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R

FEDERAL BUREAU OF INVESTIGATION

b2 07

Precedence: PRIORITY

Date: 02/21/2007

To: General Counsel
Inspection
Charlotte

Attn: NSLB
Attn: IIS
Attn: SAC
ASAC
SSA
CDC

From: Charlotte
Raleigh Resident Agency
Contact: SA

Approved By:

b6
b7C
b2

Drafted By:

(U)

Case ID #: (S) 278-HQ-C1229736-VIO (Pending) 180

(U)

Title: (S) INTELLIGENCE OVERSIGHT BOARD (IOB) VIOLATION
FBIHQ - CHARLOTTE DIVISION

Synopsis: (U) Report of a potential Intelligence Oversight Board (IOB) matter.

(U)

~~(S)~~

~~Derived From:~~ G-3
~~Declassify On:~~ 02/21/2032

(U)

Reference: (S) 278-HQ-C1229736 Serial 2570

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(S)
(S)

Enclosure(s): (U) Enclosed for NSLB and IIS are the following:
One copy of a series of e-mails (3 pages) to include
an e-mail from to ASC , et al,
FBIHQ, CTD, dated 07/21/2005.

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Details: (S)

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SC Miller *Jan 4/24/07*

CRS *RAW 04/25/07*

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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

DATE: 05-29-2007
CLASSIFIED BY 65179 DMH/KSR/JW
REASON: 1.4 (C)
DECLASSIFY ON: 05-29-2032

(U) To: General Counsel From: Charlotte
Re: ~~(S)~~ 278-HQ-C1229736-VIO, 02/21/2007

(S) [redacted]
b1 [redacted]

(S) ~~(S)~~ As a result of [redacted] investigation
07/07/2005, [redacted]
[redacted]

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(S) [redacted]
[redacted]

(S) ~~(U)~~ On or about 07/13/2005, SA [redacted] coordinated
with United States Attorney's Office (USAO), Eastern District of
North Carolina (EDNC), Chief of Criminal, [redacted] to obtain
a Grand Jury subpoena [redacted]

(S) [redacted] After receiving the subpoena,
SA [redacted] went to [redacted] and met with Associate General Counsel
[redacted] SA [redacted] served the subpoena and had some records
in hand when he received a call from SSRA [redacted]
SSRA [redacted] had been notified by FBIHQ, ITOS I, CONUS II, Team 6,
that we were not to utilize a Grand Jury subpoena and that we
must obtain a National Security Letter (NSL). Therefore, SA
[redacted] returned the records to [redacted]

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(S) ~~(U)~~ SSRA [redacted] advised FBIHQ that our SAC, [redacted]
[redacted] was TDY out of the Division and therefore we would need
to complete an EC addressed to General Counsel requesting an NSL
be approved at FBIHQ. SSRA [redacted] was then instructed by FBIHQ,
ITOS I, CONUS II, that Charlotte would be required to draft the
NSL, due to time constraints, and then obtain approval from a
neighboring division's SAC. SA [redacted] then drafted an NSL to
obtain the student records [redacted] and forwarded the NSL to
SSRA [redacted] for review. The NSL was then forwarded by SSRA
[redacted] to SAC [redacted] Division, for approval.

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(S) ~~(U)~~ [redacted] Agent
[redacted] served the NSL at [redacted] does not recall

To: General Counsel From: Charlotte
Re: ~~(S)~~ 278-HQ-C1229736-VIO, 02/21/2007

b1 (S) the individual's name to whom the NSL was given. TFA [redacted] was
b6 advised that the NSL was not the appropriate documentation to
b7C (S) receive [redacted] records [redacted] declined to honor the NSL.

(S) SSRA [redacted] then contacted CDC [redacted]
Charlotte Division, for guidance concerning the matter and the
b1 questioned legality of the NSL [redacted] CDC [redacted]
b6 then conferred with legal counsel [redacted] and FBIHQ, OGC [redacted]
b7C concerning the matter. SSRA [redacted] also contacted ASAC [redacted]
[redacted] Charlotte Division, who in turn was also in contact
with FBIHQ.

(S) Subsequently, SSRA [redacted] was advised by FBIHQ that
a Grand Jury subpoena would be obtained [redacted]
b1 [redacted] which was the office of origin on the
b2 matter, and the Grand Jury subpoena would be forwarded to
b7E the Raleigh RA for service on [redacted]
b6
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(S) On 07/15/2005, the Raleigh RA received a copy of
the Grand Jury subpoena [redacted]
[redacted] SA [redacted] and SA
[redacted] served [redacted] with the Grand Jury subpoena [redacted]
After [redacted] resistance
to comply, SA [redacted] advised [redacted] that he had been served.
b1 SSRA [redacted] was in contact with [redacted] advising of [redacted]
b6 reluctance to honor the Grand Jury subpoena and at this time [redacted]
b7C [redacted] contacted [redacted] concerning the matter.
b2 Approximately one hour later [redacted] contacted the Raleigh RA and
b7E (S) advised that the records were waiting for our retrieval.
b3 FGJ

~~SECRET~~

(U) To: General Counsel From: Charlotte
Re: ~~(S)~~ 278-HQ-C1229736-VIO, 02/21/2007

LEAD (s):

Set Lead 1: (Discretionary)

GENERAL COUNSEL

AT WASHINGTON, DC

(U) NSLB; For information and action deemed appropriate.

Set Lead 2: (Discretionary)

INSPECTION

AT WASHINGTON, DC

(U) IIS; For information and action deemed appropriate.

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[redacted] (S) (FBI)

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From: [redacted] (CTD) (FBI)
Sent: Thursday, July 21, 2005 5:23 PM
To: [redacted] (CE) (FBI)
Subject: RE: Facts on [redacted] needed re [redacted] NSL letter ASAP

(S)

(S)

~~UNCLASSIFIED~~
~~NON-RECORD~~

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

Thanks for the rapid response.

DATE: 05-29-2007
CLASSIFIED BY 65179 DMH/KSR/JW
REASON: 1.4 (C)
DECLASSIFY ON: 05-29-2032

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[redacted]

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

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From: [redacted] (CE) (FBI)
Sent: Thursday, July 21, 2005 5:17 PM
To: [redacted] (CTD)(FBI); [redacted] (CTD) (FBI); [redacted] (CTD) (FBI); [redacted] (CTD) (FBI)
Cc: [redacted] (CTD) (FBI); [redacted] (CTD)(FBI); [redacted] (CE) (FBI); [redacted] (CID) (FBI)
Subject: RE: Facts of [redacted] needed re [redacted] NSL letter ASAP

(S)

~~UNCLASSIFIED~~
~~NON-RECORD~~

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[redacted]

(S) (S)

(S)

We originally were in the process of obtaining a subpoena in the EDNC for the [redacted] records along with a sealed court order to be issued by Judge Boyle, (EDNC). This process was stopped at the direction of FBIHQ, CTD, and I was told that we needed to serve an NSL. We prepared the NSL and it was e-mailed to SAC [redacted] Atlanta Division, signed and returned. Our SAC [redacted] is currently TDY at FBIHQ. The NSL was then served on [redacted] and their legal counsel advised that he would not accept/honor the NSL because the NSL was only for [redacted]

(S)

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b3 FGJ
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We had our CDC and FBIHQ involved in this throughout the process. FBIHQ, ITOS I, then advised [redacted] Division would be forwarding us a GJ subpoena to serve. We obtained the GJ subpoena [redacted] late Friday afternoon and served it on the attorney [redacted]. He initially declined to honor the subpoena because he stated that we should have presented him with a court order under the Patriot Act and also that he wanted each individual who had records [redacted] to be named in the subpoena. He also made some additional remarks that I will not go into at this time. Bottom line is we told him to consider himself served and provided him with the subpoena. A/SAC [redacted]

(S)

(S)

[redacted] also contacted [redacted] concerning the matter at this point. About one hour later the [redacted] attorney called our office and advised the documents were ready to be picked up.

This process delayed us approximately one day in obtaining the records. However, it occupied a great deal of my time and more importantly the time of two agents who could have been focusing on the investigation at hand. I would agree with the obvious, that administrative subpoena power in the field involving CT matters may be the single most important tool that the agents could use to improve/expedite their investigations.

If you require any additional info please let me know.

Thanks [redacted]

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12/19/2006

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

From: [redacted] (CTD)(FBI)
Sent: Thursday, July 21, 2005 3:55 PM
To: [redacted] (CTD) (FBI); [redacted] (CTD) (FBI); [redacted] (CE)
(FBI); [redacted] (CTD) (FBI)
Cc: [redacted] (CTD) (FBI); [redacted] (CTD)(FBI); [redacted] (CE) (FBI)
Subject: FW: Facts on [redacted] needed re [redacted] NSL letter ASAP
Importance: High

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(S)

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NON-RECORD~~

[redacted] - Is the below true? Did we go NSL first and then GJS? Pls respond by e-mail.

[redacted] Anyone with full knowledge to get this back to [redacted] by e-mail?

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[redacted]

International Terrorism Ops Section 1
CTD/FBIHQ

[redacted]

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

From: [redacted] (CTD) (FBI)
Sent: Thursday, July 21, 2005 3:10 PM
To: [redacted] (CTD)(FBI); [redacted] (CTD)(FBI)
Cc: [redacted] (CTD) (FBI); [redacted] (CTD) (FBI); [redacted] (DO) (FBI); [redacted] (CTD) (FBI)
Subject: Facts on [redacted] needed re [redacted] NSL letter ASAP
Importance: High

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NON-RECORD~~

(S) I just got a call from [redacted] of OCA. The Director has requested a write up on the circumstances surrounding the NSL letter issued to [redacted]

(S) It is the Director's understanding that an NSL letter was issued to [redacted] in connection with the London bombing. [redacted] would not honor the NSL letter and because of this the FBI had to issue them a Grand Jury subpoena.

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(S)

The Director would like to use this as an example tomorrow as to why we need administrative subpoenas's to fight the war on terror. In particular, he would like to know how much extra time was spent having to get the Grand Jury subpoena.

Please provide me with an e-mail regarding the particular facts of this incident. Just one paragraph in e-mail form will be sufficient.

12/19/2006

From: [redacted] (INSD) (FBI)
 Sent: Thursday, January 04, 2007 2:42 PM
 To: [redacted] (CE) (FBI); [redacted] (INSD) (FBI)
 Cc: [redacted] (CE) (FBI)
 Subject: RE: Charlotte NSL Issue

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~~UNCLASSIFIED~~
~~NON-RECORD~~

[redacted]

b6 Yes [redacted] can call [redacted]. We have no problem with that at all. The OIG can call anyone directly, just keep us
 b7C in the loop as to what transpires. Would it be helpful to send you a copy of what we sent the OIG?
 b1

b2 (S) Just to give you a little information, we sent the following:

- b7E
- (S) 1) E-mail dated 12/19/06 to [redacted] from [redacted] re: FW: Facts on [redacted] needed re [redacted] NSL letter ASAP.
 - (S) 2) 7/15/05 EC from Charlotte to CTD [redacted] et. Al re: [redacted]
 - (S) 3) 7/14/05 EC from Charlotte to CTD and OGC re: [redacted]
 - (S) 4) 7/14/05 letter from [redacted] to [redacted] re: [redacted]

If you would like a copy, please let me know and I can send one ASAP to your office.

(S)

Thanks.

b6 [redacted]
 b7C (202) 324 [redacted]
 b2

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

From: [redacted] (CE) (FBI)
 Sent: Wednesday, January 03, 2007 12:34 PM
 To: [redacted] (INSD) (FBI); [redacted] (INSD) (FBI)
 Cc: [redacted] (CE) (FBI)
 Subject: Charlotte NSL Issue

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~~UNCLASSIFIED~~
~~NON-RECORD~~

(S) [redacted] Regarding the NSL issue involving our Division and [redacted] one of our Agents [redacted] received a call from [redacted] of the IGs office, inquiring about the matter. I contacted [redacted] and she advised that your office had forwarded documents and e-mails regarding the matter to OIG. I'm assuming by that, that you have studied the matter and we are responding to the inquiry. Should I have SA [redacted] call [redacted] and detail his recollections of the matter? He's glad to do it, but I wanted to check with you first to make sure that was what you wanted us to do.

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Also, would you please let me know what documents and information was furnished to OIG? I would appreciate it.

Thanks.

b6 [redacted]
 b7C CDC, Charlotte
 b2 704 [redacted]

~~UNCLASSIFIED~~

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WHERE SHOWN OTHERWISE

DATE: 05-29-2007
CLASSIFIED BY 65179 DMH/KSR/JW
REASON: 1.4 (C)
DECLASSIFY ON: 05-29-2032

~~SECRET~~

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 03/13/2007

To: Charlotte

Attn: SAC
CDC

Counterterrorism

Attn: ITOS 1, CONUS 2, Team 8

Inspection

Attn: IIS

From: Office of General Counsel/
NSLB/CTLU I
Contact: UC [Redacted]

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Approved By: Thomas Julie [Signature]

Drafted By: [Redacted]

(U)

Case ID #: ~~(S)~~ 278-HQ-C1229736-VIO-3205 (Pending)

(U)

Title: ~~(S)~~ INTELLIGENCE OVERSIGHT BOARD
IOB MATTER 2007-[Redacted]

(U)

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

(U)

~~(S)~~ **Derived From:** G-3
Declassify On: 03/07/2032

(U)

Reference: ~~(S)~~ 278-HQ-C1229736-VIO Serial 2180

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Details: (S) [Redacted]

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(S) [Redacted]

(S) As a result of the [Redacted] investigation

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07/07/2005 [Redacted]

[Redacted]

~~SECRET~~

OIG/DOJ REVIEW: [Redacted]
FBI INVESTIGATION: [Redacted]
OIG/DOJ INVESTIGATION: [Redacted]

DATE: 4 19 07

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DATE: 05-29-2007
CLASSIFIED BY 65179 DMH/KSR/JW
REASON: 1.4 (C)
DECLASSIFY ON: 05-29-2032

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

(U) To: Charlotte From: Office of General Counsel
Re: ~~(S)~~ 278-HQ-C1229736-VIO, 03/13/2007

(S)

[Redacted]

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(S)

[Redacted]

(S)

~~(U)~~ On or about 07/13/2005, SA [Redacted] coordinated with United States Attorney's Office (USAO), Eastern District of North Carolina (EDNC), Chief of Criminal, [Redacted] to obtain a Grand Jury subpoena [Redacted]

(S)

After receiving the subpoena, SA [Redacted] went to [Redacted] and met with [Redacted] SA [Redacted] served the subpoena and had some records in hand when he received a call from SSRA [Redacted]. SSRA [Redacted] had been notified by FBIHQ, ITOS I, CONUS II, Team 6, that the field office was not to utilize a Grand Jury subpoena but must obtain a National Security Letter (NSL). Therefore, SA [Redacted] returned the records [Redacted]

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~~(U)~~

SSRA [Redacted] advised FBIHQ that their SAC, [Redacted] was TDY out of the Division and therefore FBIHQ would need to complete an EC addressed to General Counsel requesting an NSL be approved at FBIHQ. SSRA [Redacted] was then instructed by FBIHQ, ITOS I, CONUS II, that Charlotte would be required to draft the NSL, due to time constraints, and then obtain approval from a neighboring division's SAC. SA [Redacted] then drafted an NSL to obtain [Redacted] and forwarded the NSL to SSRA [Redacted] for review. The NSL was then forwarded by SSRA [Redacted] to SAC [Redacted] Atlanta Division, for approval.

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(S)

~~(U)~~ On or about 07/14/2005, JTTF Task Force Agent [Redacted] served the NSL [Redacted] requesting [Redacted] [Redacted] TFA [Redacted] does not recall the individual's name to whom the NSL was given. TFA [Redacted] was advised [Redacted] that the NSL was not the appropriate

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(U) To: Charlotte From: Office of General Counsel
Re: ~~(S)~~ 278-HQ-C1229736-VIO, 03/13/2007

b1 (S) [redacted]
b6 documentation [redacted] declined
b7C to honor the NSL.

b6 (U) SSRA [redacted] then contacted Acting CDC [redacted]
b7C [redacted] Charlotte Division, for guidance concerning the matter
b1 and the questioned legality of the NSL for [redacted]
(S) CDC [redacted] then conferred with legal counsel [redacted] and FBIHQ,
OGC, concerning the matter. SSRA [redacted] also contacted ASAC
[redacted] Charlotte Division, who in turn was also in
contact with FBIHQ.

b1 (S) (U) Subsequently, SSRA [redacted] was advised by FBIHQ
b3 that a Grand Jury subpoena would be obtained [redacted]
b6 [redacted] which was the office of origin
b7C on [redacted] matter, and the Grand Jury subpoena would be
b2 (S) forwarded to the Raleigh RA for service on [redacted]
b7E

(S) (X) On 07/15/2005, the Raleigh RA received a copy of
the Grand Jury subpoena [redacted]
[redacted] SA [redacted] and
SA [redacted] served [redacted] with the Grand Jury subpoena [redacted]
[redacted] After [redacted]
resistance to comply, SA [redacted] advised [redacted] that he had
been served. SSRA [redacted] was in contact with ASAC [redacted]
advising [redacted] reluctance to honor the Grand Jury subpoena
and at this time [redacted] contacted the [redacted]
concerning the matter. Approximately one hour later, [redacted]
contacted the Raleigh RA and advised that the records were
waiting for FBI retrieval.

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

(U) Section 2.4 of Executive Order 12863 mandates that Inspectors General and General Counsel of the Intelligence Community components (in the FBI, the Assistant Director, Inspection Division (INSD), and the General Counsel, Office of the General Counsel (OGC), respectively) report to the IOB intelligence activities that they have reason to

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(U) To: Charlotte From: Office of General Counsel
Re: ~~(S)~~ 278-HQ-C1229736-VIO, 03/13/2007

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

(U) ~~(S)~~ NSLs are a specific type of investigative tool that allows the FBI to obtain certain limited types of information without court intervention: (1) telephone and email communication records from telephone companies and internet service providers (Electronic Communications Privacy Act, 18 U.S.C. § 2709); (2) records of financial institutions (which is very broadly defined) (Right to Financial Privacy Act, 12 U.S.C. § 3414(a)(5)(A)); (3) a list of financial institutions and consumer identifying information from a credit reporting company (Fair Credit Reporting Act, 15 U.S.C. §§ 1681u(a) and (b)); and (4) full credit report in an international terrorism case (Fair Credit Reporting Act, 15 U.S.C. § 1681v). NSLs may be issued in conformity with statutory requirements, including 18 U.S.C. § 2709. [redacted]

b1

(U) ~~(S)~~ In this instance, Charlotte served an NSL requesting records outside the permissible scope of an NSL. OGC notes that, according to Charlotte, Charlotte acted upon the advice and direction of FBIHQ, Charlotte personnel sought legal advice prior to the service of the NSL, and no records were obtained in response to the NSL. These mitigating factors should be considered when judging the performance of Charlotte personnel. However, the circumstances as a whole must be reported to the IOB since the service of the NSL in this case was not in compliance with ECPA and the NSIG.

~~SECRET~~

~~SECRET~~

(U) To: Charlotte From: Office of General Counsel
Re: ~~(S)~~ 278-HQ-C1229736-VIO, 03/13/2007

LEAD(s) :

Set Lead 1: (Info)

CHARLOTTE

AT CHARLOTTE, NC -

(U) For information.

Set Lead 2: (Info)

COUNTERTERRORISM

AT WASHINGTON, DC

(U) For information.

Set Lead 3: (Action)

INSPECTION

AT WASHINGTON, DC

(U) For review and action deemed appropriate.

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cc: Ms. Thomas

IOB Library

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INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER
CHARLOTTE DIVISION
IOB MATTER 2007- [] (U)

(S)

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(S) The Charlotte Division ("Charlotte") of the Federal Bureau of Investigation ("FBI") reported via electronic communication dated February 21, 2007, that a National Security Letter was served requesting records that were beyond the permissible scope of a National Security Letter. Specifically, the FBI sought to obtain [] from a state university for an individual with ties to the July 2005 London bombings. [] are outside the scope of records that may be obtained with a National Security Letter. The state university recognized this error and refused to produce any records in response to the National Security Letter. Accordingly, no records were obtained as a result of the service of this National Security Letter. The FBI rescinded the National Security Letter, and instead served a Federal Grand Jury subpoena for []. The state university complied with the Federal Grand Jury subpoena and produced [].

b1
b3 FGJ

(U)

(S) The FBI's service of a National Security Letter requesting educational records was in violation of The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection, even though no records were obtained in response to the National Security Letter. Thus, the matter is being reported to the IOB.

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

DATE: 05-29-2007
CLASSIFIED BY 65179 DMH/KSR/JW
REASON: 1.4 (C)
DECLASSIFY ON: 05-29-2032

ALL INFORMATION CONTAINED
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WHERE SHOWN OTHERWISE

~~Derived from : G-3~~
~~Declassify on: 03/07/2032~~

~~SECRET~~