

**PROCEDURES FOR COLLECTION, USE, AND STORAGE OF INFORMATION
DERIVED FROM NATIONAL SECURITY LETTERS**

I. References

- a. Right to Financial Privacy Act, 12 U.S.C. §§ 3401 *et seq.*
- b. Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.*
- c. Electronic Communications Privacy Act, 18 U.S.C. §§ 2510 *et seq.*
- d. Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458.
- e. Executive Order 12333, *United States Intelligence Activities* (as amended).
- f. Executive Order 13388, *Further Strengthening the Sharing of Terrorism Information to Protect Americans*.
- g. Domestic Investigations and Operations Guide, FBI, 2008.

II. Introduction

The national security letter procedures (NSL Procedures) set forth below apply to all data acquired through National Security Letters (NSLs) (referred to hereafter as "NSL-derived" information), including financial and credit data received pursuant to the Right to Financial Privacy Act (RFPA), 12 U.S.C. § 3414(a)(5), and the Fair Credit Reporting Act (FCRA), 15 U.S.C. §§ 1681u and 1681v, and electronic communication transactional, subscriber or toll billing records received pursuant to the Electronic Communications Privacy Act (ECPA), 18 U.S.C. § 2709.

These procedures govern the collection, use and storage of NSL-derived information and are designed to ensure that only those records that may have

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As the FBI adopts and uses new technology and processes, it will modify these procedures accordingly.

These procedures recognize and incorporate by reference existing limits on the collection of information through NSLs that are mandated by statute and by FBI policy. The case agent or analyst, SSA, CDC, ASAC, SAC, and other requestors and approvers must assess whether the information sought through the NSL is relevant to a national security investigation and whether the NSL is the least intrusive means to obtain the information. These two considerations--relevance and least intrusive means--in combination have the effect of limiting the collection to information that is reasonably

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believed at the time the NSL is issued to be information that will likely further the investigation's goals.

Although the FBI can only use NSLs to seek information that is relevant to an authorized investigation

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II. Financial Records Obtained by NSL

A. General Information

An NSL issued under the RFPFA is used to obtain financial records from "financial institutions," as that term is defined by statute. These NSLs may be used in any properly predicated national security investigation. The statute does not limit the type of financial information the FBI can obtain.

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[Redacted] If is, of course, impossible to know ahead of time which items from the broader set of requested records will be in this category. For this reason, the procedures outlined below require an examination of the data produced in response to a RFPA NSI [Redacted]

[Redacted]

B. NSL Procedures for Financial Records

1. Before issuing an NSL pursuant to the RFPA, the requesting agent or analyst should determine whether such an NSL is the least intrusive means to obtain the information needed. *See generally* Domestic Investigations and Operations Guide (DIOG), FBI (December 16, 2008) at 112; Executive Order 12333, Part 2.4.

2. [Redacted]

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3. [Redacted]

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4. [Redacted]

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5. [Redacted]

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6. [Redacted]

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III. Credit Report Information Obtained by NSL

A. General Information

An NSL issued under FCRA may request either limited information or a full credit report from a credit bureau, depending on the type of national security investigation in which the NSL is issued. *See* 15 U.S.C. §§ 1681u, 1681v. Section 1681u authorizes the FBI to issue an NSL to obtain information from credit agency records identifying, among other things, “the name, address, former addresses, places of employment, or former places of employment” and the names of all the financial institutions at which an individual maintains or has maintained an account. *See* 15 U.S.C. § 1681u(a)-(b). This limited information may be obtained in any appropriately predicated national security investigation (*i.e.*, it is available in both counterterrorism and counterintelligence investigations).

Section 1681v allows the FBI to issue an NSL to obtain a full consumer credit report and “all other information in a consumer’s file.” *See* 15 U.S.C. § 1681v. This type of NSL, however, is available only in counterterrorism investigations. Thus, the FBI cannot use such an NSL to obtain a full consumer credit report for a counterintelligence investigation *unrelated* to international terrorism. If the investigation is not related to international terrorism and the investigators or analysts have an investigative need for a full credit report, they must work with the appropriate U.S. Attorney’s Office to obtain a court order compelling the disclosure of the report.

B. NSL Procedures for Credit Report Information

1. Before seeking an NSL pursuant to the FCRA, the agent or analyst should determine whether such an NSL is the least intrusive means to obtain the needed information. For instance, if the agent or analyst needs to determine all entities that have extended credit to the target of the investigation, a less intrusive step would be to issue an NSL seeking limited credit information rather than issuing an NSL for a full consumer credit report, even if the full report would be legally available. *See generally* Domestic Investigations and

Operations Guide, FBI (December 16, 2008) at 112; Executive Order 12333, Part 2.4.

2. [Redacted]

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3. [Redacted]

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5. [Redacted]

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IV. Electronic Communication Transactional Records Obtained by NSL

A. General Information

An NSL issued under ECPA may be used to obtain electronic communication transactional records from an electronic communication service provider. [Redacted]

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[Redacted] These NSLs may be used in any appropriately predicated national security investigation. See 18 U.S.C. § 2709(b)(2).

The FBI may receive electronic communication transactional records [Redacted]

[Redacted] subject to the review discussed in paragraph B.2., [Redacted]

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In the course of an investigation, [Redacted]

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[Redacted] Before

issuing an NSL to ascertain the identity [redacted] that has been identified [redacted] the agent or analyst must determine whether doing so is the "least intrusive means" to obtain needed information. In many cases, those identities, although "relevant" to the investigation, are not needed to pursue the investigation. [redacted]

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B. NSL Procedures for Electronic Communication Transactional Records

1. Before seeking an NSL for electronic communications transactional records pursuant to ECPA, the agent or analyst should determine whether such an NSL is the least intrusive means to obtain the needed information. If only subscriber information is needed, an NSL should be issued for subscriber records rather than issuing a broader request for the transactional records associated with the account. *See generally* Domestic Investigations and Operations Guide, FBI (December 16, 2008) at 112; Executive Order 12333, Part 2.4.

2.

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IV. Telephone Subscriber and Toll Billing Record Information Obtained by NSL

A. General Information

An NSL issued under ECPA may also be used to obtain telephone subscriber and toll billing records. In response to an NSL, a service provider may disclose only the following four types of information: name, address, length of service, and local and long distance toll billing records. See 18 U.S.C. § 2709(b)(1). These NSLs may be used in any properly predicated national security investigation. See 18 U.S.C. § 2709(b)(2).

The FBI may receive subscriber and toll billing records [Redacted] [Redacted] subject to the review discussed in paragraph B.2., below, the responsive records received [Redacted] [Redacted]

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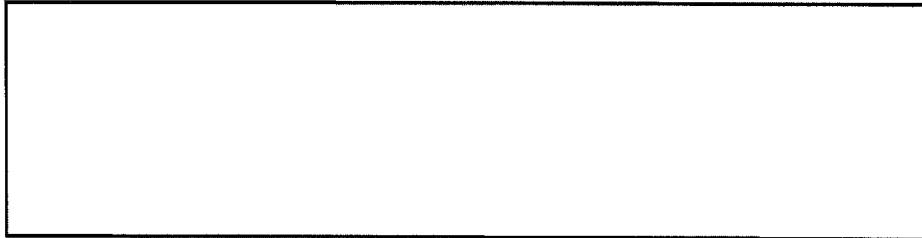
[Redacted]

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B. NSL Procedures for Telephone Subscriber and Toll Billing Records.

1. Before seeking an NSL for telephone toll billing records pursuant to ECPA, the agent or analyst should determine whether such an NSL is the least intrusive means to obtain the needed information. If only subscriber information is needed, an NSL should be issued for those records rather than issuing a broader request for subscriber and toll billing records. *See generally* Domestic Investigations and Operations Guide, FBI (December 16, 2008) at 112; Executive Order 12333, Part 2.4.

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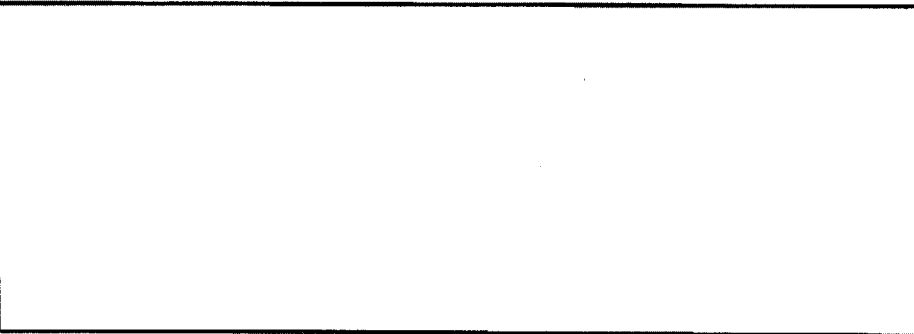
3.



until it is destroyed in accordance with a disposition schedule approved by NARA.

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5. If the [redacted] may contribute to the investigation, the investigator should also consider whether an NSL is the least intrusive means to obtain the information. In some cases, information obtained from open source or government data bases will meet investigative needs. The information contained in these data bases is sometimes stale and inaccurate, however. These factors, among others, should be considered in determining whether to issue an NSL for the information.

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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 02-21-2011 BY 65879 DMH/STP/BJH

COUNSEL (DGC).

1. Telephone Subscriber EC (wpd)
2. Telephone Subscriber NSL (wpd)
3. Toll Record EC (wpd)
4. Toll Record NSL (wpd)
5. E-Mail Subscriber EC (wpd)
6. E-Mail Subscriber NSL (wpd)
7. E-Mail Transactional Record EC (wpd)
8. E-Mail Transactional Record NSL (wpd)
9. RFPA EC (wpd)
10. RFPA NSL (wpd)
11. 1681u(a) EC (wpd)
12. 1681u(a) NSL (wpd)
13. 1681u(b) EC (wpd)
14. 1681u(b) NSL (wpd)
15. 1681u(a) and (b) combination EC (wpd)
16. 1681u(a) and (b) combination NSL (wpd)
17. 1681v EC full credit report / IT investigation only (wpd)
18. 1681v NSL full credit report / IT investigation only (wpd)

NATIONAL SECURITY LETTERS

National Security letters are a specific type of investigative tool that allows the FBI to obtain certain limited types of information without court intervention:

1. Under the Electronic Communications Privacy Act (ECPA), 18 U.S.C. §2709, the FBI can obtain telephone and email communication records from telephone companies and internet service providers.
2. Under the Right to Financial Privacy Act (RFPA), 12 U.S.C. §3414(a)(5)(A), the FBI can obtain the records of financial institutions (which is very broadly defined).
3. Under the Fair Credit Reporting Act (FCRA), 15 U.S.C. §§1681u(a) and (b), the FBI can obtain a list of financial institutions and consumer identifying information from a credit reporting company.
4. Under the Fair Credit Reporting Act, 15 U.S.C. §1681v, the FBI can obtain a full credit report in an international terrorism case. This provision was created by the 2001 USA Patriot Act.

FCRA NSL (Full Credit Report - 15 U.S.C. 1681v)

DIOG

DIOG §18.6.6 (National Security Letters)

OIG Reports

~~(Secret)~~

OIG Report - NSLs (March 2008)

OIG Report - NSLs (March 2007)

**OIG Reports
(Unclassified)**

OIG Report on FBI's Use of Exigent Letters for Telephone Records (January 2010)

OIG Report on FBI's NSL Use -- Corrective Actions of NSL Usage in 2006 (March 2008)

OIG Report on FBI's Use of National Security Letters (March 2007)

**Congressional
Research Service**

National Security Letters (December 27, 2010)

National Security Letters (October 28, 2009)

ACLU-NSL-298

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1/24/2012