

# FEDERAL BUREAU OF INVESTIGATION

**Precedence:** PRIORITY

**Date:** 10/02/2006

**To:** All Field Offices

**Attn:** ADIC  
SAC  
CDC

All Legats  
Counterterrorism  
Criminal Investigative  
Cyber  
Counterintelligence

**Attn:** Legats  
**Attn:** A/AD Joseph Billy, Jr.  
**Attn:** AD James H. Burrus  
**Attn:** AD James E. Finch  
**Attn:** AD Timothy D. Berezney

**From:** Office of the General Counsel  
Investigative Law Unit

**Contact:** SSA [Redacted]

(202) 324- [Redacted]

**Approved By:** Caproni Valerie E  
Lammert Elaine N  
Thomas Julie F

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 07-03-2007 BY 65179/DNH/KSR/RW

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**Drafted By:** [Redacted]

**Case ID #:** 66F-HQ-1085159 (Pending)  
66F-HQ-1085165 (Pending)

**Title:** NEW ANNUAL REPORTING REQUIREMENT  
EMERGENCY DISCLOSURES UNDER 18 U.S.C. 2702 (b)(8)

**Synopsis:** To advise FBI Headquarters Divisions and Field Offices of the annual reporting requirement regarding voluntary disclosures made by service providers to the FBI pursuant to the emergency disclosure provision of Title 18, United States Code, Section 2702 (b)(8), and to set forth procedures for facilitating the same.

**Enclosure(s):** Enclosed is a copy of a memorandum from the Department of Justice (DOJ), dated July 10, 2006, and entitled "Reporting Requirement Under Section 107 of the USA PATRIOT Improvement and Reauthorization Act of 2005."

**Details:** On March 9, 2006, the USA PATRIOT Improvement and Reauthorization Act of 2005, (USA PATRIOT IRA), was signed into law. The USA PATRIOT IRA made several changes to various criminal laws, including 18 U.S.C. § 2702(b)(8) which permits an electronic communications service provider to voluntarily disclose to law enforcement the content of customer communications if the provider, "in good faith, believes that an emergency involving danger of death or serious physical injury to

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To: All Field Offices From: Office of the General Counsel  
Re: 66F-HQ-1085159, 10/02/2006

any person requires disclosure without delay of communications relating to the emergency." The emergency disclosure provision can be used in both criminal cases and national security investigations. For further legal guidance on use of the emergency disclosure provision, see the Electronic Communication (EC) from OGC to All Field Offices, dated August 25, 2005, and entitled "Emergency Disclosure Provision for Information from Service Providers under 18 U.S.C. § 2702(b)" (66F-HQ-1085159, Serial 65).

18 U.S.C. 2702(b)(8) was amended to include the following DOJ reporting requirements:

"Section 107. ENHANCED OVERSIGHT OF GOOD-FAITH  
EMERGENCY DISCLOSURES UNDER SECTION 212 OF THE USA  
PATRIOT ACT

(a) ENHANCED OVERSIGHT-Section 2702 of title 18, United States Code, is amended by adding at the end the following:

(d) REPORTING OF EMERGENCY DISCLOSURES-On an annual basis, the Attorney General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report containing-

(1) the number of accounts from which the Department of Justice has received voluntary disclosures under subsection (b)(8); and

(2) a summary of the basis for disclosure in those instances where-

(A) voluntary disclosures under subsection (b)(8) were made to the Department of Justice; and

(B) the investigation pertaining to those disclosures was closed without the filing of criminal charges."

This reporting requirement was intended to allay concerns raised during the USA PATRIOT ACT reauthorization process that the use of the voluntary disclosure provision lacked adequate oversight and that disclosures were being made in situations which were not truly emergency situations.

Receiving offices are reminded that the emergency disclosure provision under 18 U.S.C. 2702 (b)(8) is limited to those situations where the service provider, in good faith, believes that an emergency involving death or serious physical injury to any person requires disclosure without delay of communications relating to the emergency. While the service provider is responsible for determining the amount of information

To: All Field Offices From: Office of the General Counsel  
Re: 66F-HQ-1085159, 10/02/2006

it needs to reach this "good faith" belief, it is possible that they can reach this determination solely based on a statement from the FBI or another entity that such an emergency exists. Agents should seek the advice of their Chief Division Counsel (CDC), the Investigative Law Unit, or the National Security Law Branch, if they have a question regarding whether the facts of a particular case create an emergency situation supporting the use of the emergency disclosure provision.

Emergency disclosures may also be made in regard to the records associated with the communications. However, the reporting requirement is limited to those cases where the content of communications is disclosed.<sup>1</sup>

DOJ will be responsible for reporting the above information to Congress. To ensure consistency in component reporting, DOJ created a single form for all components to utilize to capture and track information relating to this reporting requirement. The form, a sample of which is included as part of the enclosure to this EC, contains the following fields which must be completed for every case where a provider voluntarily discloses content of an electronic communication pursuant to Section 2702(b)(8):

- 1) Date of Disclosure
- 2) Account
- 3) Basis for Disclosure
- 4) Investigation Opened (yes/no)
- 5) Date Investigation Opened
- 6) Case File Number
- 7) Investigation Closed (yes/no)
- 8) Date Investigation Closed
- 9) Criminal Charges Filed (yes/no)
- 10) Charges Filed
- 11) Entity Bringing Charges

For purposes of completing the form, the following guidelines should be followed:

(1) The disclosures should be organized by account. Typically, when the FBI seeks information from an electronic service provider or a remote computing service (usually an ISP) pursuant to Section 2702(b)(8), the FBI informs the provider that the request is directed at a specific account or an online identity,

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<sup>1</sup>The Act also modified the emergency standard for the disclosure of records to mirror that used for the disclosure of content.

To: All Field Offices From: Office of the General Counsel  
Re: 66F-HQ-1085159, 10/02/2006

such as a screen name.

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(2) A summary of the basis for the disclosure must be retained. The summary should contain sufficient information to allow an individual unfamiliar with the investigation to assess whether there could have been a good faith belief that an emergency existed;

(3) Disclosures made pursuant to 18 U.S.C. 2702(b)(8) and subsequent investigations must be tracked to determine whether an investigation was closed without the filing of criminal charges;

(4) Although recipients should provide the number of accounts that disclosures were received from within a given year, a summary of the basis for disclosure should not be reported unless and until the investigation is closed without the filing of criminal charges; and

(5) In task force situations where the FBI is the lead agency, it is responsible for making the report. In those task force situations where the FBI is not the lead agency but nevertheless receives the disclosure directly from the ISP, then the FBI should also make a report. If more than one DOJ entity on the task force receives a disclosure directly from the ISP, the FBI should coordinate with those other DOJ task force entities to ensure that only one report is made.

DOJ's first report will cover the period from July 1, 2006 through December 31, 2006. For subsequent years, the reporting period will cover the period from January 1 through December 31. Each field office and FBIHQ Division will be responsible for immediately maintaining the information set forth in the attached form in an appropriate office control file. A separate control file will be necessary for any classified material. In order to avoid duplicate reporting, an entity that submits a request for an emergency disclosure is responsible for recording the information. The forms will be transmitted by the field and FBIHQ Divisions to the Investigative Law Unit (ILU), Office of the General Counsel, on an annual basis. ILU will advise the field offices and FBIHQ Divisions by EC as to the deadline for transmittal each year. The first deadline for transmittal will be January 31, 2007.

To: All Field Offices From: Office of the General Counsel  
Re: 66F-HQ-1085159, 10/02/2006

Each Field Office and FBIHQ Division shall designate a Point of Contact (POC) for compiling the annual report to ILU and shall notify ILU via electronic communication (EC) of that POC on or before December 8, 2006. Further, **all Field Office Squad Supervisors whose Agents receive emergency disclosures subject to this reporting requirement are responsible for providing the requested information to the Field Office POC.**

Finally, it should be noted that all of the information contained in the form will not be transmitted by DOJ to Congress. The form simply provides a uniform method for tracking information so that if later questions are received by the Department relating to the report, there is a mechanism in place to identify the case in which the disclosure was received.

Any questions should be directed to the Investigative Law Unit at (202) 324- or the National Security Law Branch at (202) 324-

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To: All Field Offices From: Office of the General Counsel  
Re: 66F-HQ-1085159, 10/02/2006

LEAD(s) :

Set Lead 1: (Action)

ALL RECEIVING OFFICES

Each Field Office and FBIHQ Division shall designate a Point of Contact (POC) for compiling the annual Field Office report to ILU and shall notify ILU via electronic communication (EC) of that POC on or before **December 8, 2006**.

Set Lead 2: (Action)

ALL RECEIVING OFFICES

Please distribute to all employees. Each Field Office and FBIHQ Division shall provide the first annual report to the Investigative Law Unit by **January 31, 2007**.

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FEDERAL BUREAU OF INVESTIGATION  
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Page 2 ~

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Page 3 ~

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Page 4 ~

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Page 5 ~

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Page 6 ~

outside the scope/does not pertain to NSL

Page 7 ~

outside the scope/does not pertain to NSL

Page 14 ~ Referral/Direct

Page 15 ~ Referral/Direct

Page 16 ~ Referral/Direct

Page 17 ~ Referral/Direct

Page 18 ~ Referral/Direct

Page 19 ~ Duplicate

Page 20 ~ Duplicate

Page 21 ~ Duplicate

Page 22 ~ Duplicate

Page 23 ~ Duplicate

Page 24 ~ Duplicate

Page 25 ~ Duplicate

Page 26 ~ Duplicate

Page 27 ~ Duplicate

Page 28 ~ Duplicate

Page 29 ~ Duplicate

Page 30 ~ Duplicate

Page 31 ~ Duplicate

Page 32 ~ Duplicate

Page 33 ~ Duplicate

Page 34 ~ Duplicate

Page 35 ~ Duplicate

Page 36 ~ Duplicate

Page 37 ~ Duplicate

Page 38 ~ Duplicate

Page 39 ~ Duplicate

Page 40 ~ Duplicate

Page 41 ~ Duplicate

Page 42 ~ Duplicate

Page 43 ~ Duplicate

Page 44 ~ Duplicate

Page 45 ~ Duplicate

Page 46 ~ Duplicate  
Page 47 ~ Duplicate  
Page 48 ~ Duplicate  
Page 49 ~ Duplicate  
Page 50 ~ Duplicate  
Page 51 ~ Duplicate  
Page 52 ~ Duplicate