

FEDERAL BUREAU OF INVESTIGATION

Precedence: IMMEDIATE

Date: 4/11/2006

To: All Divisions

Attn: ADIC, AD, DAD, SAC, CDC

From: Office of the General Counsel
National Security Law Branch LX-1 Room 3S100

Contact: [REDACTED]

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Approved By: Mueller Robert S III

Drafted By: [REDACTED]

Case ID #: [REDACTED]

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Title: LEGAL ADVICE AND OPINIONS
BUSINESS RECORD APPLICATIONS
DELEGATION OF AUTHORITY

Reference: [REDACTED]

Synopsis: Delegates signature authority for applications for business records for certain types of business record requests to the Deputy Director and the Executive Assistant Director for the National Security Branch under 50 U.S.C. § 1861(a) (3).

Details: The Foreign Intelligence Surveillance Act of 1978 (FISA), 50 U.S.C § 1861, provides for access to certain business records for foreign intelligence (FI) and international terrorism (IT) investigations through issuance of an order from the FISA Court (FISC). Section 1861(a) authorizes the "Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge)" to make an application for the order. That delegation was made on 10/10/2003.²

Under the newly enacted USA PATRIOT Act Improvement and Reauthorization Act of 2005 (2005 PATRIOT Act), the FBI is authorized to issue certain enumerated business record applications only with the approval of the Director or a specified designee:

In the case of an application for an order requiring the production of library circulation records, library patron lists, book sales records, book customer lists,

¹ See [REDACTED]

To: All Divisions From: Office of the General Counsel
Re: [REDACTED] 04/11/2006

b7E

firearms sales records, tax return records, educational records, or medical records containing information that would identify a person, the Director of the Federal Bureau of Investigation may delegate the authority to make such application to either the Deputy Director of the Federal Bureau of Investigation or the Executive Assistant Director for National Security (or any successor position).² The Deputy Director or the Executive Assistant Director may not further delegate such authority.

50 U.S.C. 1861(a)(3).

DELEGATION OF SIGNATURE AUTHORITY FOR SPECIAL CATEGORIES OF BUSINESS RECORDS REQUESTS

Thus, as permitted by 50 U.S.C. § 1861(a)(3), I hereby delegate certification signature authority for those business record applications enumerated in Section 1861(a)(3) to the following FBI officials:

1. The Deputy Director, and
2. The Executive Assistant Director for the National Security Branch.

CHANGES IN 10/10/2003 DELEGATION AUTHORITY FOR ALL OTHER BUSINESS RECORD REQUESTS

In addition, the prior business records delegation by EC dated 10/10/2003 listed the following officials as having certification signature authority for all business record order applications:³

1. The Deputy Director;

² This position is the Executive Assistant Director for the newly created National Security Branch.

³ The 2005 PATRIOT Act removes certification signature authority for the enumerated applications in Section 1861(a)(3) from these officials; therefore, the 10/10/2003 delegation is modified to recognize that these officials no longer have certification signature authority for such records. Nonetheless, no such business record applications were made under that delegation. In fact, until the passage of the 2005 PATRIOT Act, it was not evident that those records were obtainable via a business record order. The statute now makes clear that those records are in fact obtainable via a business record order.

To: All Divisions From: Office of the General Counsel
Re: [REDACTED] 04/11/2006 b7E

2. The Executive Assistant Director for the Counterterrorism/Counterintelligence;⁴
3. The Assistant Directors and all Deputy Assistant Directors of the Counterterrorism, Counterintelligence, and Cyber Divisions; and
4. The General Counsel, the Deputy General Counsel for National Security Affairs, and the Senior Counsel for National Security Affairs.⁵

However, in light of changes in FBI organizational structure, I hereby additionally delegate certification signature authority for all business record applications, except those enumerated in Section 1861(a)(3), to

1. The Executive Assistant Director (EAD) for the National Security Branch and the Associate EAD for the National Security Branch; and
2. The Deputy General Counsel for the National Security Law Branch.⁶

FINAL LIST OF FBI OFFICIALS WITH SIGNATURE AUTHORITY FOR ALL OTHER BUSINESS RECORD REQUESTS

Thus, the current list of officials to whom signature authority has been delegated for all but the special categories of business records set forth in Section 1861(a)(3), is as follows:

1. The Deputy Director;
2. The Executive Assistant Director (EAD) and Associate EAD for the National Security Branch;
3. The Assistant Directors and all Deputy Assistant Directors of the Counterterrorism, Counterintelligence, and Cyber Divisions;
4. The General Counsel; and

⁴ This position no longer exists in the FBI.

⁵ This position no longer exists in the FBI.

⁶ This position was previously designated as the Deputy General Counsel for National Security Affairs but is more properly termed the Deputy General Counsel for the National Security Law Branch.

To: All Divisions From: Office of the General Counsel b7E
Re: [REDACTED] 04/11/2006

5. The Deputy General Counsel for the National Security Law Branch.

The National Security Law Branch (NSLB) will continue to issue business record applications for filing with the FISC. Further, NSLB, through its website, will provide further information on the changes made by the 2005 PATRIOT Act to the business records provision of FISA.

To: All Divisions From: Office of the General Counsel
Re: [REDACTED] 04/11/2006 b7E

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ALL RECEIVING OFFICES

Disseminate to personnel involved in CI and IT operations and to other personnel as appropriate.