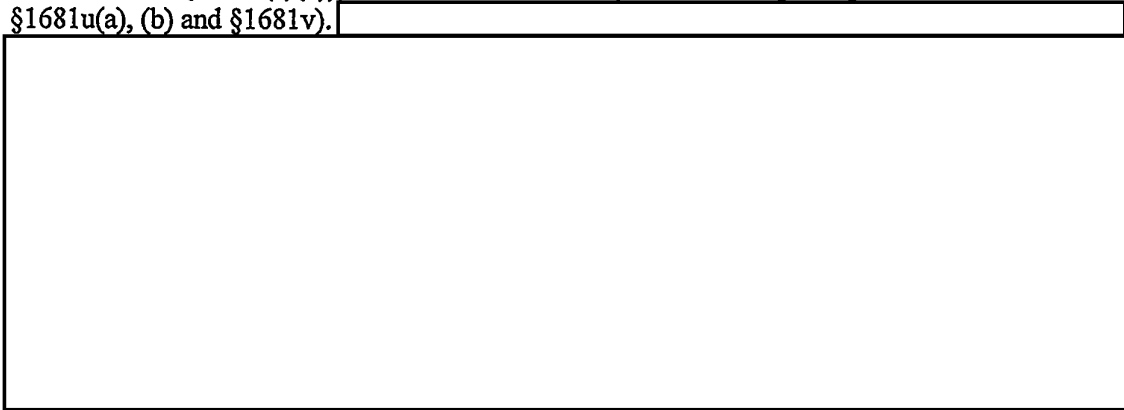


**Business Record Order
50 U.S.C. §1861**

WHEN TO USE A BUSINESS RECORD ORDER

In the conduct of authorized national security investigations, the FBI may seek to acquire business records from individuals and businesses when the information sought is relevant to the subject matter of the authorized investigation. Some information is protected from disclosure but subject to a national security letter (NSL), such as telephone records and ISP records (Electronic Communications Privacy Act, 18 U.S.C. § 2709); financial records (Right to Financial Privacy Act, 12 U.S.C. § 3414(a)(5)); and credit information (Fair Credit Reporting Act, 15 U.S.C. §1681u(a), (b) and §1681v).



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Other types of information, which are not statutorily protected, may be obtained by voluntary production by the business possessing the records. However, if the business chooses not to provide the information voluntarily, the agent can use a grand jury subpoena, if there is a criminal nexus. However, if there is no criminal nexus, then a business record order is the investigative method that is necessary in order to obtain the records.

THE PATRIOT ACT

Section 215 of the Patriot Act amended the business record provision of FISA enacted in 1998, which provided that the FBI could apply to the FISA Court (FISC) for an order to compel production of records from a common carrier, public accommodations facility, physical storage facility, and vehicle rental facility, if there were a tie to a foreign power. The Patriot Act expanded the nature of the information that could be obtained under the business records order, to provide for the acquisition of any tangible things (including books, records, papers, documents, and other items) for an authorized investigation to obtain foreign intelligence information, not concerning a U. S. person or to protect against international terrorism or clandestine intelligence activities, provided that such investigation, if of a U. S. person, is not conducted solely upon the basis of Constitutionally protected activity. 50 U.S.C. §1861. Thus, Section 215 adopted a "relevance" standard; that is, the request must be relevant to an authorized preliminary or full investigation. Section 215 further provided that the application be made to the FISC by an FBI official no lower in rank than an ASAC. By EC dated October 10, 2003, the

Director delegated such approval authority to the Deputy Director, the Executive Assistant Director for Counterterrorism/Counterintelligence, the Assistant Director and all Deputy Assistant Directors of the Counterterrorism, Counterintelligence, and Cyber Divisions, the General Counsel, the Deputy General Counsel for National Security Affairs, and the Senior Counsel for National Security Affairs. In addition, Section 215 included a nondisclosure clause, by which the recipient may not disclose to any other person that the FBI has sought or obtained the tangible things named in the order.

OBTAINING A BUSINESS RECORD ORDER

The mechanics of obtaining a FISA business record order are outlined in an EC issued by OGC on 10/29/2003 as amended by an EC issued by OGC on 11/05/2003. OGC also has drafted a model business record request form (revised as of 8/23/2005) that should be filled out and, upon approval by the squad supervisor, CDC, and SAC or ASAC, should be submitted to the FISAMS, headquarters operational unit, and NSLB in order to start the process of obtaining a business record order. At the present time, the business record request process has not been fully integrated into the FISAMS. The FISA Unit will soon be creating a process whereby business record requests will be automated in the same manner as FISA electronic surveillance, physical search, and pen register requests. However, at the present time, while the request should be submitted to the FISAMS and is available for viewing in the FISAMS, the movement of the request is not tracked through the FISAMS and approvals are not obtained through the FISAMS. It remains a manual process. The application to the FISC is drafted by NSLB, based upon the information submitted in the business request form. Upon the approval of the draft application by the requesting agent, the application and proposed order is submitted to OIPR for its approval. Upon OIPR's approval, the request is submitted to the FISC for issuance of an order.

The business record order issued by the FISC will be classified. [redacted]

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[redacted]

[redacted] The enclosures to that EC include a model business record request form, which is accessible through the link set forth in the paragraph above. [redacted]

[redacted]

Questions about business record requests should be directed to Assistant General Counsel [redacted]

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Investigative Tools for Intelligence Investigations

[REDACTED]
National Security Law Branch
Federal Bureau of Investigation

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FISA - Business Records

- Under FISA, 50 USC 1861, FBI can apply to FISC for an ex parte order for business records (note: other sections of FISA say that AG applies to Court for order)
- When added to FISA in 1998, limited to business records from common carriers, public accommodations, vehicle rentals, storage facilities and standard was specific and articulable facts that records related to agent of foreign power

FISA - Business Records

- Patriot Act expanded universe of items obtainable, to “any tangible things (including books, records, papers, documents and other items)”
- Patriot Act changed legal standard: “the information to be obtained is foreign intelligence information not concerning a US person , or is relevant to an ongoing investigation to protect against international terrorism or clandestine intelligence gathering activities” and investigation of USP cannot be based solely on activities protected by First Amendment
- Same standard as established by Patriot Act for PR/TT; NSLs
- Available in

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FISA - Business Records

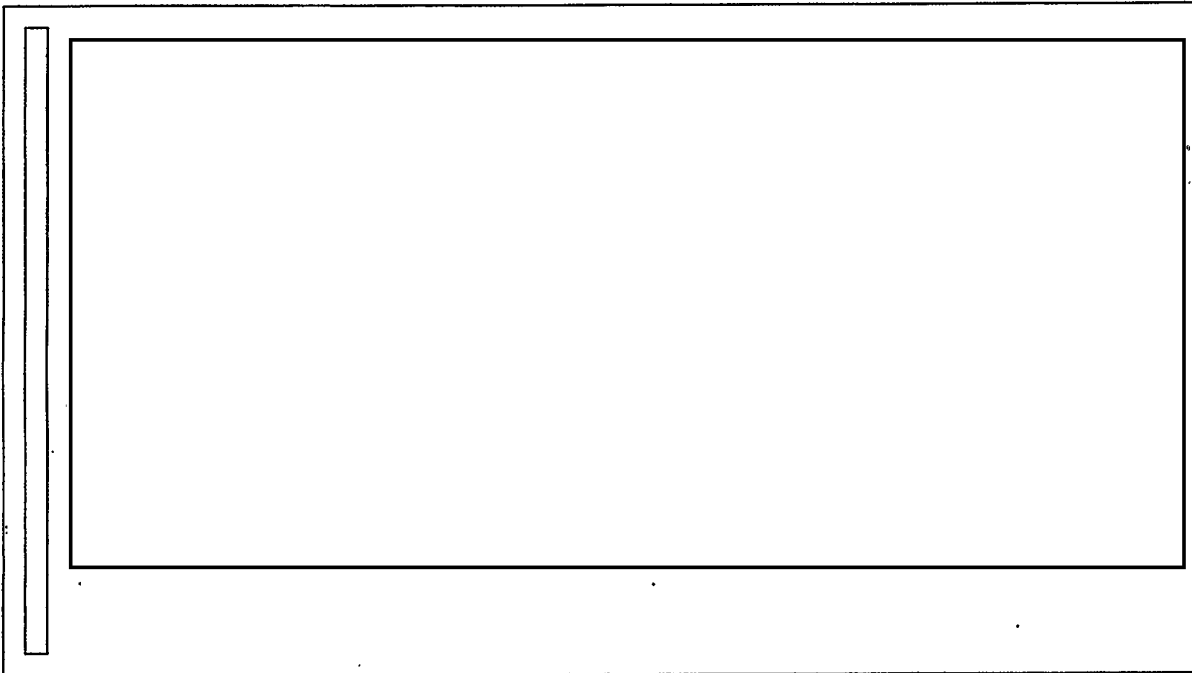
- FISA permits delegation down to level of ASAC
- At current time, approval authority has been delegated to headquarters officials (Deputy Director; EAD for CT/CI; AD and all DADs of CT, CI, Cyber; General Counsel, Deputy General Counsel for National Security Affairs, and Senior Counsel for National Security Affairs)
- Business records form available for field to fill out and submit to headquarters and NSLB (atty



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FISA - Business Records



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QUESTIONS?

- NSLB - (202) 324-3951

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- Visit our FBI Intranet site at

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FEDERAL BUREAU OF INVESTIGATION
FOIPA
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