

EXHIBIT 1

Electronic Frontier Foundation v. Dep't of Justice, Civ. No. 06-1773-RBW

Plaintiff's Opposition to Defendant's Motion for *Open America* Stay



Electronic Frontier Foundation
Protecting Rights and Promoting Freedom on the Electronic Frontier

April 6, 2007

BY FACSIMILE – (202) 514-5331

Tasia Scolinos
Director of Public Affairs
Office of Public Affairs
U.S. Department of Justice
Room 1128
950 Pennsylvania Avenue, NW.
Washington DC 20530-0001

REQUEST FOR EXPEDITED FOIA PROCESSING

Dear Ms. Scolinos:

This is a request for expedited processing of a Freedom of Information Act (“FOIA”) request, made pursuant to 28 CFR 16.5(d)(1). By letters dated August 25 and September 1, 2006 (attached hereto as Exhibits 1 & 2), the Electronic Frontier Foundation (“EFF”) submitted FOIA requests to the Federal Bureau of Investigation (“FBI”) seeking the disclosure of FBI records concerning the Investigative Data Warehouse (“IDW”).

I believe these pending requests meet the criteria for expedited processing under 28 CFR 16.5(d)(1)(iv), as they concern “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.” 28 CFR 16.5(d)(1)(iv). You recently concluded that another request EFF submitted to the FBI, concerning the Bureau’s use of National Security Letters (“NSLs”), warranted expedited processing on this ground. *See* Exhibit 3, attached hereto. As I explain below, the factors EFF cited in support of the expedited processing of our NSL request in our letter to you dated March 12, 2007 (which I incorporate herein by reference) are equally applicable to our pending IDW requests.

In his report of March 9, 2007, the Department’s Inspector General documented numerous instances of the FBI’s “improper or illegal use” of NSL authority. Of particular relevance to this request, the Inspector General revealed that “NSL data is periodically downloaded . . . into the FBI’s Investigative Data Warehouse (IDW), a centralized repository for intelligence and investigative data with advanced search capabilities.” U.S. Department of Justice, Office of the Inspector General, “A Review of the Federal Bureau of Investigation’s Use of National Security Letters” (March 2007), at 30. The Bureau’s continuing retention in the IDW of the personal data improperly or illegally obtained through abuses of the NSL process is obviously central to the undisputed questions about “integrity which affect public confidence.” Indeed, during the Senate Judiciary Committee’s hearing on the issue on March 21, Sen. Feingold had the following exchange with the Inspector General:

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Sen. Feingold: In your October 2006 memo to the attorney general on the Justice Department's top management and performance challenges for fiscal year 2006, you caution that the Patriot Act granted the FBI broad new authorities to collect information, including the authority, quote, "To review and store information about American citizens and others in the United States about whom the FBI has no individualized suspicion of illegal activity," unquote.

You cautioned nearly six months ago that the department and the FBI need to be particularly mindful about the potential for abuse of these types of powers.

First, I want to establish some basic facts alluded to in your memo. Under the existing NSL statutes, it is possible to obtain information, including full credit reports, about people who are entirely innocent of any wrongdoing. Isn't that correct?

Mr. Fine: Well, it is possible, yes, as a result of the investigation there's no finding of anything and that they are innocent. Yes.

Sen. Feingold: And the FBI's policy is that it will retain all information obtained via NSLs indefinitely, often in databases like the Investigative Data Warehouse that are available to thousands of investigators. Is that correct?

Mr. Fine: Yes.

Sen. Feingold: Now, with regard to your caution about the potential for abuse of these powers, DOJ responded in November 2006 that the FBI agrees and that it is, quote, "aggressively vigilant in guarding against any abuse," unquote.

Would you agree with that statement, that the FBI has been aggressively vigilant in guarding against abuses?

Mr. Fine: I would agree that the FBI was not aggressively vigilant in terms of guarding against the problems we found, yes.

Indeed, the Department has recognized that the questions surrounding the retention of NSL data in the IDW are serious and require further examination. In a "Fact Sheet" issued on March 20, the Department announced "new oversight of the use and retention

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of NSL-derived information” and the creation of a “working group” to “examine how NSL-derived information is used and retained by the FBI.” Fact Sheet: Department Of Justice Corrective Actions on the FBI’s Use of National Security Letters (March 20, 2007) (attached hereto as Exhibit 4).

In summary, it is clear that recent events warrant the expedited processing of EFF’s requests for information concerning the policies and procedures governing the inclusion and use of information in the Investigative Data Warehouse. As such, we hereby request such expedited treatment.

Thank you for your consideration of this request. As applicable Department regulations provide, I will anticipate your determination within ten (10) calendar days. 28 CFR 16.5(d)(1).

Under penalty of perjury, I hereby affirm that the foregoing is true and correct to the best of my knowledge and belief.



David L. Sobel
Senior Counsel

attachments

cc: (w/o attachments)

James C. Luh
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch

Exhibit 1

Electronic Frontier Foundation Request to Expedite FOIA Processing
April 6, 2007



Electronic Frontier Foundation
Protecting Rights and Promoting Freedom on the Electronic Frontier

August 25, 2006

BY FACSIMILE — (202) 324-3752

David M. Hardy, Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Department of Justice
935 Pennsylvania Avenue NW
Washington, DC 20535-0001

RE: Freedom of Information Act Request

Dear Mr. Hardy:

This letter constitutes a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and is submitted to the Federal Bureau of Investigation (“FBI”) on behalf of the Electronic Frontier Foundation (“EFF”). We make this request as part of EFF’s FOIA Litigation for Accountable Government (“FLAG”) Project, which works to obtain government documents and make them widely available to the public.

We seek disclosure of the following agency records (including, but not limited to, electronic records) concerning the FBI’s “Investigative Data Warehouse” (“IDW”):

- 1) records listing, describing or discussing the categories of individuals covered by the IDW;
- 2) records listing, describing or discussing the categories of records in the IDW;
- 3) records listing, describing or discussing criteria for inclusion of information in the IDW;
- 4) records describing or discussing any FBI determination that the IDW is, or is not, subject to the requirements of the Privacy Act of 1974; and
- 5) records describing or discussing any FBI determination that the IDW is, or is not, subject to federal records retention requirements, including the filing of Standard Form (SF) 115, “Request for Records Disposition Authority.”

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August 25, 2006
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To assist you in conducting a search for responsive records, we note that FBI Deputy Assistant Director John E. Lewis stated, in a speech on March 14, 2005, that

within the FBI's Counterterrorism Division, we operate an information system known as the Investigative Data Warehouse. The IDW provides our agents and analysts with instant access to photographs, biographical information, physical location information, and financial data for thousands of known and suspected terrorists. The database comprises more than 100 million pages of terrorism-related documents, and billions of structured records such as addresses and phone numbers. . . .

Request for News Media Fee Status

EFF asks that it not be charged search or review fees for this request because EFF qualifies as a representative of the news media pursuant to the FOIA and 28 C.F.R. § 16.11(b)(6).

EFF is a non-profit public interest organization that works "to protect and enhance our core civil liberties in the digital age."¹ One of EFF's primary objectives is "to educate the press, policymakers and the general public about online civil liberties."² To accomplish this goal, EFF routinely and systematically disseminates information in several ways.

First, EFF maintains a frequently visited web site, <http://www.eff.org>, which received 38,858,298 hits in July 2006 — an average of 52,228 per hour. The web site reports the latest developments and contains in-depth information about a variety of civil liberties and intellectual property issues.

EFF has regularly published an online newsletter, the EFFector, since 1990. The EFFector currently has more than 77,000 subscribers. A complete archive of past EFFectors is available at <http://www.eff.org/effector/>.

Furthermore, EFF publishes two blogs that highlight the latest news from around the Internet. DeepLinks (<http://www.eff.org/deeplinks/>) reports and analyzes newsworthy developments in technology, while miniLinks (<http://www.eff.org/minilinks/>) directs

¹ Guidestar Basic Report, Electronic Frontier Foundation, <http://www.guidestar.org/pqShowGsReport.do?npId=561625> (last visited July 5, 2006).

² *Id.*

David M. Hardy
August 25, 2006
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readers to other news articles and commentary on these issues. DeepLinks had 817,993 hits in July 2006; miniLinks received 436,043 hits during the same period.³

In addition to reporting hi-tech developments, EFF staff members have presented research and in-depth analysis on technology issues in no fewer than eighteen white papers published since 2002. These papers, available at <http://www.eff.org/wp/>, provide information and commentary on such diverse issues as electronic voting, free speech, privacy and intellectual property.

EFF has also published several books to educate the public about technology and civil liberties issues. *Everybody's Guide to the Internet* (MIT Press 1994), first published electronically as *The Big Dummy's Guide to the Internet* in 1993, was translated into several languages, and is still sold by Powell's Books (<http://www.powells.com>). EFF also produced *Protecting Yourself Online: The Definitive Resource on Safety, Freedom & Privacy in Cyberspace* (HarperEdge 1998), a "comprehensive guide to self-protection in the electronic frontier," which can be purchased via Amazon.com (<http://www.amazon.com>). Finally, *Cracking DES: Secrets of Encryption Research, Wiretap Politics & Chip Design* (O'Reilly 1998) revealed technical details on encryption security to the public. The book is available online at <http://cryptome.org/cracking-des.htm> and for sale at Amazon.com.

Most recently, EFF has begun broadcasting podcasts of interviews with EFF staff and outside experts. *Line Noise* is a five-minute audio broadcast on EFF's current work, pending legislation, and technology-related issues. A listing of *Line Noise* podcasts is available at <feed://www.eff.org/rss/linenoisemp3.xml> and <feed://www.eff.org/rss/linenoiseogg.xml>. These podcasts were downloaded about 5,000 times from EFF's web site last month.

Request for a Public Interest Fee Waiver

EFF is entitled to a waiver of duplication fees because disclosure of the requested information is in the public interest within the meaning of 5 U.S.C. § 552(a)(4)(a)(iii) and 28 C.F.R. § 16.11(k). To determine whether a request meets this standard, the FBI determines whether "[d]isclosure of the requested information is likely to contribute significantly to public understanding of the operations or activities of the government," and whether such disclosure "is not primarily in the commercial interest of the requester." 28 C.F.R. §§ 16.11(k)(i), (ii). This request clearly satisfies these criteria.

³ These figures include hits from RSS feeds through which subscribers can easily track updates to DeepLinks and miniLinks.

David M. Hardy
August 25, 2006
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First, the FBI's development and use of the IDW concerns "the operations or activities of the government." 28 C.F.R. § 16.11(k)(2)(i).

Second, disclosure of the requested information will "contribute to an understanding of government operations or activities." 28 C.F.R. § 16.11(k)(2)(ii) (internal quotation marks omitted). EFF has requested information that will shed light on the FBI's development and use of a large investigative database, as well as its functionality and the extent of its use.

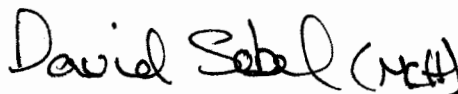
Third, the requested material will "contribute to public understanding" of the nature and extent of the information contained in the IDW. 28 C.F.R. § 16.12(k)(2)(iii) (internal quotation marks omitted). This information will contribute not only to EFF's understanding of the FBI's investigative activity, but to the understanding of a reasonably broad audience of persons interested in the subject. EFF will make the information it obtains under the FOIA available to the public and the media through its web site and newsletter, which highlight developments concerning privacy and civil liberties issues, and/or other channels discussed more fully above.

Fourth, the disclosure will "contribute significantly" to the public's knowledge and understanding of the FBI's development and use of the IDW. 28 C.F.R. § 16.11(k)(2)(iv) (internal quotation marks omitted). Little is publicly known about the IDW, so disclosure of this information will help inform the public about the database and its potential impact on personal privacy.

Furthermore, a fee waiver is appropriate here because EFF has no commercial interest in the disclosure of the requested records. 28 C.F.R. § 16.11(k)(3). EFF is a 501(c)(3) nonprofit organization, and will derive no commercial benefit from the information at issue here.

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact me at (202) 797-9009 x. 10. As the FOIA provides, I will anticipate a determination on this request from your office within 20 working days.

Sincerely,

A handwritten signature in black ink that reads "David Sobel" followed by a circled "NCH" in the right margin.

David L. Sobel
Senior Counsel

Exhibit 2

Electronic Frontier Foundation Request to Expedite FOIA Processing
April 6, 2007



Electronic Frontier Foundation
Protecting Rights and Promoting Freedom on the Electronic Frontier

September 1, 2006

BY FACSIMILE — (202) 324-3752

David M. Hardy, Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Department of Justice
935 Pennsylvania Avenue NW
Washington, DC 20535-0001

RE: Freedom of Information Act Request

Dear Mr. Hardy:

This letter constitutes a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and is submitted to the Federal Bureau of Investigation (“FBI”) on behalf of the Electronic Frontier Foundation (“EFF”). We make this request as part of EFF’s FOIA Litigation for Accountable Government (“FLAG”) Project, which works to obtain government documents and make them widely available to the public.

On August 30, 2006, the Washington Post published an article, attached hereto, concerning the FBI’s “Investigative Data Warehouse” (“IDW”).¹ According to the article, the FBI described the 659 million-record database as “one of the most powerful data analysis tools available to law enforcement and counterterrorism agents.”

With respect to the data quality practices used to maintain the IDW, the article reported:

Irrelevant information can be purged or restricted, and incorrect information is corrected, [Gurvais Grigg, acting director of the FBI’s Foreign Terrorist Tracking Task Force] said. Willie T. Hulon, executive assistant director of the FBI’s National Security Branch, said that generally information is not removed from the system unless there is “cause for removal.”

Every data source is reviewed by security, legal and technology staff members, and a privacy impact statement is created, Grigg said. The FBI conducts in-house auditing so that each query can be tracked, he said.

¹ Ellen Nakashima, “FBI Shows Off Counterterrorism Database,” Washington Post, Aug. 30, 2006 at A06, *available* at <http://www.washingtonpost.com/wp-dyn/content/article/2006/08/29/AR2006082901520.html>.

We seek disclosure of the following agency records (including, but not limited to, electronic records):

1. all records describing data expungement, restriction or correction procedures for the IDW;
2. all privacy impact statements created for the IDW; and
3. all results of audits conducted to ensure proper operation of the IDW.

Request for News Media Fee Status

EFF asks that it not be charged search or review fees for this request because EFF qualifies as a representative of the news media pursuant to the FOIA and 28 C.F.R. § 16.11(b)(6).

EFF is a non-profit public interest organization that works “to protect and enhance our core civil liberties in the digital age.”² One of EFF’s primary objectives is “to educate the press, policymakers and the general public about online civil liberties.”³ To accomplish this goal, EFF routinely and systematically disseminates information in several ways.

First, EFF maintains a frequently visited web site, <http://www.eff.org>, which received 38,858,298 hits in July 2006 — an average of 52,228 per hour. The web site reports the latest developments and contains in-depth information about a variety of civil liberties and intellectual property issues.

EFF has regularly published an online newsletter, the EFFector, since 1990. The EFFector currently has more than 77,000 subscribers. A complete archive of past EFFectors is available at <http://www.eff.org/effector/>.

Furthermore, EFF publishes two blogs that highlight the latest news from around the Internet. DeepLinks (<http://www.eff.org/deeplinks/>) reports and analyzes newsworthy developments in technology, while miniLinks (<http://www.eff.org/minilinks/>) directs readers to other news articles and commentary on these issues. DeepLinks had 817,993 hits in July 2006; miniLinks received 436,043 hits during the same period.⁴

In addition to reporting hi-tech developments, EFF staff members have presented research and in-depth analysis on technology issues in no fewer than eighteen white papers published since 2002. These papers, available at <http://www.eff.org/wp/>, provide information and commentary on such diverse issues as electronic voting, free speech, privacy and intellectual property.

² Guidestar Basic Report, Electronic Frontier Foundation, <http://www.guidestar.org/pqShowGsReport.do?npold=561625> (last visited Sept. 1, 2006).

³ *Id.*

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EFF has also published several books to educate the public about technology and civil liberties issues. *Everybody's Guide to the Internet* (MIT Press 1994), first published electronically as *The Big Dummy's Guide to the Internet* in 1993, was translated into several languages, and is still sold by Powell's Books (<http://www.powells.com>). EFF also produced *Protecting Yourself Online: The Definitive Resource on Safety, Freedom & Privacy in Cyberspace* (HarperEdge 1998), a "comprehensive guide to self-protection in the electronic frontier," which can be purchased via Amazon.com (<http://www.amazon.com>). Finally, *Cracking DES: Secrets of Encryption Research, Wiretap Politics & Chip Design* (O'Reilly 1998) revealed technical details on encryption security to the public. The book is available online at <http://cryptome.org/cracking-des.htm> and for sale at Amazon.com.

Most recently, EFF has begun broadcasting podcasts of interviews with EFF staff and outside experts. *Line Noise* is a five-minute audio broadcast on EFF's current work, pending legislation, and technology-related issues. A listing of *Line Noise* podcasts is available at <feed://www.eff.org/rss/linenoisemp3.xml> and <feed://www.eff.org/rss/linenoiseogg.xml>. These podcasts were downloaded about 5,000 times from EFF's web site last month.

Request for a Public Interest Fee Waiver

EFF is entitled to a waiver of duplication fees because disclosure of the requested information is in the public interest within the meaning of 5 U.S.C. § 552(a)(4)(a)(iii) and 28 C.F.R. § 16.11(k). To determine whether a request meets this standard, the FBI determines whether "[d]isclosure of the requested information is likely to contribute significantly to public understanding of the operations or activities of the government," and whether such disclosure "is not primarily in the commercial interest of the requester." 28 C.F.R. §§ 16.11(k)(i), (ii). This request clearly satisfies these criteria.

First, the FBI's development and use of the IDW concerns "the operations or activities of the government." 28 C.F.R. § 16.11(k)(2)(i).

Second, disclosure of the requested information will "contribute to an understanding of government operations or activities." 28 C.F.R. § 16.11(k)(2)(ii) (internal quotation marks omitted). EFF has requested information that will shed light on the FBI's development and use of a large investigative database, as well as its functionality and the extent of its use.

Third, the requested material will "contribute to public understanding" of the nature and extent of the information contained in the IDW. 28 C.F.R. § 16.12(k)(2)(iii) (internal quotation marks omitted). This information will contribute not only to EFF's understanding of the FBI's investigative activity, but to the understanding of a reasonably broad audience of persons interested in the subject. EFF will make the information it obtains under the FOIA available to the public and the media through its web site and newsletter, which highlight developments concerning privacy and civil liberties issues, and/or other channels discussed more fully above.

Fourth, the disclosure will "contribute significantly" to the public's knowledge and understanding of the FBI's development and use of the IDW. 28 C.F.R. § 16.11(k)(2)(iv) (internal quotation marks omitted). Little is publicly known about the IDW, so disclosure of this

information will help inform the public about the database and its potential impact on personal privacy.

Furthermore, a fee waiver is appropriate here because EFF has no commercial interest in the disclosure of the requested records. 28 C.F.R. § 16.11(k)(3). EFF is a 501(c)(3) nonprofit organization, and will derive no commercial benefit from the information at issue here.

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact me at (202) 797-9009 x. 12. As the FOIA provides, I will anticipate a determination on this request from your office within 20 working days.

Sincerely,

A handwritten signature in black ink that reads "Marcia Hofmann". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Marcia Hofmann
Staff Attorney

Exhibit 3

Electronic Frontier Foundation Request to Expedite FOIA Processing
April 6, 2007



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

March 30, 2007

Ms. Marcia Hofmann
Staff Attorney
Electronic Frontier Foundation
Suite 650
1875 Connecticut Avenue, N.W.
Washington, DC 20009

RE: FOIPA Request No. 1073946-000

Dear Ms. Hofmann:

This letter is in response to your request to the U.S. Department of Justice ("DOJ"), Office of Public Affairs ("OPA"), for expedition of your Freedom of Information Act ("FOIA") request dated March 12, 2007 to FBI Headquarters ("FBIHQ"). Your March 12, 2007 FOIA request seeks access to "records discussing or reporting violations or potential violations of statutes, Attorney General guidelines, and internal FBI policies governing the use of National Security Letters." In your March 12, 2007 FOIA request you sought expedited processing pursuant to 28 C.F.R. § 16.5 (d)(1)(iv) ("[a] matter of widespread and exceptional media interest in which there exists possible questions about the government's integrity which affects public confidence."). We have been advised that the Director of OPA has concluded that the subject matter of your request is in fact a "matter of widespread and exceptional media interest in which there exists possible questions about the government's integrity which affects public confidence," and has therefore concluded that your request for expedited processing should be granted.

By separate letter dated March 29, 2007, the FBI acknowledged your March 12, 2007 FOIA request and advised you that your FOIA request has been assigned FOIPA Request No. 1073946, and we have begun to conduct a search for potentially responsive records. Once the FBI completes its search for all records potentially responsive to your FOIA request, you will be advised as to the outcome of this search effort.

With respect to the portion of your letter seeking a waiver of the customary fees, we will make a decision once our records search is completed. In the event that your request for a fee waiver is denied, you will be notified of any applicable fees prior to the processing of any responsive records.

Sincerely yours,

David M. Hardy/cls

David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

Exhibit 4

Electronic Frontier Foundation Request to Expedite FOIA Processing
April 6, 2007



Department of Justice

FOR IMMEDIATE RELEASE
TUESDAY, MARCH 20, 2007
WWW.USDOJ.GOV

NSD
(202) 514-2007
TDD (202) 514-1888

Fact Sheet: **Department Of Justice Corrective Actions** **on the FBI's Use of National Security Letters**

WASHINGTON – Nearly two weeks ago, the Attorney General commended the work of the Inspector General in uncovering serious problems in the FBI's use of National Security Letters (NSLs). The Attorney General and the Director of the FBI agreed that such mistakes would not be tolerated, and the Attorney General ordered the FBI and the Justice Department to put in place safeguards to ensure greater oversight and controls over the use of NSLs.

Since that time, the FBI and Justice Department have moved expeditiously to implement the recommendations of the Inspector General's report and to create additional safeguards to ensure that NSLs are used properly. Below are some of the actions that the FBI and Justice Department have taken to date and will be taking in the near future to address these shortcomings:

New Oversight and Auditing of the FBI's Use of NSLs

*Initial Audit – Last Friday, the FBI's Inspection Division launched a retrospective audit of the use of NSLs in all 56 FBI field offices nationwide. The FBI consulted with and received input from the Justice Department's National Security Division (NSD) and the Department's Chief Privacy and Civil Liberties Officer (CPCLO) in developing its plan for the audit, which is based upon the Inspector General's methodology for identifying potential Intelligence Oversight Board (IOB) violations. While this audit is being led by the FBI's Inspection Division, the Justice Department's NSD and CPCLO are also participating in the audits at various FBI field offices.

*Regular Audits Going Forward – Starting next month, the Justice Department's NSD, in conjunction with the CPCLO, the FBI's Inspection Division and the FBI's Office of General Counsel, will begin conducting comprehensive reviews of the use of NSLs at FBI headquarters and in field offices around the country. It is expected that the findings of the FBI's initial audit will inform the process of these ongoing reviews. This is a new level of oversight by Department of Justice lawyers with years of experience in intelligence and law enforcement.

Prohibition on the Use of "Exigent" Letters

*On March 5, 2007, the FBI issued a Bureau-wide directive prohibiting the use of the exigent letters described in the Inspector General's report. All FBI field offices have been asked to identify any use in their office of an exigent letter or anything akin to an exigent letter.

*The FBI Director in February 2007 ordered an expedited review by the Inspection Division of the unit that issued the exigent letters described in the Inspector General's report, for the purpose of determining management accountability.

*The NSL audits described above will also include a review of whether exigent letters described in the

Inspector General's report were issued in other FBI field offices.

*The Associate Deputy Attorney General and the Justice Department's Office of Professional Responsibility are also examining the role FBI officials played in the use of NSLs and exigent letters.

New Oversight of FBI-Reported IOB Violations

*The Justice Department's NSD will now review all Intelligence Oversight Board (IOB) violations that the FBI reports to the IOB. When reviewing these IOB referrals from the FBI, the NSD will promptly notify the Attorney General if it appears that the incident suggests the need for a change in policy, training or oversight mechanisms. The NSD will also report to the CPCLO any IOBs that raise serious civil rights or privacy issues. *The NSD will also report to the Attorney General every six months on all IOB referrals reported by the FBI during the preceding six-month period. This mechanism will help identify trends and potential future problems.

New Measures to Address NSL Tracking

*In early 2006, the FBI began developing a new NSL tracking database. The Web-based system will be piloted in the FBI's Washington Field Office in the summer of 2007 and will be deployed to four large field offices in late 2007. The new system will include a field that will identify whether the NSL recipient complied with the request and will possibly allow for entry of notes or comments on the response.

*Until the new system is deployed, FBI field offices will report monthly on NSLs that have been issued. The FBI Office of General Counsel will ensure that the NSLs comply with applicable statutes, guidelines, and policies.

*To obtain a better accounting of past use of NSLs and correct inaccuracies in past Congressional reports, the FBI Director has ordered an intensive process to query other computer systems to locate files where NSLs may have been issued but not reported to FBI Office of General Counsel for inclusion in its tracking database. In addition, the FBI Office of General Counsel is correcting any data entry errors in the existing database. The Attorney General has also mandated that the Justice Department's NSD and CPCLO advise him on additional steps that should be taken to correct the inaccurate numbers reported to Congress.

*On March 5, 2007, the FBI issued a new policy requiring the retention of copies of signed NSLs.

New Training and Guidance on NSLs

*The FBI will re-issue comprehensive guidelines throughout the Bureau concerning the proper use of NSLs. The FBI Office of General Counsel will evaluate existing guidance and make necessary revisions in consultation with the Department of Justice's National Security Division.

*The FBI has begun developing a new training course on the proper use of NSLs that will be available to FBI personnel through the Internet. After the course development is complete, the FBI will issue a directive mandating training for all Special Agents-in-Charge, Assistant Special Agents-in-Charge, as well as all appropriate FBI agents and analysts.

*In the meantime, the FBI has ordered that anytime an FBI Office of General Counsel attorney is traveling in the field for any reason, the attorney must schedule mandatory NSL training. The FBI will consider whether additional training on NSLs for new agents is needed.

*The Justice Department's Executive Office of U.S. Attorneys will review its existing training materials and guidance for terrorism investigations and prosecutions to ensure that NSLs are properly described in such materials.

New Oversight of the Use and Retention of NSL-Derived Information

*A working group co-chaired by the Office of the Director of National Intelligence and the Justice Department's CPCLO has been convened to examine how NSL-derived information is used and retained by the FBI. The FBI's Privacy Officer as well as a representative from the Justice Department's NSD will be represented on this working group. The working group will examine how the NSL records are stored and disseminated and determine the retention practices of other agencies with NSL authorities.

Review of Role of FBI's Division Counsel

*The Justice Department's NSD and the FBI have begun examining whether the FBI's organizational structure should be changed to have FBI's Division Counsel in field offices report to the FBI's Office of General Counsel in Headquarters rather than to field office Special-Agents-in-Charge.

Proposed Legislation

*The Inspector General recommended in its report that the term "toll billing records information" in the Electronic Communications Privacy Act NSL statute be clarified. The Justice Department and FBI are developing a proposal to address this concern.

Future Oversight

*The Attorney General has asked the Inspector General to report to him in four months on the FBI's implementation of the recommendations contained in the Inspector General report.

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