

December 11, 2006

BY COURIER

Mr. Stephen Friedman
Chairman
Intelligence Oversight Board
Room 50209
New Executive Office Building
725 17th Street, Northwest
Washington, D.C.

DECLASSIFIED BY 65179/DMH/KSR/RW
ON 05-31-2007

Dear Mr. Friedman:

Enclosed for your information is a self-explanatory memorandum entitled "Intelligence Oversight Board Matter 2007 [redacted]" (U)

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The memorandum sets forth details of investigative activity which the FBI has determined was conducted contrary to the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations and/or laws, Executive Orders, or Presidential Directives which govern FBI foreign counterintelligence and international terrorism investigations. This matter has also been referred to our Internal Investigations Section, Inspection Division, for a determination of whether any administrative action is warranted. (U)

Enclosure

1 - 278-HQ-C1229736-VIO - 1121

~~UNCLASSIFIED WHEN
DETACHED FROM
CLASSIFIED ENCLOSURE~~

~~Derived From: G-3
Declassify On: 25X1~~

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Mr. Stephen Friedman

Should you or any member of your staff require additional information concerning this matter, an oral briefing will be arranged for you at your convenience. (U)

Sincerely,

Julie F. Thomas
Deputy General Counsel

- 1 - The Honorable Alberto R. Gonzales
Attorney General
U.S. Department of Justice
Room 5111

- 1 - Mr. James Baker
Counsel, Office of Intelligence Policy and Review
National Security Division
U.S. Department of Justice
Room 6150

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INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER
SAN FRANCISCO FIELD OFFICE b2
IOB MATTER 2007 [redacted] (U)

(S) ~~(S)~~ The Federal Bureau of Investigation ("FBI") has determined that in conducting a [redacted] [redacted] the FBI improperly used a National Security Letter (NSL) to obtain subscriber information and telephone toll billing records on a telephone number which was not related to the investigation. The overcollection was due to a mistake in the NSL in identifying the telephone number [redacted] [redacted] of The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG).¹ In this regard, on [redacted]

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[redacted] issued a National Security Letter (NSL) pursuant to the Electronic Communications Privacy Act, 18 U.S.C. § 2709, to a telephone carrier for the telephone subscriber and toll billing records of a telephone number intended to be identified as that of the target. Instead, one of the numbers within the telephone number was incorrectly written; thus, the information returned from the carrier was subscriber information and the telephone toll billing records of a wholly unrelated telephone number. The error was discovered upon receipt of the information, and the records were not reviewed

~~Derived from: G-3
Declassify on: 25X1~~

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nor used for any investigative purpose. Despite the inadvertent nature of the mistake, the fact remains that information was improperly collected on a telephone number unrelated to an investigation. Thus, the matter is being reported to the IOB.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

DATE: 05-30-2007
CLASSIFIED BY 65179/DMH/KSR/RW
REASON: 1.4 (c)
DECLASSIFY ON: 05-30-2032

¹ (S) [redacted]

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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 12/11/2006

To: [Redacted] Attn: SAC [Redacted]

ASAC [Redacted]

SSA [Redacted]

SA [Redacted]

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Counterterrorism

Attn: AD [Redacted]

Inspection

Attn: Internal Investigative Section

Attn: [Redacted] Room 11865

From: Office of the General Counsel

NSLB/CTLU II/1/LX-1 3S-100/

Contact: AGC [Redacted]

Approved By: Thomas Julie F [Signature]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

Drafted By: [Redacted]

2B 12/14/06

(U) Case ID #: ~~(S)~~ 278-HQ-C1229736-VIO-1914 (Pending)

(U) Title: ~~(S)~~ INTELLIGENCE OVERSIGHT BOARD
MATTER 2007 [Redacted] b2

DATE: 05-30-2007
CLASSIFIED BY 65179/DMH/KSR/RW
REASON: 1.4 (c)
DECLASSIFY ON: 05-30-2032

(U) Synopsis: ~~(S)~~ It is the opinion of the Office of the General Counsel (OGC) that this matter must be reported to the Intelligence Oversight Board (IOB). OGC will prepare and deliver the necessary correspondence to the IOB.

(U) ~~Derived From: G-3
Declassify On: 25X1~~

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(U) Reference: (S) [Redacted] 278-HQ-C1229736-VIO Serial 1757

(U) Details: ~~(S)~~ By electronic communication (EC) dated 09/07/2006, the [Redacted] Field Office [Redacted] requested that OGC review the facts of the captioned matter and determine whether it warrants reporting to the IOB. In our opinion, it does. Our analysis follows.

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(U) [Redacted] prepared and approved a National Security Letter (NSL) seeking subscriber

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OIG/DOJ REVIEW [Redacted] DATE: b6 12/21/06
FBI INVESTIGATION [Redacted] b7C
OIG/DOJ INVESTIGATION: [Redacted]

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To: [REDACTED] From: Office of the General Counsel
Re: 278-HQ-C1229736-VIO, 12/11/2006

(U) information and telephone toll records of a certain telephone number. Due to a typographical error, the telephone number on the NSL was erroneously transcribed.¹ On 08/31/2006, the telephone records were opened and it was determined that they were not the target's records. The correct telephone number was listed within the body of the requesting EC, but it had been incorrectly annotated in the "Enclosure" paragraph of the requesting EC, and on the NSL letter to the provider. [REDACTED] [REDACTED] did not review or analyze the records submitted by [REDACTED] in response to the NSL, and no information from those records was recorded or indexed in any database.

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(U) The President, by Executive Order 12334, dated 12/04/1981, established the President's Intelligence Oversight Board (PIOB). On 09/13/1993, by Executive Order 12863, the President renamed it the Intelligence Oversight Board (IOB) and established the Board as a standing committee of the President's Foreign Intelligence Advisory Board. Among its responsibilities, the IOB has been given authority to review the FBI's practices and procedures relating to foreign intelligence and foreign counterintelligence collection.

(U) Section 2.4 of Executive Order 12863 mandates that Inspectors General and General Counsel of the Intelligence Community components (in the FBI, the Assistant Director, Inspection Division (INSD), and the General Counsel, Office of the General Counsel (OGC), respectively) report to the IOB intelligence activities that they have reason to believe may be unlawful or contrary to Executive Order or Presidential Directive. This language has been interpreted to mandate the reporting of any violation of a provision of The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG), effective 10/31/2003, or other guidelines or regulations approved by the Attorney General in accordance with EO 12333, dated 12/04/1981, if such provision was designed to ensure the protection of individual rights.

(U) Violations of provisions that merely are administrative in nature and not deemed to have been designed to ensure the protection of individual rights are generally

¹ (U) In order to avoid any further dissemination of this incorrect telephone number, the number is not being listed in this document.

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To: [REDACTED] From: Office of the General Counsel
Re: 278-HQ-C1229736-VIO, 12/11/2006

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not reported to the IOB. The FBI Inspection Division is required, however, to maintain records of such administrative violations for three years so that the Counsel to the IOB may review them upon request. The determination as to whether a matter is "administrative in nature" must be made by OGC. Therefore, such administrative violations must be reported as potential IOB matters.

(U) ~~(S)~~ NSLs are a specific type of investigative tool that allows the FBI to obtain certain limited types of information without court intervention: (1) telephone and email communication records from telephone companies and internet service providers (Electronic Communications Privacy Act, 18 U.S.C. § 2709); (2) records of financial institutions (which is very broadly defined) (Right to Financial Privacy Act, 12 U.S.C. § 3414(a)(5)(A)); (3) a list of financial institutions and consumer identifying information from a credit reporting company (Fair Credit Reporting Act, 15 U.S.C. §§ 1681u(a) and (b)); and (4) full credit report in an international terrorism case (Fair Credit Reporting Act, 15 U.S.C. § 1681v). NSLs may be issued in conformity with statutory requirements, including 18 U.S.C. § 2709. NSIG, section V.12.

(U) ~~(S)~~ In this situation, due to the incorrect number stated in the NSL, the FBI received telephone toll billing records pertaining to a telephone number that was neither under investigation nor related to an investigation. Therefore, the information was improperly collected, although unintentionally so, in violation of the NSIG and ECPA.

(U) Here, the target's rights were not violated because he was not the subject of the improperly collected information. It is unknown whether the erroneous information received pertained to a United States Person, inasmuch as there has been no review of the information. Nonetheless, based upon the fact that information which may be about a USP was improperly, although inadvertently, collected, and in accordance with the reporting requirements of Section 2.4 of Executive Order 12863, OGC will prepare a cover letter and a memorandum to report this matter to the IOB.

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To: [redacted] From: Office of the General Counsel
Re: 278-HQ-C1229736-VIO, 12/11/2006

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LEAD(s):

Set Lead 1: (Action)

INSPECTION

AT WASHINGTON, DC

(U) For action deemed appropriate.

Set Lead 2: (Information)

COUNTERINTELLIGENCE

AT WASHINGTON, DC

(U) For information.

Set Lead 3: (Information)

[redacted]

(S)

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[redacted]

Office should contact [redacted]

and ask whether the improperly or unintentionally acquired information should be returned or destroyed with appropriate documentation to the file.

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cc: Ms. Thomas

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[redacted]

IOB Library

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