

Precedence: ROUTINE

Date: 10/21/2004

To: Director's Office
Counterintelligence
Washington Field

Attn: OPR
Attn: AD
Attn: SAC
CDC

From: General Counsel
NSLB/CILU/Room 7975

Contact: [redacted] ext. [redacted]

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Approved By: Thomas Julie
[redacted]

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Drafted By: [redacted]

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Case ID # (U) ~~(S)~~ 278-HQ-C1229736-VIO (Pending)
(S) 105A-WF-223252 (Pending)

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

Title: ~~(S)~~ (U) INTELLIGENCE OVERSIGHT BOARD MATTER
IOB 2004-77

Synopsis: ~~(S)~~ (U) The Office of the General Counsel (OGC) considers that this matter must be reported to the Intelligence Oversight Board (IOB) and to the Office of Professional Responsibility (OPR). OGC will prepare an appropriate cover letter and a memorandum to the IOB. Our analysis follows.

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

DATE: 08-15-2005
CLASSIFIED BY 65179/DMH/JW/05-CV-0845
REASON: 1.4 (C)
DECLASSIFY ON: 08-15-2030

Details: ~~(S)~~ [redacted] (S)

[redacted] (S)
[redacted] (S)
[redacted] (S)

~~(S)~~ [redacted] (S)

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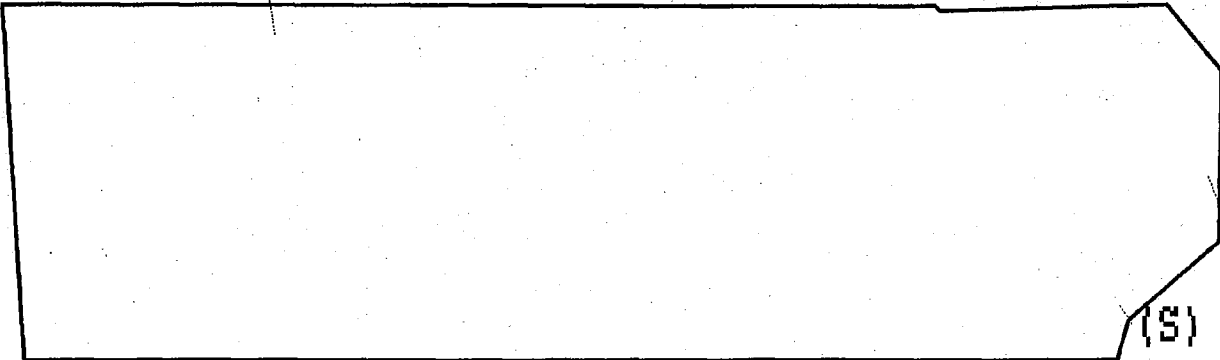
Case ID : 278-HQ-C1229736-VIO
105A-WF-223252

Serial : 600
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(U) The Right to Financial Privacy Act (RFPA), Title 12, United States Code, Section 3401 et seq. (12 USC 3401 et seq.) states in 3402 that "except as provided by section 3403(c) or (d), 3413, or 3414 of this title, no Government authority may have access to or obtain copies of, or the information contained in the financial records of any customer from a financial institution"

(U) 12 USC 3414 provides in part:

(a) (1) Nothing in this chapter (except sections 3415, 3417, 3418, and 3421 of this title) shall apply to the production and disclosure of financial records pursuant to requests from--

- (A) a Government authority authorized to conduct foreign counter- or foreign positive-intelligence activities for purposes of conducting such activities; or
- (B) . . .

(2) In the instances specified in paragraph (1), the Government authority shall submit to the financial institution the certificate required in section 3403(b) of this title signed by a supervisory official of a rank designated by the head of the Government authority.

(U) Section 2-17 of the National Foreign Intelligence Program Manual (NFIPM) lists the FBI officials who can request financial records under the foregoing section of RFPA. According to section 2-17 of the NFIPM, such requests must be made by an Assistant Special Agent in Charge or a more senior official.

(U) 12 USC 3417 provides for civil liability of an agency or department of the United States that obtains financial records or information in violation of the RFPA. The same section deals with "disciplinary action for wilful or intentional violation" of these RFPA provisions by agents or employees of the government.

~~(S)~~ In this instance, the conduct of SA [redacted] was wilful and intentional, even though she did not realize that she had acted in contravention of the RFPA and Bureau policy. It (U)

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should also be noted that SA [] was at the time a probationary agent. Inasmuch as her actions nevertheless amount to "intelligence activities that . . . may be unlawful or contrary to Executive order or Presidential directive" they are reportable to the Intelligence Oversight Board (IOB) under the terms of section 2.4 of Executive Order 12863. OGC will therefore prepare a cover letter and a memorandum to report this matter to the IOB and to advise that it has been referred to the Office of Professional Responsibility. (U)

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LEAD(s):

Set Lead 1: (Action)

DIRECTOR'S OFFICE

AT OPR FO, DC

(U) For action deemed appropriate.

Set Lead 2: (Action)

COUNTERINTELLIGENCE

AT WASHINGTON, DC

(U) Please read and clear.

Set Lead 3: (Action)

WASHINGTON FIELD

AT WASHINGTON, DC

(U) For action deemed appropriate.

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BY COURIER

General Brent Scowcroft (USAF Retired)
Chairman
Intelligence Oversight Board
Room 5020
New Executive Office Building
725 17th Street, N.W.
Washington, D.C. 20503

Dear General Scowcroft:

This letter forwards for your information a self-explanatory enclosure entitled, "Intelligence Oversight Board (IOB) Matter, IOB 2004-77." (U)

The enclosure sets forth details of investigative activity which the FBI has determined may have been 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. (U)

DATE: 08-15-2005
CLASSIFIED BY 65179/DMH/JW/05-CV-0845
REASON: 1.4 (C)
DECLASSIFY ON: 08-15-2030

~~UNCLASSIFIED WHEN
DETACHED FROM
CLASSIFIED ENCLOSURE~~

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

- 1 - Ms. Thomas
- 1 -
- 1 - IOB Library
- 1 - 278-HQ-C1229736-VIO

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

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Case ID : 278-HQ-C1229736-VIO

Serial : 601

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General Brent Scowcroft (USAF Retired)

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.

Sincerely,

Julie Thomas
Deputy General Counsel

Enclosure

- 1 - The Honorable John D. Ashcroft
Attorney General
U.S. Department of Justice
Room 5111
- 1 - Mr. James Baker
Counsel, Office of Intelligence Policy and Review
U.S. Department of Justice
Room 6150

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INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER
IOB 2004-77 (U)

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~~(S)~~ Investigation of this IOB matter has determined that (S)

(S)

~~(S)~~ Such information is relevant in national security investigations of this type. However, the proper method for obtaining bank records is through a National Security Letter under Title 12, United States Code, Section 3414(a)(1)(A). Access to financial records by government authorities through means not provided by law is prohibited under Title 12, United States Code, Section 3402. (U)

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(U) This matter has been referred to the FBI's Office of Professional Responsibility for such action as may be appropriate.

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

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