

Precedence: ROUTINE

Date: 02/14/2005

To: [redacted] b2
b7E

Attn: SAC
CDC

Counterterrorism

Attn: ITOS1/CONUS1
SSA [redacted]

b6
b7C

Inspection

Attn: SC Toni Fogle

From: General Counsel

National Security Law Branch/LX Crossing Room 5S200

Contact: [redacted]

Approved By: Thomas Julie F
[redacted]

b2 ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
b6 WHERE SHOWN OTHERWISE
b7C

Drafted By: [redacted]

Case ID # (U) 278-HQ-C1229736-VIO (Pending).

DATE: 09-30-2005
CLASSIFIED BY 65179/DMH/JW/05-CV-0845
REASON: 1.4 (C)
DECLASSIFY ON: 09-09-2030

Title: (U) INTELLIGENCE OVERSIGHT BOARD
(IOB) MATTER 2004-89

Synopsis: (U) It is the opinion of the Office of the General Counsel (OGC) that this matter must be reported to the Intelligence Oversight Board (IOB) and to the Inspection Division (INSO), FBIHQ. OGC will prepare and deliver the necessary correspondence to the IOB. Our analysis follows.

Reference: (U) 278-HQ-C1229736-VIO Serial 457
278-HQ-C1229736-VIO Serial 555

Administrative: (U) This communication contains one or more footnotes. To read the footnotes, download and print the document in WordPerfect 6.1.

Case ID : 278-HQ-C1229736-VIO

Serial : 724

~~(S)~~ (U) Derived from: G-3
Declassify on: X25-1

Details: ~~(S)~~ As reported by the Counterterrorism Division in an Electronic Communication (EC) dated 09/15/2004, on [redacted] on the [redacted] Division [redacted] on [redacted] who are each a United States person as that term is used in Section 101(f) of the Foreign Intelligence Surveillance Act of 1978 (FISA).¹¹ On [redacted] obtained authorization from the Foreign Intelligence Surveillance Court (FISC) to install [redacted]

(S)

[redacted]

(S)

[redacted]

(S)

~~(S)~~ On [redacted] case agent contacted the [redacted] Technical Squad and advised them that FISA authority would expire on [redacted] and to disable the line appropriately. Thereafter on [redacted] Intelligence Analyst (IA) queried Telephone Application and determined that [redacted]

b1
b2
b6
b7A
b7C
b7E

[redacted]

(S)

[redacted]

(S)

~~(S)~~ On [redacted] IA noted through a review of Telephone Applications that the collection [redacted] The [redacted] Supervisory Special Agent, Technical Squad, was notified immediately and on that date took the necessary steps to disable the line.

(S)

~~(S)~~ Subsequently it was determined that [redacted]

(S)

[Redacted]

(S)
(S)

b1
b2
b7A
b7E

[Redacted]

(S)

[Redacted]

(S)

(S) Upon discovering the error of [Redacted] Case Agent immediately notified the Counterterrorism Squad Supervisor who then briefed the appropriate [Redacted] Division management and the FBI Headquarters CTD/ITOS 1/CONUS 1/Team 2 Supervisory Special Agent [Redacted]

b1
b2
b7A
b7E

[Redacted]

(S)

(U) Measures have been taken by [Redacted] to prevent a recurrence of this error. The Technical Squad's personnel have been instructed in the proper procedures and the need for vigilance in a handling all Court authorized technical surveillance and the need for attentiveness to all aspects of technical collection.

b2
b7E

(U) Section 2-56 of the National Foreign Intelligence Program Manual (NFIPM) requires OGC to determine whether the facts related above are required to be reported to the IOB. Section 2.4 of Executive Order (EO) 12863, dated 09/13/1993, mandates that Inspectors General and General Counsel of the Intelligence Community components (in the FBI, the Assistant Director, INSD, and the General Counsel, OGC, respectively) report to the IOB "concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive

order or Presidential directive."

Applying these principles to the case at hand, the OGC concludes that the inadvertent collection of information from the

[redacted]

(S)

was a violation of The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG), Section V.14, and the Foreign Intelligence Surveillance Act of 1978 (FISA), as amended, 50 U.S.C. 1841-1846.

b1
b2
b7A
b7E

[redacted]

(S)

When the authorization in the order of the USFISC had expired, further collection on the

Though the

(S)

FBI terminated the device in a timely manner, collection was inadvertently reinitiated contrary to the authorization by the US FISC. Consequently, in accordance with E.O. 12863 and Section 2-56 of the NFIPN, the inadvertent error must be reported to the IOB, which this Office will do.

LEAD (s):

Set Lead 1: (Info)

[redacted]

AT

[redacted]

b2
b7E

(U) Read and Clear.

Set Lead 2: (Action)

INSPECTION

AT WASHINGTON, DC

(U) For action deemed appropriate.

~~SECRET~~

Working Copy

Page 5

- 1 - Ms. Thomas
- 1 -
- 1 - IOB File

b6
b7c

****FOOTNOTES**** (U)

Y1: ~~(S)~~ A United States person is defined in Section 101(i) of the Foreign Intelligence Surveillance Act (FISA)(codified at 50 U.S.C. 1801 et seq.) as a citizen of the United States for an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Naturalization Act) See also Section I.C of The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIC).

~~SECRET~~

~~SECRET~~

----- Working Copy -----

Page 2

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 A. Baker
Counsel, Office of Intelligence Policy and Review
U.S. Department of Justice
Room 6150

b2
b7E

INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER
[redacted] FIELD OFFICE
IOB MATTER 2004-89 (U)

b1
b2
b6
b7A
b7C
b7E

Investigation of this IOB matter has determined that on [redacted] the [redacted] Division [redacted] initiated [redacted] who are each a United States person. [redacted] (S)

~~SECRET~~

~~SECRET~~

----- Working Copy -----

obtained authorization from the Foreign Intelligence Surveillance Court (FISC) to

[redacted]

residential telephone was serviced by [redacted] which had confirmed that the telephone was subscribed by [redacted]

(S)
(S)
(S)

b1
b2
b6
b7A
b7C
b7E

On [redacted] in accordance with the FISC order,

[redacted] discontinued technical surveillance of targets' residential telephone number [redacted]

[redacted]

(S)

thereafter on [redacted] a [redacted]

Intelligence Analyst (IA) queried the [redacted] system and determined [redacted]

(S)

b2
b7E

[redacted]

(S)

on [redacted] IA noted through a review of [redacted]

[redacted]

(S)

b1
b2
b7A
b7E

Supervisory Special Agent, Technical Squad, was notified immediately and on that date took the necessary steps to disable the line. (S)

[redacted]

(S)

~~Derive from: G-3~~
~~Declassify on: X25-1~~

b1
b2
b7A
b7E

[redacted]

(S)

Upon discovering the error on [redacted] appropriate management personnel were notified at [redacted] and at FBI Headquarters. [redacted]

b1
b2
b7A
b7E

[redacted]

(S)

Measures have been taken by [redacted] to prevent a recurrence of this error including instructing [redacted] Technical Squad's personnel in the proper procedures and the need for vigilance in a handling all Court authorized technical surveillance and the need for attentiveness to all aspects of

b2
b7E

~~SECRET~~

~~SECRET~~

---- Working Copy ----

Page 4

technical collection. ~~(S)~~ (U)

Though inadvertent, the over collection violated 50 U.S.C. 1842(c)(2) and The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection. ~~(S)~~ (U)

This matter also has been referred to the FBI's Inspection Division for action deemed appropriate. (U)

~~SECRET~~

SECRET