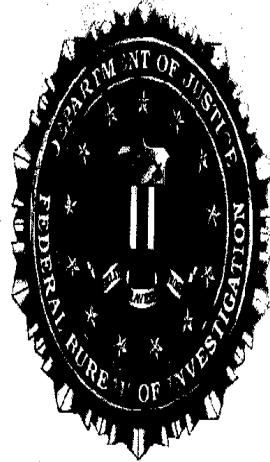


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DATE 02-29-2012 BY 65179 DMH/STP/MLB



# **FISA Business Records Request (FISA § 215 Requests)**

**Presented to the [LOCATION] Field Office**

**[date]**

3/18/11

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ACLU Sect. 215-1931

# FISA Business Records Requests

- **Purpose:** Compulsory processes used to compel the disclosure of records and other information **relevant** to a predicated investigation to protect against international terrorism or clandestine intelligence activities.
- **Legal authority:** Foreign Intelligence Surveillance Act of 1978, 50 U.S.C. §§ 1861- 63.

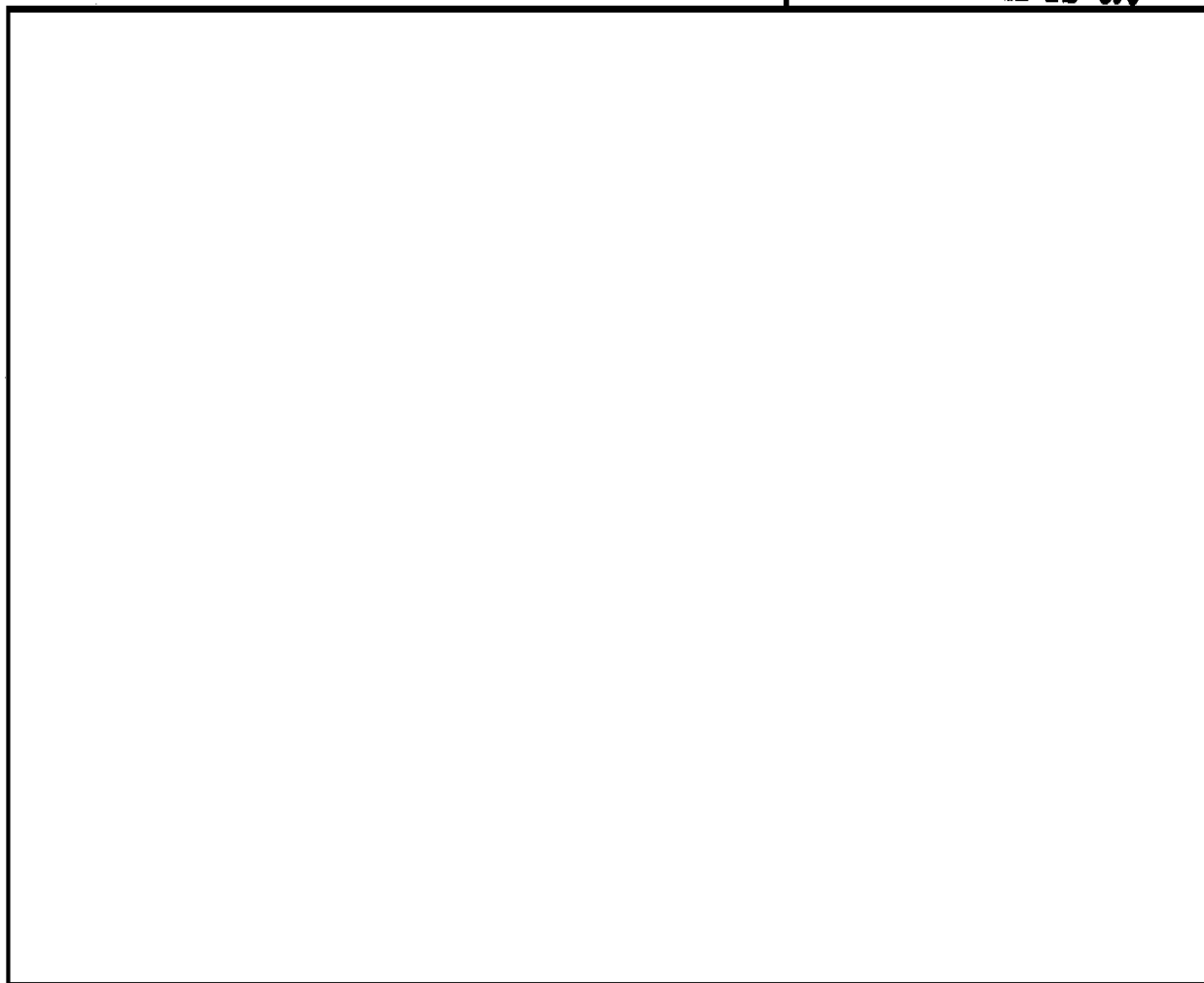
## **Scope of FISA Business Records authority**

This authority may be used to obtain “any tangible things (including books, records, papers, documents, and other items.”

- Broad – similar is scope to a Federal grand jury subpoena.

# Requesting a FISA Business Records Order

The FISA Business Records Request Form is at



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# Standard = Relevance

FISA Business Records Request (FBRR) must include a statement of the facts and circumstances relied upon by the applicant to establish that the records sought are relevant to a predicated investigation, and supporting the need for non-disclosure, if non-disclosure is requested...

- to obtain foreign intelligence information not concerning US person, or
- to protect against international terrorism or clandestine intelligence activities.

# Presumptive Relevance Test

The tangible things are **presumptively relevant** if the facts show 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.

FISA, 50 U.S.C. § 1861(b)(2)(A)

# Statement of Facts

- The facts and circumstances that establish:
  - The records sought are relevant to an authorized investigation and, if applicable, including an explanation of why each e-mail account requested is relevant; and
  - Support the need for non-disclosure, if non-disclosure is requested.
- In the case of a U.S. person target of investigation, an affirmative statement that the investigation is not based solely on the exercise of First Amendment rights;

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- The USPER status of subject of the investigation.

# Statement of Facts

- Describe the tangible things with **sufficient particularity** to permit them to be fairly identified.
- Contain a **date of return** (provide the recipient reasonable amount of time to produce).
- May require only the production of tangible things that would be available with a grand jury subpoena or a court order.



# **Special Approval for Certain Tangible Things**

Special approval level for certain FBRRs:

**The Director, the Deputy Director, or the Executive Assistant Director for National Security** must make the application for special categories of tangible things that contain information that would identify a person...

# Special Categories of Tangible Things

- Library circulation records
- Library patron lists
- Book sales records and book customer lists
- Firearm sales records
- Tax return records
- Educational records
- Medical record

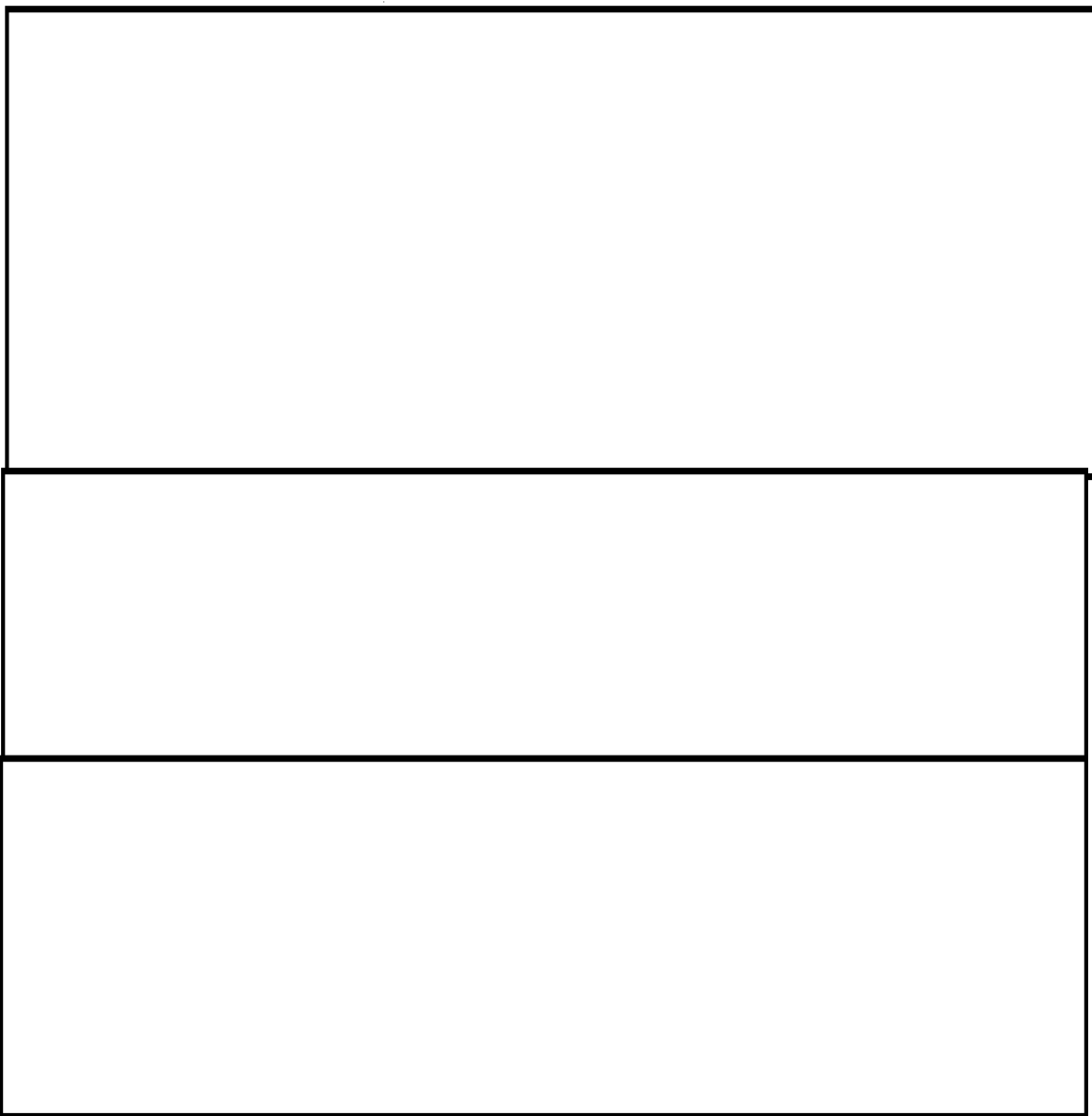
# Nondisclosure

No person shall disclose that the FBI has sought tangible things ... other than to:

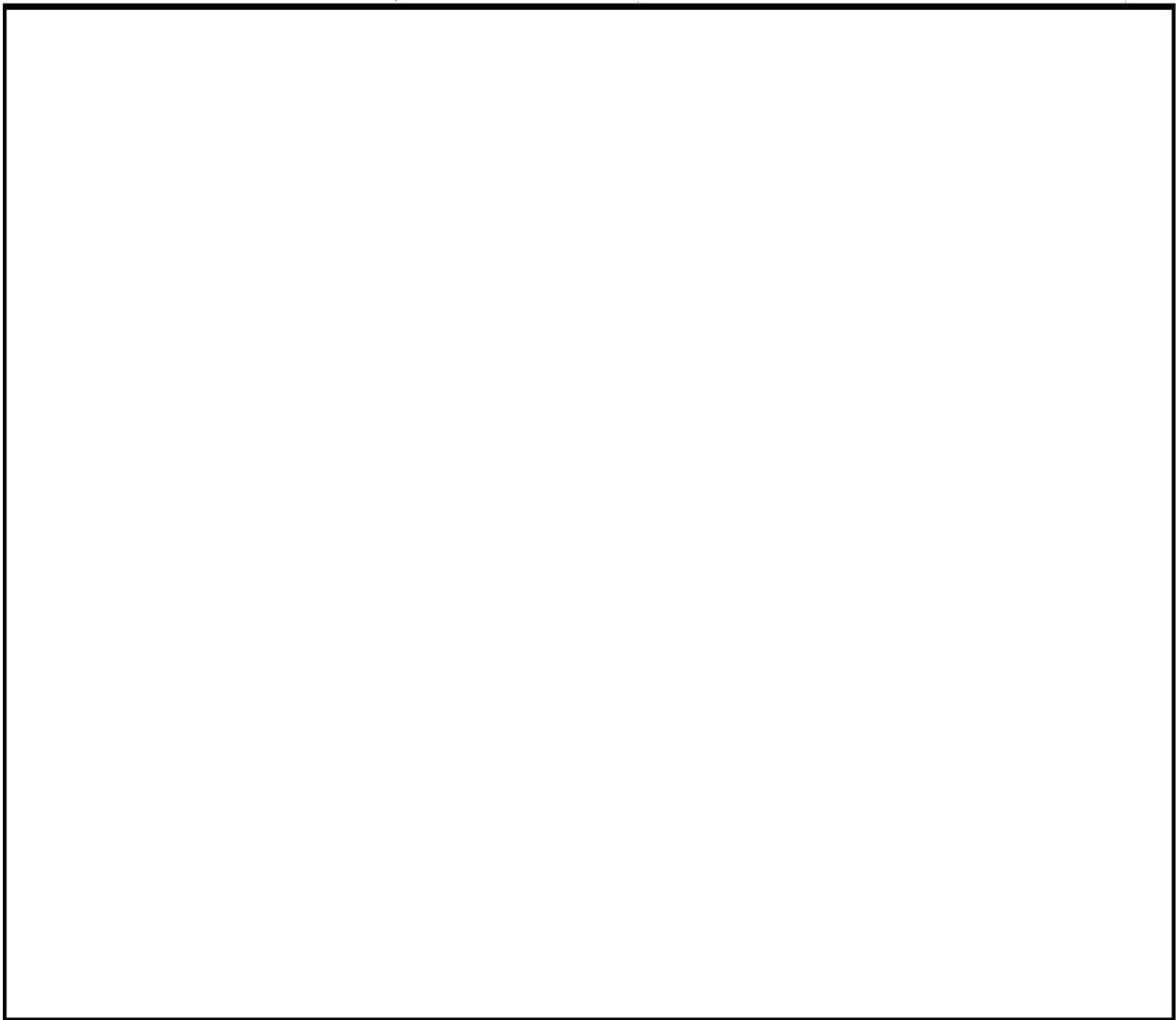
- Persons to whom disclosure is necessary to comply with the order.
- An attorney to obtain legal advice or assistance with respect to the production.
- A person a permitted by the Director (or designee).

# Electronic Communication Transactional Records

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# Electronic Communication Transactional Records



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3/18/11

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ACLU Sect. 215-1943

# Electronic Communication Transactional Records

- The facts and circumstances that establish:
  - The records sought are relevant to an authorized investigation and, if applicable, including an explanation of why each e-mail account requested is relevant; and
  - Support the need for non-disclosure, if non-disclosure is requested.
- In the case of a U.S. person target of investigation, an affirmative statement that the investigation is not based solely on the exercise of First Amendment rights;

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- 
- The USPER status of subject of the investigation.

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ACLU Sect. 215-1944

## **Nondisclosure Extended to Others**

- The recipient shall notify the other person of the nondisclosure.
- The other person is subject to nondisclosure.
- Director (or designee) may ask the recipient to identify other persons to whom disclosure made **(except that the recipient does not have to identify the attorney).**

# **Challenge of FISA Business Records Order**

**Time to challenge:** Not less than 1 year  
after order – recipient may move to modify  
or set aside the nondisclosure order.



# Challenge of FISA Business Records Order

Foreign Intelligence Surveillance Court (FISC) may grant the motion **only if**:

(i) the order does not meet FISA requirements or is otherwise unlawful,

(ii) based on the government's application and recipient's petition, no reason to believe that disclosure ... "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."

# Recipient's Challenge of FISA Nondisclosure

- After recipient's petition challenging nondisclosure, the government may choose to submit a certification by the AG, the DAG, an AAG, or the Director that a disclosure may endanger the national security or interfere with diplomatic relations.
- The FISC must treat the certification as conclusive.

# Minimization Procedures

- AG shall adopt minimization procedures to govern the retention and dissemination of information.
- Minimize the retention/Prohibit the dissemination:
  - Nonpublicly available info re unconsenting USPERs.
  - Consistent with the US IC need to obtain, produce and disseminate foreign intelligence information.
- Interim minimization procedures (approved 9/5/06)
- FISC may soon (Spring 2011?) approve new Minimization Procedures

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# More Information

See the National Security Law Branch's  
webpage concerning FISA Business Records  
Request:

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# Questions

[name]

National Security Law Branch (NSLB)

Direct: 202-324-\_\_\_\_\_

NSLB Front Desk: 202-324-3951

