limited to making another request for voluntary compliance.

(b) With respect to FISC orders under section 215, there are no DOJ internal procedures nor statutory emergency procedures for obtaining orders on an expedited basis. There is one process for all business record order requests.





57. As I understand it, under current law, there are no requirements for the Justice Department to report on the use of these orders [National Security Letters]. That is, the FBI never has to tell Congress or the public how many of these National Security Letters have been issued, what type of information is sought, what kind of recipients are targeted, whether the information is used, at all, or whether it is turned over to other agencies. There are few reporting requirements for surveillance orders either. As I understand it, the Intelligence Reform Act requires the Justice Department to report the number of FISA orders every six months in broad categories, such as physical search, or wiretaps, or pen registers.

NSLQ

There are no requirements to report what type[s] of things are sought, what kind[s] of recipients were targeted, or whether the information was useful.

We know that policy-making after 9/11 involves a delicate balance between liberty and security.

How can the nation have an informed debate about where to draw the line unless we know what's happening? Wouldn't it be useful for Congress and the American people to know if, say, ninety percent of all these orders were used to obtain medical records? Or that half of all them are used to obtain credit reports?

Response to 57:

The premise of the question is faulty. Three of the four statutes that authorize the issuance of NSL's require such reports, and the FBI reports the numbers of NSL's to Congress in accordance with those requirements. (The exception is the 15 USC § 1681v credit report.) Those numbers are broken down by type of NSL issued and whether they pertain to U.S. persons.

63. The government has the authority to request certain information from certain entities and individuals pursuant to each of the following authorities: Section 2709 of Title 18 of the United States Code, Section 1114(a)(5) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a)(5)), Section 625 of the Fair Credit Reporting Act (15 U.S.C. 1681u), and Section 626 of the Fair Credit Reporting Act (15 U.S.C. 1681v). For the last three calendar years (2002, 2003, and 2004), with respect to each of these authorities:

NSLQ

How many requests has the government made?

ANSWER: As to requests made by the FBI, see #64, below. It should be noted that the first three provisions cited authorize only the FBI to request such records. 15 USC §1681v allows any government agency conducting an international terrorism investigation to do so, but the FBI cannot speak to requests made by other agencies

**64. How many requests were made by the Federal Bureau of Intelligence and how many were made by other government agencies?**

NSLs

Answer to 64: As indicated above, the FBI cannot speak for other agencies. For calendar years 2002, 2003 and 2004, the FBI issued the following NSL's:

| <u>Authority</u>            | <u>2002</u> | <u>2003</u> | <u>2004</u> |
|-----------------------------|-------------|-------------|-------------|
| (S) ECPA<br>18 USC § 2709   |             |             |             |
| RFPA<br>12 USC § 3414(a)(5) |             |             |             |
| FCRA<br>15 USC § 1681u      |             |             |             |
| FCRA<br>15 USC § 1681v      |             |             |             |

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**65. With how many requests did recipients fail to comply?**

ANSWER: We do not keep track of how many requests were not complied with, but we do believe non-compliance is a major problem only with isolated recipients. For instance, the major credit card companies have taken the position that they are not subject to the Right to Financial Privacy Act and have refused to respond to such NSL's. Further, certain credit reporting companies have failed to respond to requests for redacted credit reports or have responded with full credit reports.

**66. Has the government attempted to enforce any requests judicially? If yes, how many requests has the government attempted to enforce judicially and what was the outcome of these attempts?**

ANSWER: No, the government has not attempted to enforce any requests judicially, nor is there explicit authority for doing so.

**145. Section 505 of the PATRIOT Act broadly expanded the FBI's authority to issue administrative subpoenas (known as "national security letters," or "NSLs") in terrorism investigations. The FBI has read section 505 to authorize the service of NSLs on libraries that offer their patrons access to the Internet. Has the FBI used NSLs to obtain library records, how often, and under what circumstances?**

§ 505



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ANSWER: One NSL has been issued to a library. It was for e-mail transactional information and was issued pre-PATRIOT Act..

**146. OGC. Librarians have argued that libraries are not ISPs, that libraries offering Internet access are themselves customers of ISPs, and that the FBI can obtain the information it needs from the ISPs that service the libraries. What information can the FBI *not* obtain through an NSL served on an ISP that services a library that it *can* obtain through an NSL served on the library itself?**

ANSWER: What information is obtainable from a library but not from an ISP would depend on how the library configures its systems in providing Internet access. At the most basic level, where each computer terminal has its own Internet cable provided by the ISP, all relevant information would be obtainable from the ISP. If, however, the library acquires broad bandwidth and itself parses it out, e.g., through a proxy server, the only information the ISP could provide would be that the line into the library is in use. The ISP would not be able to provide information concerning individual sessions conducted at specific times on specific computers. The problem worsens if the library's system enables users to access the Internet over a wireless network, which has the potential to air its service not just within the confines of the library walls, but to persons outside the library and in surrounding locations. In these cases, only the library would be able to provide the relevant transactional data.

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NSL VIO-14036

