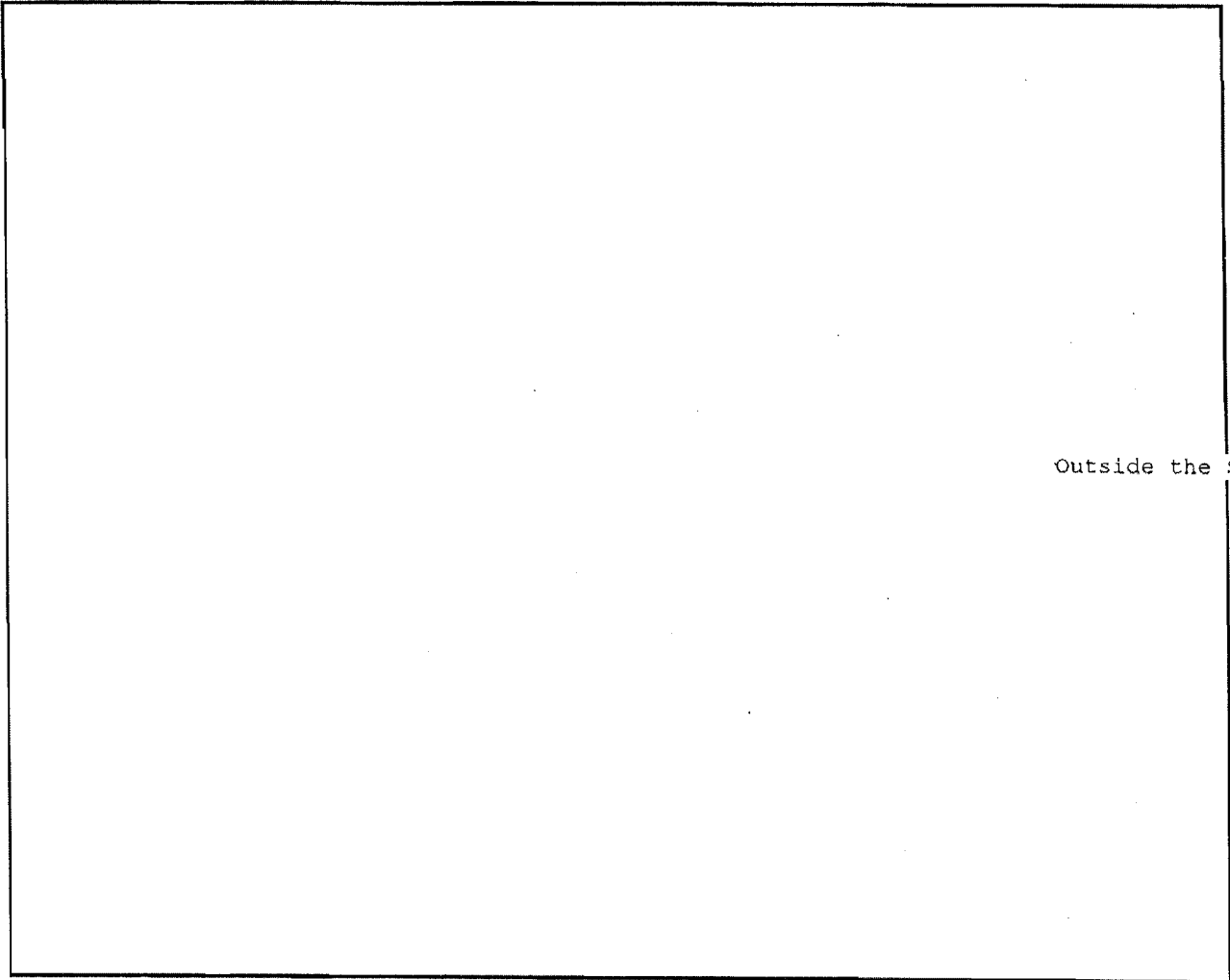


**Responses of the Federal Bureau of Investigation  
to Questions for the Record  
Arising from the March 25, 2009, Hearing Before the  
Senate Committee on the Judiciary  
Regarding Oversight of the FBI**

**Questions Posed by Chairman Leahy**



Outside the Scope

*These responses are current as of 5/29/09*

ACLU-NSL-40

16. The last time the FBI was given broad discretion to investigate people who were not suspected of wrongdoing was when the Patriot Act authorized the FBI to use National Security Letters against Americans who were not agents of a foreign power, but only "relevant" to an investigation. The Department of Justice Inspector General found widespread misuse and mismanagement of this authority. How can we be sure that the even greater authority provided in the AGGs to investigate Americans with even less of a threshold for starting "assessments," and no reporting requirements, will not lead to similar abuses?

Response:

The 2007 report by DOJ's Office of the Inspector General (OIG) regarding the FBI's use of National Security Letters (NSLs) expressed significant concerns regarding the issuance and documentation of NSLs. The report demonstrated the need for the FBI not only to take action to address the immediate concerns raised by the OIG, but also to ensure that the necessary policy, training, and oversight is in place to prevent similar situations from occurring with other aspects of FBI investigations. It is important to note that the concerns raised by the report, although serious, were not pervasive. For example, of the 293 NSLs the OIG examined in its 2007 report, 22 (or 7 percent) involved unreported potential intelligence violations. Of those 22 potential violations, 10 were third-party overproductions, leaving a net potential FBI violation rate of 4 percent. Only five of the errors (1.7 percent of the total sample) involved FBI errors that resulted in the FBI obtaining information it was not authorized to obtain.

Although the "true" error rate was only 1.7 percent, it was still unacceptable. Accordingly, the FBI has taken significant actions to eliminate or mitigate the problems identified in the course of the OIG review. Perhaps the most notable NSL-specific action (among policy changes and increased training) was the addition of an NSL subsystem to the FISA management system. This system is programmed with drop-down menus and other user friendly features to make the NSL process less time intensive for agents and analysts while simultaneously increasing the accuracy of the process and decreasing the sorts of human errors noted in OIG reports. No NSL prepared within the system can now issue unless vital information is included, such as the subject of the NSL, the predication for the NSL, the type of NSL requested, the recipient, and the specific targets of the NSL. In other words, the automated system captures all the information required for Congressional reporting before the NSL is generated. In addition to improving the accuracy of Congressional reporting, this system ensures that each NSL receives

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*These responses are current as of 5/29/09*

ACLU-NSL-41

the required legal and supervisory review. Providing one database for the automated generation of NSLs also reduces the time-consuming manual process for generating the required documentation and ensures consistency between the documents reviewed and the NSLs actually issued. After a pilot project, the system became operational in all FBI field offices and at FBIHQ on 1/1/08.

In addition to taking NSL-specific action, the FBI established an Office of Integrity and Compliance (OIC) to formalize the efforts of executive management to identify and mitigate significant areas of risk. This office focuses the attention of executive management on aspects of the FBI's operations and business processes that pose compliance risks. Through this office, rather than merely reacting to problems once they arise, the FBI is proactively identifying areas of legal risk and developing policy and training to mitigate those risks.

The AG Guidelines and the DIOG contain numerous measures designed to ensure their authorities will be used properly. Most fundamentally, the AG Guidelines and the DIOG authorize only relatively passive, non-intrusive investigative techniques in assessments - NSLs are not authorized nor, with one very limited exception, are other forms of legal process that demand information from third parties. Furthermore, the DIOG imposes an extensive approval, review, and oversight regime to govern the use of assessments. In addition, in many instances there are reporting requirements, especially in those assessments involving sensitive investigative circumstances and undisclosed participation in organizations. The guidelines also require DOJ's National Security Division, in conjunction with the FBI's Office of the General Counsel, to conduct regular reviews of all aspects of FBI national security and foreign intelligence activities. These regular reviews of FBI field offices and headquarters divisions, along with periodic Inspection Division audits, facilitate the OIC's identification of risk areas. Finally, the FBI has learned from the management errors involving NSLs and has imposed a much better system to capture assessment initiation, approval, and progress so the use and conduct of assessments can be monitored and reviewed.

The FBI has also developed a comprehensive training plan to implement the AG Guidelines. Before the implementation of the AG Guidelines and the DIOG, a mandatory 19-module Virtual Academy course was launched. This was followed by a two-day conference on the DIOG for all Chief Division Counsels (CDC) hosted by the OGC, OIC, and Corporate Policy Office (CPO). Finally, the OGC, OIC, and CPO hosted a series of conferences for all CDCs, Division Policy

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*These responses are current as of 5/29/09*

Officers, and Division Compliance Officers to "Train-the-Trainers" on the DIOG's standards for operational activities. The attendees were certified as trainers upon successfully passing an exam that is scenario driven and designed to test their ability to apply the DIOG's standards and concepts. These trainers are now training their division personnel, who will also be required to pass the exam.

Outside the Scope

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*These responses are current as of 5/29/09*

ACLU-NSL-43

Outside the Scope

**36. Congress granted the FBI the authority to use National Security Letters (NSL) in counterterrorism and counterintelligence investigations. The use of NSLs are invaluable in these investigations. Their use also pre-dates the attacks of 9/11/01. Periodic reviews by the Department of Justice – Office of the Inspector General indicate that the FBI is taking great steps to prevent the unauthorized use of an NSL in investigations. This is largely in part to your commitment to ensure that this invaluable tool is not abused. Can you briefly give me an update on NSL usage since last year’s OIG report?**

**Response:**

As the inquiry recognizes, the FBI has taken significant steps to improve compliance with regard to NSL usage, revising policy to address concerns raised by DOJ’s OIG, increasing training on the proper issuance and handling of NSLs, and creating an Office of Integrity and Compliance to insure that the FBI will continually improve compliance with statutes, guidelines, and policy governing the use of NSLs and other investigative tools. Perhaps most significantly, on 1/1/08 the FBI mandated the use of a web-based, automated NSL creation system that prompts the drafter to enter all information necessary to create an NSL. This system supplies the appropriate statutory language and ensures that the NSL and the supporting memorandum are internally consistent. An NSL can be issued from this system only after all the required officials have approved it within the system. This system has increased the accuracy of NSL reporting and has reduced typographical and other non-substantive errors. The FBI continues to look for ways to ensure that the few NSLs prepared outside the system (generally due to the classification level of the underlying facts) are similarly well controlled.

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*These responses are current as of 5/29/09*

In its March 2008 review of the FBI's use of NSLs, which assessed these corrective actions, the OIG found that the FBI and DOJ had made significant progress in implementing its recommendations and in adopting other corrective actions to address problems in the use of NSLs. Since that OIG report, for the year ending on 3/15/09, the FBI issued more than 14,000 NSLs.

Outside the Scope

*These responses are current as of 5/29/09*



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 7, 2010

The Honorable Patrick Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed please find responses to questions for the record stemming from the appearance of FBI Director Robert Mueller before the Committee on September 17, 2008, at an FBI oversight hearing. We apologize for our lengthy delay in responding to your letter and hope that this information is of assistance to the Committee.

Please do not hesitate to call upon us if we may provide additional assistance regarding this, or any other matter. The Office of Management and Budget has advised us that there is no objection to submission of this letter from the perspective of the Administration's program.

Sincerely,

A handwritten signature in cursive script that reads "m u i l".

Ronald Weich  
Assistant Attorney General

Enclosure

cc: The Honorable Jeff Sessions  
Ranking Member

ACLU-NSL-46

**Responses of the Federal Bureau of Investigation  
Based Upon the September 17, 2008 Hearing before the  
U.S. Senate Committee on the Judiciary  
Regarding Oversight of the FBI**

**Questions Posed by Senator Schumer**

**Schumer 6. Following the Inspector General's 2007 report on National Security Letters, you ended the FBI's practice of sending exigent letters to obtain telephone records and also stated that FBI instituted a new procedure to track National Security Letters. Since you ended the use of exigent letters last year, how many National Security Letters has the FBI sent in total?**

**Response:**

Information responsive to this question is set forth in the classified report, dated April 30, 2010, that the Department previously submitted to the Committee pursuant to 18 U.S.C. 2709(e) and section 118(a) of the USA Patriot Improvement and Reauthorization Act of 2005. Please refer to that report.



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Section 552

Section 552a

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FOIA/PA DELETED PAGE INFORMATION SHEET

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X Deletions were made pursuant to the exemptions indicated below with no segregable material available for release to you.

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FEDERAL BUREAU OF INVESTIGATION  
FOIA/PA DELETED PAGE INFORMATION SHEET

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Deletions were made pursuant to the exemptions indicated below with no segregable material available for release to you.

**Section 552**

**Section 552a**

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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 27, 2009

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed please find responses to questions posed to FBI Director Robert S. Mueller III, following Director Mueller's appearance before the Committee on September 17, 2008. The subject of the Committee's hearing was "Oversight of the Federal Bureau of Investigation." The data in these responses is current as of December 15, 2008. More recent information can be found in the Director's testimony before the Committee of March 25, 2009, as well as the President's Fiscal Year 2010 budget. However, we hope this information is helpful to the Committee.

The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to the submission of these responses. If we may be of additional assistance in connection with this or any other matter, we trust that you will not hesitate to call upon us.

Sincerely,

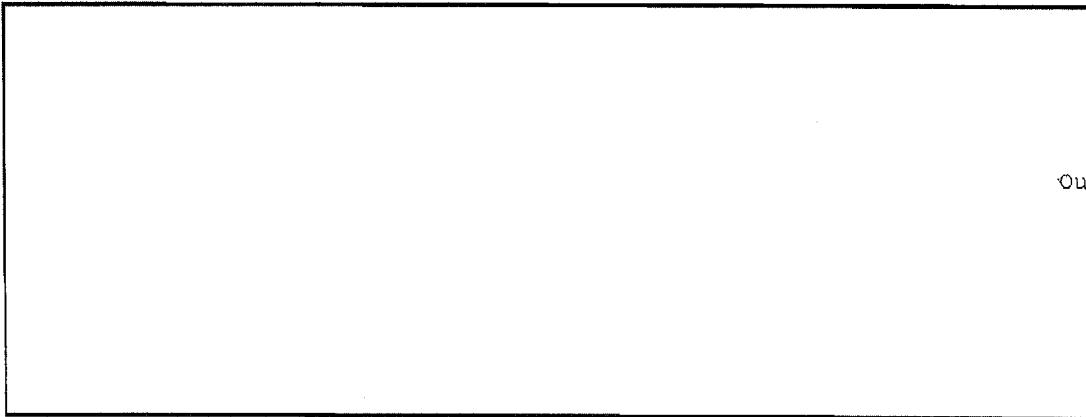
A handwritten signature in cursive script that reads "M. Faith Burton".

M. Faith Burton  
Acting Assistant Attorney General

Enclosure

cc: The Honorable Arlen Specter  
Ranking Minority Member

ACLU-NSL-52

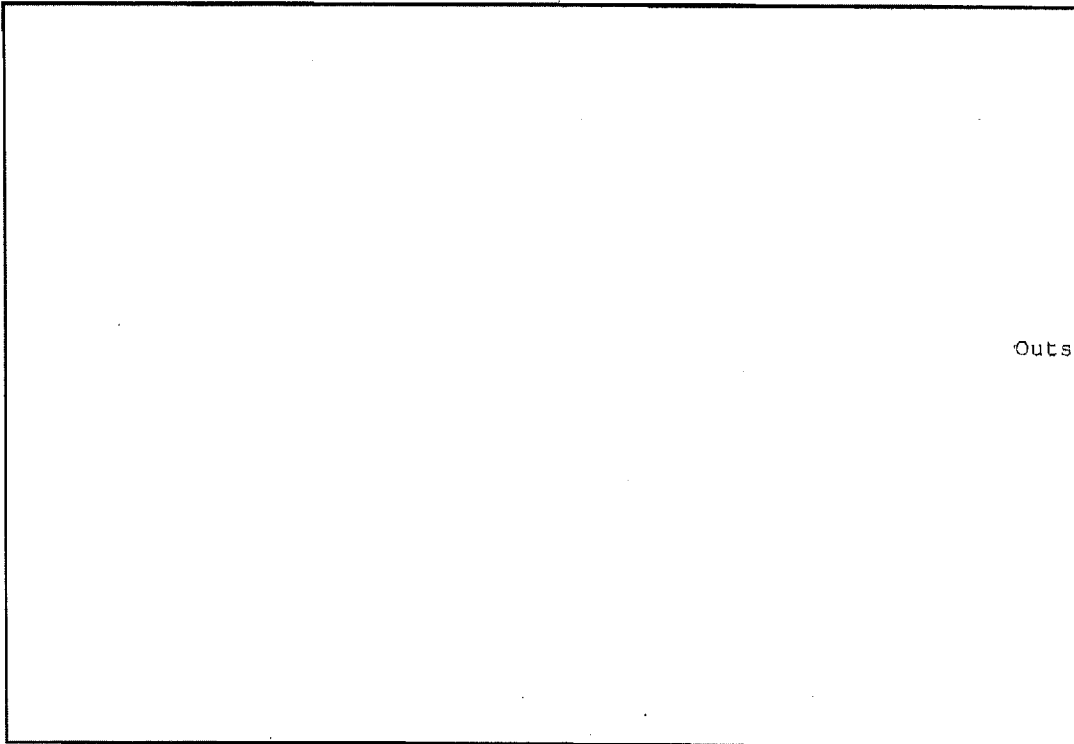


Outside the Scope

**Schumer 6. Following the Inspector General's 2007 report on National Security Letters, you ended the FBI's practice of sending exigent letters to obtain telephone records and also stated that FBI instituted a new procedure to track National Security Letters. Since you ended the use of exigent letters last year, how many National Security Letters has the FBI sent in total?**

**Response:**

The response to this inquiry is classified and, therefore, will be provided separately.



Outside the Scope



**U.S. Department of Justice**

Office of Legislative Affairs

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

ACLU-NSL-54

Outside the Scope

**Questions Posed by Representative Nadler**

**26. The Inspector General (IG) for the Department of Justice (DOJ) made 11 recommendations in its first report in March 2007 on the Federal Bureau of Investigation's (FBI) use of National Security Letters (NSLs). In March 2008, the IG issued its second report and provided an update on the FBI's progress in implementing these 11 recommendations. During the May 20, 2009 hearing, I asked you about this and requested a further update. You testified that the FBI may have a disagreement with one or two of these recommendations and that you would have to get back to me with respect to the FBI's the status of implementation. Which of the 11 recommendations made by the IG in its March 2007 report does the FBI now disagree with, if any? What is the current status of the FBI's implementation of each of these recommendations? Please provide**

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*These responses are current as of 8/19/09*

information, excluding what was already covered in the March 2008 IG report, explaining what actions the FBI has taken and is taking to implement each of the recommendations or why it is taking no such actions.

**Response:**

We apologize to the Committee for any confusion created during the hearing. In fact, the FBI agreed with all of the recommendations made in the OIG's March 2007 report on the FBI's use of NSLs and took all of the actions requested by the OIG. Those actions were completed prior to the hearing and were documented in the FBI's response to the OIG report, which was made available to the Committee.

**27. The DOJ IG issued its second report on the FBI's use of NSLs in March 2008. In this second report the IG made 17 recommendations. The FBI said it agreed with and would implement all of these suggestions.**

**a. What is the status of the FBI's implementation of each of these 17 recommendations from March 2008? Please provide information explaining what actions the FBI has taken and is taking to implement each of these recommendations or why it is taking no such actions. When do you expect each of these recommendations to be fully put into place?**

**Response:**

In its 3/13/08 report on the FBI's use of NSLs in 2006, the OIG made 17 recommendations and the FBI agreed with all 17. These recommendations were made before the full implementation of the NSL Subsystem to the FISA Management System, which is web based and prompts the drafter to enter all information necessary to create an NSL. The NSL Subsystem does not allow the drafter to proceed if required fields are missing or do not satisfy system parameters. These required fields include fields documenting the required approvals. With very limited exceptions, all FBI Field Offices and FBIHQ Divisions are required to use this system when drafting NSLs. Deployment of this system either addressed or rendered moot several of the OIG recommendations. Following is our response to each of the 17 recommendations.

**Recommendation #1:** Create blank mandatory fields in the software supporting the NSL data system for entering the U.S. person/non-U.S. person status of the NSL target and for entering the number of NSL requests in order to prevent inaccuracies that may otherwise result from the current default settings.

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*These responses are current as of 8/19/09*



**FBI Response:** The NSL Subsystem now requires the user to select one of the U.S. person status options before the NSL can be approved. An NSL cannot be created in the NSL Subsystem without this information.

**Recommendation #2:** Implement measures to verify the accuracy of the data entered into the new NSL data system, including periodic review of NSL samples to ensure that training and other changes have reduced or eliminated data entry errors. These periodic reviews should draw upon resources made available by the FBI's Inspection Division and OIC.

**FBI Response:** With the creation of the NSL Subsystem, the FBI's OGC no longer manually enters NSL data. The NSL Subsystem has simplified the data entry process, has resulted in fewer data entry errors, and has enhanced the accuracy of the data used for Congressional reporting. The FBI periodically reviews sample NSLs to ensure the data entered into the NSL Subsystem is accurate. In addition, in 2009 the FBI's Inspection Division began to review NSLs, including the accuracy of the data entered in to the NSL Subsystem. The first such review verified that statistics generated in the NSL Subsystem were accurately recorded.

**Recommendation #3:** Implement measures to check data requested in NSLs against serialized source documents to verify that the data extracted from the source document and used in the NSL (such as the telephone number or e-mail address) are accurately recorded on the NSL and the approval cover document.

**FBI Response:** The FBI agrees with this recommendation in principle, but we believe that there are, at times, more authoritative sources than serialized documents (such as a telephone bill recovered from a target's trash). The FBI continues to provide training regarding the duty to accurately prepare NSLs and to verify critical data against authoritative documents to avoid errors. The NSL Subsystem requires the user to certify the accuracy of the entered information before the NSL can be approved. In addition, because the NSL Subsystem populates the NSL and the cover document with information provided from a central data entry point, the system ensures that the information is internally consistent. The periodic review of NSLs conducted by the FBI's Inspection Division will include a review of serialized source documents to verify that the data used in NSLs (such as telephone numbers and account numbers) are correct.

**Recommendation #4:** Regularly monitor the preparation of NSL-related documents and the handling of NSL-derived information through periodic

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*These responses are current as of 8/19/09*

reviews and inspections. At a minimum, these reviews should include quarterly file reviews during which squad supervisors spot check NSL-related documents in investigative files to ensure adherence to NSL authorities and related AG Guidelines and internal FBI policies.

**FBI Response:** In response to this recommendation, the FBI imposed systemic changes in how NSL return information is handled. Rather than rely on the suggested spot checks, we have incorporated into the new NSL Subsystem requirements for legal and supervisory review of NSL-related documents. The system also requires the requestor to review the results for responsiveness and overproduction and will not allow an NSL to be "closed" until the case agent certifies that the response has been reviewed for overproduction. The system automatically tracks who provided the certification and when. If the requestor does not complete the review, the system automatically notifies the Division's SAC and Assistant SAC (ASAC). This notification recurs until the situation is resolved. Notwithstanding these safeguards, the FBI's Inspection Division periodically reviews NSL document preparation and the handling of the responsive materials. In the most recent such review, fewer than 1% of the reviewed NSLs involved undetected "overproduction." This compared favorably to the 7.7% involving undetected overproduction identified by the OIG in its 2008 review of NSL usage.

**Recommendation #5:** Assign OGC attorneys to participate in pertinent meetings of operational and operational support units in the Counterterrorism and Counterintelligence Divisions.

**FBI Response:** The FBI's OGC has continued the well-established practice of attending these meetings.

**Recommendation #6:** Consider increasing OIC's staffing level so it can develop sufficient skills, knowledge, and independence to accomplish its mission.

**FBI Response:** The FBI is continuing to evaluate the OIC's personnel needs as the program evolves.

**Recommendation #7:** Reinforce the distinction between the FBI's two NSL authorities pursuant to the FCRA throughout all levels of the FBI's National Security Branch and in all appropriate training.

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*These responses are current as of 8/19/09*

**FBI Response:** The NSL Subsystem has been programmed so that it will not allow a 1681v NSL to be issued in an investigation designated in the subsystem as a counterintelligence investigation. Nonetheless, the FBI continues to provide training regarding this distinction, and the distinction is emphasized in the DIOG.

**Recommendation #8:** Add to both the Inspection Division's reviews and the National Security Division's national security reviews a review of FCRA NSLs requested in counterintelligence investigations.

**FBI Response:** Although FCRA NSLs are not specifically targeted in Inspection Division reviews of NSL usage, if an FCRA NSL from a counterintelligence investigation is among a sample reviewed, it will be reviewed for conformity with FCRA requirements. The FBI's OGC continues to conduct periodic national security reviews in conjunction with DOJ's National Security Division. These reviews typically include, but are not limited to, analysis of NSL use in selected national security cases.

**Recommendation #9:** Clarify in continuing discussions with major credit reporting agencies that these agencies should not provide full consumer credit reports in response to section 1681u NSLs and should ensure that they provide only requested information in response to all FCRA NSLs.

**FBI Response:** The FBI has longstanding relationships with the credit bureaus and has had extensive conversations with them regarding responses to FCRA NSLs. The credit bureaus have been asked to review NSL requests carefully and to provide only limited credit information in response to section 1681u NSL requests. The FBI's CDCs continue to communicate with the credit bureaus regarding overproduction in response to NSLs, and the FBI has found that our ability to work collegially with the credit bureaus on an attorney-to-attorney basis has resulted in less overproduction.

**Recommendation #10:** Ensure that guidance and training continue to improve the identification of circumstances under which matters must be reported to the FBI's OGC as possible intelligence violations.

**FBI Response:** The FBI has updated its IOB policy based upon Executive Order 13462, "President's Intelligence Advisory Board and Intelligence Oversight Board," dated 2/29/08, and a memorandum jointly issued by the IOB and the Director of National Intelligence entitled "Criteria on Thresholds for Reporting Intelligence Oversight Matters and Instructions Relating to Formatting and

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*These responses are current as of 8/19/09*

Scheduling,” dated 7/17/08. The FBI’s updated policy imposes on all FBI employees an ongoing responsibility to report to the FBI’s OIG intelligence activities that may be unlawful, may be contrary to Executive Order or Presidential Directive, or may impugn the reputation or integrity of the FBI or otherwise call into question the propriety of its intelligence activities. The FBI now requires that all current and new FBI employees, contractors, joint task force members, and detailees who handle national security matters complete a Virtual Academy course regarding potential IOB matters.

**Recommendation #11:** Issue guidance regarding the filing and retention of NSL-derived information. This guidance should require that all NSL-derived information be appropriately documented and stored, be easily identifiable, and be readily available for internal and external audit.

**FBI Response:** Following the release of the 2007 OIG Report, an NSL working group was formed to examine issues related to the use of NSLs and NSL-derived information. The working group, which is chaired by DOJ’s Privacy and Civil Liberties Officer and includes both FBI and DOJ personnel, will prepare a formal report for the Deputy AG. The FBI will coordinate any guidance on filing and retaining NSL information with the NSL working group as that group continues to consider whether NSL-derived data should be tagged, labeled, or otherwise subject to new rules limiting its retention or dissemination. The FBI currently requires that all NSL requests, approvals, and responsive records be maintained in an NSL subfile of the investigative file.

**Recommendation #12:** Include in the FBI’s 90-day case file reviews and the National Security Division’s national security reviews an analysis of the FBI’s compliance with requirements governing the filing and retention of NSL-derived information.

**FBI Response:** The FBI now requires supervisors to include in their regular quarterly file reviews an examination of compliance with the requirements governing the receipt, filing, and retention of NSL-derived information. Compliance with these requirements is also examined by DOJ and FBI attorneys during national security reviews.

**Recommendation #13:** Periodically reissue guidance and training materials reminding case agents and supervisors assigned to national security investigations that they must carefully examine the circumstances surrounding the issuance of

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*These responses are current as of 8/19/09*

each NSL to determine whether there is adequate justification for imposing non-disclosure and confidentiality requirements on the NSL recipient.

**FBI Response:** The FBI has adopted a two-pronged approach to NSL non-disclosure requirements. The first has been an increased emphasis on training those involved in the issuance of NSLs, including training at the CDC and Management Program Analyst conferences. This additional training also includes an online NSL course, which is available through the internal FBI system and required for all National Security Branch personnel. The second prong is the mandatory use of the NSL Subsystem for almost all NSLs. The NSL Subsystem reminds requesters that nondisclosure requirements may be imposed only when the specific circumstances of the NSL justify the requirement, preventing completion of the NSL request unless the basis for the nondisclosure requirement is specified. The system also now includes a menu-driven set of choices to assist drafters in affirmatively articulating their reasoning if a nondisclosure requirement is to be imposed.

**Recommendation #14:** Periodically reinforce through guidance and training the requirement to report to the FBI's OGC possible intelligence violations arising from the use of NSL authorities.

**FBI Response:** Please see the response to recommendation #10, above.

**Recommendation #15:** Require case agents and supervisors assigned to national security investigations to specify in any reports to the FBI's OGC the precise remedial measures employed in handling any unauthorized information obtained in response to NSLs and to address whether the inappropriately provided information was used or uploaded into FBI databases.

**FBI Response:** Under the new IOB policy, FBI employees are required to include the following information in their reports to the FBI's OGC: a) how or why the error occurred; b) how the FBI is handling any information that was improperly collected and/or used; and c) any remedial action the FBI has taken to prevent a recurrence of the incident (including training and written guidance).

**Recommendation #16:** Periodically provide to case agents and supervisors assigned to national security investigations examples of common errors in the use of NSLs, such as the examples used in the 11/30/06 FBI OGC memorandum regarding possible NSL-related intelligence violations.

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*These responses are current as of 8/19/09*

**FBI Response:** While the NSL Subsystem has greatly reduced the number of errors in the issuance and use of NSLs, the FBI will continue the practice of incorporating into NSL and IOB training and written guidance anecdotal information regarding common errors in the use of NSLs, updating the examples of common errors as new issues arise.

**Recommendation #17:** Direct the NSL Working Group to re-examine, with the participation of the FBI and of DOJ's National Security Division, measures for: a) addressing the privacy interests associated with NSL-derived information, including the benefits and feasibility of labeling or tagging NSL-derived information, and b) minimizing the retention and dissemination of such information.

**FBI Response:** The NSL Working Group continues to examine these issues and has completed a second draft report. The conclusions and recommendations in this report were submitted informally to DOJ OIG staff members, who indicated that the report was a significant improvement over the earlier version. This draft report has been forwarded to the newly appointed DOJ Privacy and Civil Liberties Officer for review, and DOJ and the FBI are continuing to discuss the recommendations contained in the draft.

**b. Assuming Recommendation Number Two, which calls for the FBI to do spot checks of NSLs to make sure data is being entered properly, has been fully implemented, what has the FBI learned by doing these spot checks?**

**Response:**

As indicated in the response to Recommendation # 4, above, the FBI does not conduct systematic NSL spot checks in field offices, but has instead focused on training and on implementing the mandatory NSL Subsystem. The subsystem has simplified the process by which NSLs are created, thereby decreasing errors. The FBI's Inspection Division conducts periodic reviews, which have verified that statistics generated in the NSL Subsystem are generally recorded accurately.

**28. The NSL Working Group was formed to analyze the use and retention of information gained from NSLs. It sent its report to the Attorney General (AG) in August 2007, but it was withdrawn as of February 2008. The DOJ IG expressed several concerns in its March 2008 report about the NSL Working Group's August 2007 conclusions. It suggested the NSL Working Group should reconsider whether additional privacy and civil liberties protections were needed to govern the use and retention of information gained from NSLs.**

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*These responses are current as of 8/19/09*

According to the FBI's responses to the IG's recommendations in the March 2008 report, the AG asked the NSL Working Group to continue its work. Has the NSL Working Group finished a new version of its report and conclusions? If so, please provide a copy and explain how the FBI has implemented its recommendations. If not, when do you expect the NSL Working Group to finish and propose new recommendations?

**Response:**

The NSL Working Group has continued its work and has completed a second draft report. This report's conclusions and recommendations were submitted informally to the DOJ OIG, which indicated that this report was a significant improvement over the earlier version. In June 2009, the draft report was forwarded to the newly appointed DOJ Privacy and Civil Liberties Officer for review and submission to the Deputy AG. DOJ and the FBI are continuing to discuss the recommendations contained in the draft.

29. In December 2008, the Second Circuit Court of Appeals, in *Doe v. Mukasey*, held unconstitutional both the conclusive treatment of the government's certification that disclosure of NSLs would hurt national security, diplomatic relations, certain investigations, etc. and the imposition of a nondisclosure requirement without the government initiating judicial review. It reasoned that reciprocal notice, in which people who want to challenge the nondisclosure order tell the government as such and then the government has to go to court to maintain the nondisclosure provision, would be constitutional. In a May 9, 2009 letter to Judiciary Committee Chairman John Conyers announcing the government would not appeal this decision, Attorney General Eric Holder suggests this reciprocal notice approach is being used. He writes that since *Doe* the FBI has issued more than 3,000 NSLs with a notice of the right to challenge the nondisclosure provision, which would force the government to go to court to enforce the nondisclosure requirement, and that so far no one has invoked that right.

a. To what does the phrase "more than 3,000 NSLs" in the May 9, 2009 letter refer? Is that the number of all national security letters issued by the FBI since the date of the *Doe* decision (December 15, 2008) or the number of a certain subset of those NSLs? If it is a subset of those NSLs, please explain and describe what is contained by that subset.

**Response:**

That phrase refers to the number of NSLs issued after 2/10/09, the date on which the new reciprocal notice was added to the FBI's automated NSL creation system.

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*These responses are current as of 8-19-09*

**b. Please provide the exact number of NSLs issued since December 15, 2008, broken down both by the number with and without a nondisclosure requirement and by the number with and without a notice of the right to challenge the nondisclosure requirement.**

**Response:**

From 12/15/08 through 6/30/09, the FBI issued 8,509 NSLs. Of those NSLs, 8,338 contained nondisclosure language, while 171 did not. During the same period, 6,267 NSLs contained language notifying the recipient of a right to challenge the nondisclosure provision, while 2,242 did not. It should be noted that the FBI began including language regarding the right to challenge the nondisclosure provision on 2/10/09 and all 6,267 NSLs issued since that date have included this language. No challenges have been received to date.

**c. Has the FBI provided this notice to recipients of NSLs in all jurisdictions, and not just to recipients in the Second Circuit? In the future, will the FBI be providing this notice to recipients of NSLs in all jurisdictions, and not just in the Second Circuit?**

**Response:**

The FBI has been including this "challenge" notice in all NSLs containing a nondisclosure provision since 2/10/09, regardless of jurisdiction.

**d. Has the FBI been providing this notice to all recipients of NSLs, and not just to recipients constrained by a nondisclosure requirement issued pursuant to 18 U.S.C. § 2709? In the future, will the FBI be providing this notice to all recipients of NSLs, and not just to recipients constrained by a nondisclosure requirement issued pursuant to 18 U.S.C. § 2709?**

**Response:**

Since 2/10/09, the FBI has been including the reciprocal nondisclosure language in all types of NSLs, not just in NSLs issued pursuant to 18 U.S.C. § 2709.

**e. Please provide a copy of the notice the FBI is sending to NSL recipients that informs them of their right to challenge the nondisclosure provision.**

**Response:**

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*These responses are current as of 8/19/09*



The notice reads as follows.

You also have the right to challenge the nondisclosure requirement set forth above. If you wish to make a disclosure that is prohibited by the nondisclosure requirement, you must notify the FBI, in writing, of your desire to do so within 10 calendar days of receipt of this letter. That notice must be mailed or faxed to the XXXXX Division, attention: XXXX XXXXX (phone number: XXX-XXX-XXXX), with a copy to FBI HQ, attention: General Counsel (fax number: XXX-XXX-XXXX) and must reference the date of the NSL and the identification number found on the upper left corner of the NSL. If you send notice within 10 calendar days, the FBI will initiate judicial proceedings in approximately 30 days in order to demonstrate to a federal judge the need for nondisclosure and to obtain a judicial order requiring continued nondisclosure. The nondisclosure requirement will remain in effect unless and until there is a final court order holding that disclosure is permitted.

**30. Before the Second Circuit's opinion in Doe, the FBI Office of General Counsel (OGC) issued a directive that the nondisclosure orders were not supposed to be "automatically" included in the NSLs or made in a "perfunctory manner" and only when there was a "genuine need." In its March 2008 report on NSLs, the DOJ IG found that 97 percent of the NSLs it examined contained a nondisclosure order. Considering that 97 percent of NSLs issued had a nondisclosure order, how would the FBI respond to the conclusion that such orders were being included automatically and not always when there was a genuine need? Does the FBI agree or disagree that such a conclusion would be reasonable? Why or why not?**

**Response:**

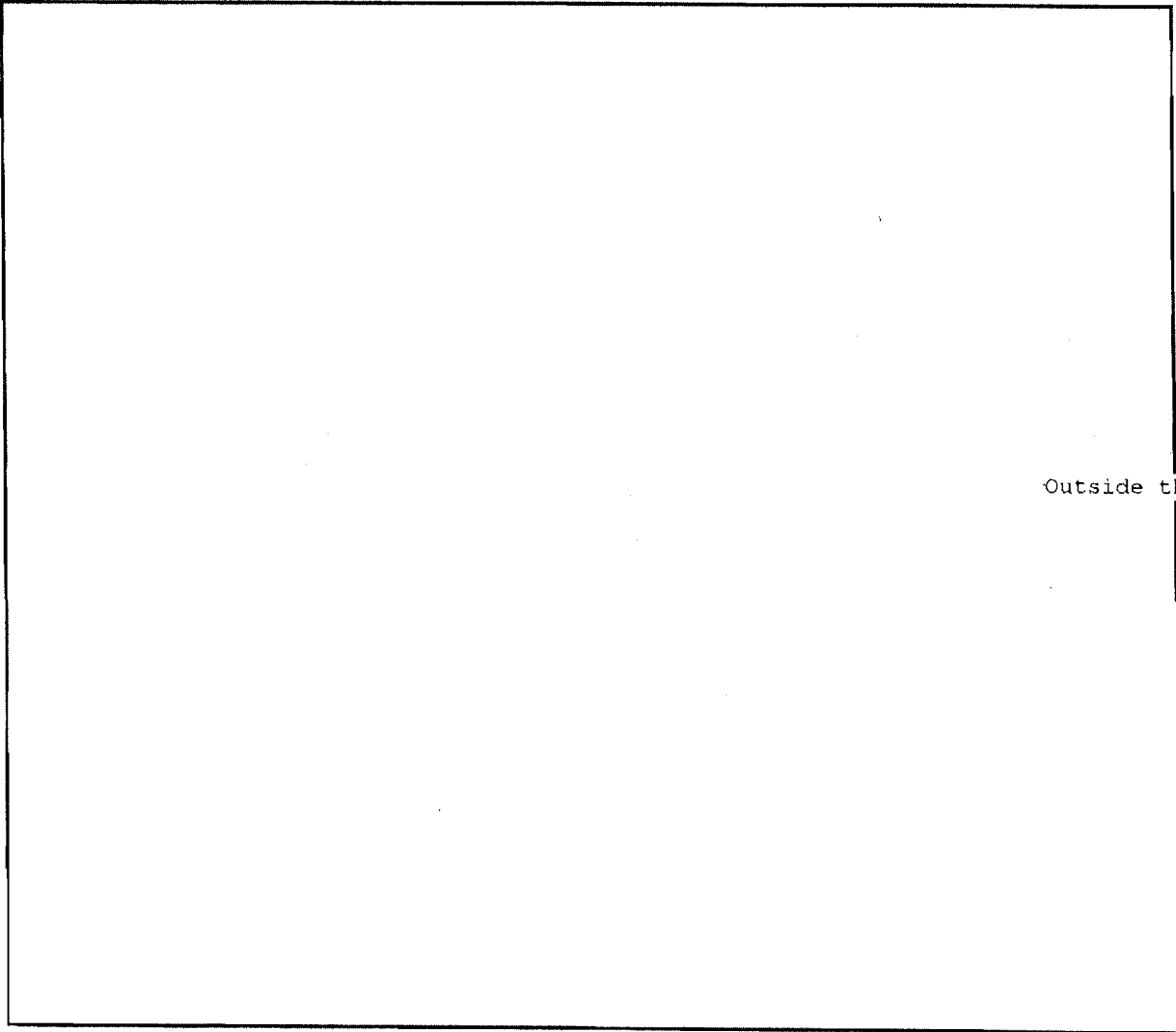
The FBI does not agree with this conclusion. By definition, the information sought through an NSL is relevant to an ongoing investigation of international terrorism or clandestine intelligence activities. Accordingly, only under highly unusual circumstances will disclosure of the fact that such an NSL has been issued not risk causing one of the statutorily delineated harms. Consistent with

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that expectation, most NSLs meet the standard for the inclusion of nondisclosure requirements. As indicated in the response to Question 29b, above, since 2/10/09 171 NSLs have been issued without nondisclosure requirements. The fact that not all NSLs include nondisclosure requirements confirms that the FBI is, in fact, making an individualized determination of the need for nondisclosure in each case.

**31. Questions [29] and [30] address the nondisclosure requirements for NSL recipients.**



Outside the Scope

*These responses are current as of 8/19/09*