



**U.S. Department of Justice**

Office of Legislative Affairs

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Office of the Assistant Attorney General

Washington, D.C. 20530

March 15, 2011

The Honorable Lamar Smith  
Chairman  
Committee on the Judiciary  
United States House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

Enclosed please find responses to questions for the record arising from the appearance of FBI Director Robert Mueller before the Committee on May 20, 2009, at an oversight hearing. We apologize for the lengthy delay and hope that this information is of assistance to the Committee.

Please note that these responses are current as of August 19, 2009. The Office of Management and Budget has no objection to our submitting these responses to the Committee with that caveat. Please do not hesitate to call upon us if we may be of additional assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "R Weich".

Ronald Weich  
Assistant Attorney General

Enclosure

cc: The Honorable John Conyers, Jr.  
Ranking Minority Member



The Inspector General's 2008 Report Regarding the FBI's Use of Section 215 Orders in 2006

**23. The 2008 Inspector General (IG) Report noted that when FBI agents submitted Section 215 requests processed in 2006, they encountered similar processing delays as those identified in the IG's 2007 report. These delays were caused by unfamiliarity with Section 215 orders, too few resources to handle requests expeditiously, the multi-layered review process, and substantive issues regarding whether the application met the statutory requirements. What is the FBI doing to address these problems?**

**Response:**

The FBI has worked diligently to expedite the accurate and timely processing of Section 215 requests. The Foreign Intelligence Surveillance Act (FISA) Management System, which is the FBI's computerized tracking and management system for the handling of FISA electronic surveillance and search warrant requests, has been modified to accept Section 215 requests, reducing reliance by the FBI and of DOJ's Office of Intelligence on e-mail to process requests for Section 215 orders. In addition, the in-house training for the FBI attorneys responsible for drafting these requests has been improved and the related experience level of FBI field offices has increased.

**24. The 2008 IG report also recommended that the FBI develop procedures that require FBI employees to review materials received from Section 215 orders to ensure that the material they receive pursuant to Section 215 is authorized by the Section 215 order itself. What has the FBI done to implement this recommendation?**

**Response:**

In addition to applying the Standard Minimization Procedures (SMPs) for business records that are required by the USA PATRIOT Improvement and Reauthorization Act of 2005, the FBI's policy implementing the new Attorney General (AG) Guidelines for Domestic Investigations requires that the case agent review all documents produced in response to a 215 request to determine whether they are responsive to the order before uploading the documents or data received into FBI databases. This policy also requires that non-responsive information mistakenly provided to the FBI pursuant to a 215 order be sequestered and that the case agent determine the best way to return the unresponsive material to the producing party and to obtain responsive material. The FBI's policy also addresses the steps to be taken by the case agent in the event of overproduction. In addition, new SMPs for business records are being drafted for the AG's approval and for review by the FISC that will further address the FBI's procedures for reviewing production in response to 215 orders.

Outside the Scope



**31. Questions [29] and [30] address the nondisclosure requirements for NSL recipients. Those receiving requests for information under Section 215 of the USA PATRIOT Act also are prohibited from disclosing receipt of that request.**

**a. Is the reciprocal notice procedure used by the FBI for NSLs being used for nondisclosure requirements issued under Section 215 of the USA PATRIOT Act?**

**If yes, since what date has the FBI used this procedure for recipients of Section 215 orders? How many Section 215 orders have been issued since that date? Has anyone given notice to the government of their intention to challenge a nondisclosure requirement in a Section 215 order? If so, has the government gone to court to enforce a nondisclosure requirement in a Section 215 order pursuant to notice being given that the recipient wished to challenge? If so, what was the result of the government going to court and asking the court enforce the nondisclosure requirement?**

**If no, what is the FBI's justification or argument for not using the reciprocal notice system in the context of Section 215 orders? Does the FBI plan to use that system for recipients of Section 215 orders in the future?**

**b. If this reciprocal notice procedure is being used for Section 215 orders, please provide a copy of the notice the FBI is sending to recipients of Section 215 orders that informs them of their right to challenge the nondisclosure provision.**

**Response to subparts a and b:**

A reciprocal notice procedure is not used in court orders obtained under Section 215. Section 215 orders, which are issued by the FISC, differ from NSLs, which are issued by the FBI.

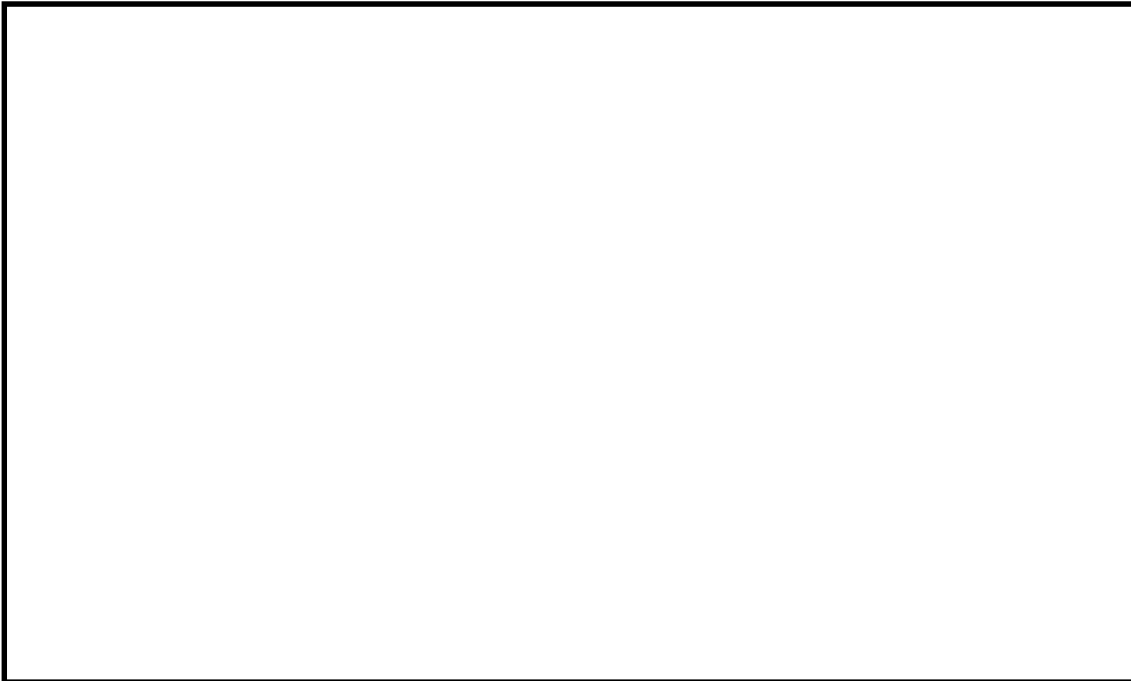
In order to obtain a Section 215 order, the FBI must present to the FISC an application demonstrating the relevance of the tangible items sought to an authorized national security investigation. Only after considering that application will the FISC issue an order directing the production of the requested items and

directing the recipient not to disclose the existence of the order. This nondisclosure requirement is identical to that used for years without controversy or legal challenge with respect to FISA electronic surveillance and search orders (50 U.S.C. §§ 1805, 1824), FISA pen register orders (50 U.S.C. § 1842), Title III electronic surveillance orders (18 U.S.C. § 2518), and Title 18 pen register/trap and trace orders (18 U.S.C. § 3123). Because there are long-standing noncontroversial processes for the judicial imposition of non-disclosure requirements, the FBI does not believe it would be appropriate to import the Doe concept of “reciprocal notice” into FISA Section 215 orders.

NSLs, in contrast, can be issued by the FBI when we determine that the requirements specified in the NSL statutes have been met. Because the nondisclosure requirement imposed in this context is not accomplished through a court order, the government did not appeal the Doe decision and agreed that the use of the reciprocal notice suggested by the court would be appropriate.

As noted above, FISC orders issued under Section 215 do not include reciprocal notice procedures. No recipient of a Section 215 order has objected to the nondisclosure requirement to date.

Outside the Scope



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