

DATE: 11-15-2010

DAT!: 11-15-2010

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REASON; 1.4 (c)

DICL~~IFY OR~ 1i-1S-10aS

AL~ IN~RKATIOO CONTAINED recussIFY OW 11-1S-2035

ALL INFORMATION CONTAINED

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CONFIDENTIAL HUMAN SOURCES

CONFIDENTIAL HUMAN SOURCES
IN NATIONAL SECURITY
INVESTIGATIONS
INVESTIGATIONSINVESTIGATIONS

IN NATIONAL SECURITY

National Security Law Branch

Nationa~ Security Law Branch
Office of the General Counsel
2010
20102010

Office of the General Counsel

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OPENING A

OPENING A

CONFIDENTIAL HUMAN SOURCE

CONFIDENTIAL HUMAN SOURCE

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PROCESS

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-. Definition of Confidential Human Source:

Def nition of Confidential Human Source:

Any individual who is believed to be

- Any individ ua[who is believed to be providing useful and credible information to

provid1ng usefuI and credible informatjon to

the FBI for any authorized information

the FBI for any authorized information

collection activ;tyI and from whom the FBI

collection activity, and from whom the FBI

expects or intends to obtain additional usefuI

expects or intends to obtain additional useful

and credible information in the future, and

and credible information in the future, and

whose jidentity, information or ret at;onship

whose identity, information or relationship

with the F13.1 warrants confidential handling.

with the FBI warrants confidential handling.

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include_following-sources2.-

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CHS OPERATING OVERSEAS

CHS OPERATING OVERSEAS

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USE OF

USE OF

CONFIDENTIAL HUMAN SOURCES

* CONFIDENTIAL HUMAN SOURCES

IN ASSESSMENTS

:> IN ASSESSMENTS

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:USE OF CHS IN ASSESSMENT

USE OF CHS IN ASSESSMENTS5

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- Current guidelines -authorized methods include:
- . Current guidelines — authorized methods include:

- Use and recruit human sources in conformity w~th AGG.
- Use and recruit human sources in conformity with AGG-

CHS. (AGG-DOM 5ectlon II.A.4.e)

CHS. (AGG-DOM Section II.A.4.e)

- "\Use"T defined as obtaln~ng Informatlon fromJ taskfng, or
- . "Use" defined as obtaining information from, tasking, or

otherwise operating such sources. (AGG-CHS VII. V I

otherwise operating such sources. (AG -CHS VII.V,

DIOL 5.9.H. L)

DIOG 5.9.H.1)

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USE OF CHS IN ASSESSMENTS

Limitations on use of Ck§ in Assessments:

used course providing

assistance to federal agencies, unlike unless- have DO) approval.

DOM Section III.B.2.5.9.5).

. noncriminal(

threat-foreign intelligence USPs, since FBI .USP, practicable, regard. AGG-DOM

I.C.2.b also DIOG 5.9.H.5).

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~*~;i;~ O~ J~H~;~s;;~TS

- May not be used in the course of providing
- aS~stance to other federa' agenc\es, un like other
- assessment methods, U niess-DOJ approva l.

AGG-OOM Section III.6.2.c. (see also DIOG

S.9.H.S),

- Should generally not be used to collect noncr;
- minai(non-national security threat-related
- foreign n Intelligence from USPs, since FBI 'must
- operate openly and consensually with a USP1 to
- the extent practica bre, in that regardA AGG-OOM
- Section I.(see a so DIOG 5.9.H.47

USE OF CHS IN ASSESSMENTS

USE OF CHS IN ASSESSMENTS

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Least Intrusive means — use CHS only if it IS the least

Least intrusive means — use CHS only if it IS the least

intrusive means, particularly with regard to an

intrusive means, particularly with regard to an

assessment, since it is a relatively intrusive method

assessment, since it is a relatively intrusive method

of information-gathering (DIOG 5.9.H.4).

of information-gathering (DIOG SA9.H.4).

- Limit use in focus and scope to what is necessary to accomplish the authorized purpose and objective of

accomplish the authorized purpose and objective of

the assessment or predicated investigation. If only

the assessment or predicated investigation. If only

an assessment is open must limit CHS activities as

an assessment is open must limit CHS activities as

necessary to achieve the objective of the

necessary to achieve the objective of the

assessment; if come upon info that would justify

assessment; if come upon info that would justify

predicated investigation, then need

need to open

predicated investigation, then to open

investigation (DIOG 5.9.H.4).

investigation (DIOG 5.9.H.4).

- - If tasking CHS to attend religious service, need SSA
- If tasking CHS to attend religious service, need SSA

approval-in investigation; SAC approval in

approval in [investigation; SAC approval in

assessment.

assessment. (DIOG 5.9.H.3).

(DIOL 5.9.H.3).

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USE OF CHS IN ASSESSMENTS

i USE OF CHS ~_J.\ASSESSMENTS

tcl—Ta ~iJ

- Assessment

AssessmentAssessment tc::Ja source:

source:source:

-

- Type #5 assessment: Identifying potential

Type #5 assessment: Identifying potential .

human sources, assess the suitability,

human sources, assess the suitability,

credibility, or value of individuals as human

credibility, or value of individuals as human

sources, validate human sources, or
maintain the cover or credibility of human .

sources, validate human sources, or

maintain the cover or credibility of human

sources, who may be able to provide or

sources, who may be able to provide or

obtain information relating to criminal

obtain information relating to criminal

violations, threats, FI (AGG-DOM Section

violations, threats, FI (AGG-DOM Section

IIA.3.c)~

II.A.3.c).

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OF CHS IN ASSESSMENTS

~~, USE

USEUSE OF G~Slr-tASSESSMENTS

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• Assessment to a source — cont.: 1Y7E

~.; Assessment for Ja source -cont~:

• Type #5 assessment:

assessment:assessment:

Type #5

, All such assessment activities must follow the

• An such assessment acUvities must follow the
AGG-CI-IST C1-1513M1 and CHSVS_ but if conflict

AGG-CHSJ" Q-iSPM, and CHSVS!4.,J; but if confHct

with WOG, DIOL controls (DIOG 5.6.A.5).

with DIOb., DIOG controls (DI~ 5.6.A.5).

Can use a CHS in support of type #5

•
•• Can use a CHS in support of type #5
assessment to vet another CH5 (DIOL

assessment to vet another CHS (DrOG

5.9.H.2).

S.9.H.2).

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-
- Must document ~55 assessment IDM assessment activities through (DIOG 5.6.A.5).

activities through (DIOL 5.6.A.5).

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UNDISCLOSED
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PARTICIPATION (UDP)

-1. PARTICI~~~~()_~ (UDP)

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.1 smiar o definition of sensitive

- ar definition of sensitive investigative matter (DIOG 9.9.A).

investigative matter (DIOL 9.9.A).

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Assessment v. Investigation

.. "ff.*-" Assessment v. Investigation

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- Assessments
AssessmentsAssessments --

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• Investigation •

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UDP
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•• Note-
Note -r--b7E

• Former is a legal/policy call and is not,
Former is a legal/policy call and is not .

•

unlawful.

unlawful.

.Latter is a legal call and is unlawful.

• Latter is a legal call and is unlawful
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UDP Categories

The following category at field office level except for notice to SORC:

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CTL
• Vies not designate the party categorizes the UDP — in effect, it is with the originating field office since FO initiates and runs ACLURM000022

.~ UD~ C~t~_gories
• followi ng stays fiel d offi ce notice SORe;
.~-----~I~
• I boes des;g n~te the that U DP - in effect, it tteld UDPs. .
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UDP Categories

UDP Categories

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•
• Everything that doesn't fit into those
Everything that doesn't fit into those
categories comes to FBIHQ, where the first
categortes comes to FBIHQ, where the first
reviews are supposed to be by OGC. b2
reviews are supposed to be by OGCa
li• [L Jdoes not address what is the basis of

jdoes not address what is the basis of biB

OGC/NSLB review.
OGC{NSLB review.

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To date, the UDPs which reach 0 generally fall into the sate. of

To date, the UDPs which reach O~----.
generally fall into the cate a of
..~ UDP CategoriesUDP_~ategories

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PARTICIPATION (UDP)

PARTICIPATION (UDP)

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Non-Sensitive UDPs which do not come

Non-Sensitive UDPs which do not come

to FBIHQ

to FBIHQ

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PARTICIPATION (UDP)

.... ." PARTICIPATION (UDP)

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Non-Sensitive UDPs which come to FBIHQ

Non-Sensitive UDPs which come to FBIHQ

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UNDISCLOSED

UNDISCLOSEDUNDISCLOSED

PARTICIPATION (UDP)PARTICIPATION (UDP)

Sensitive UDPs which do not come to

Sensitive UDPs which do not come to

FBIHQ

FBIHQFBIHQ

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UNDISCLOSEDUNDISCLOSED

PARTICIPATION (UDP)

PARTICIPATION (UDP)

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Sensitive UDPs which come to FBIHQ

Sensitive UDPs which come to FBIHQ

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UDP

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- Limitations on what CHS reporting agent memorializes

agent memorializes:

agent memorializes:

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UDP
UDPUDP

- Limitations on what CHS reporting agent memorializes
- . Limitations on what CHS reporting agent memorializes

memorializes:

memorializes:

Case file

- - case file
- h2b7E

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OTHERWISE ILLEGAL
(OIA)

OTHERWISE ILLEGAL

ACTIVITY (OIA)ACTIVITY

ACLURM000031

OIA REQUIREMENTS

Guidance found in:

- . AGG-DOM Simon V.0
- AGG-CHS
-
- . IDIOG Section ACLURM000032

~ .

. --i O~A REQUI~EMENTS

L". Guidance found in:

- DOM Section C

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- etton 17

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b2  
b7E

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OM REQUIREMENTS

alA REQUIREMENTS

OTA can be used to obtain information or evidence

OIA ca n be used to obtain i~fu~-;"ation or eVldence

that is necessary for the success of an investigation

that is necessary for the success ~f an investiga.tlon

and when (DIOG 17.1, 17.2, 17.6, CHSPM 10:3, AGG

and when (DIOG 17.1, 17.2, 17.6; CHSPM 10:3; AGG-

UCo· IV.H.(1); AGG-CHS V.B.2; 1988 OIA Procedures

UCO IV.H.(1); AGG-CHS V.B.2; 1988 OIA Procedures

VII.A.2., B.1):

VII.A.2., B.t):

Information or evidence is not reasonably available

- 
- Information or evidence is not reasonably available otherwise or

• otherwise. or

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- 
- In necessary to prevent serious bodily injury or death, or to prevent serious bodily injury or death,

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AND AND J b7E

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But must minimize its scope, to the extent possible

- But must minimize its scope, to the extent possible.

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OIA NOT ALLOWED

OIA NOT ALLOWED

- Activities which may not be authorized
- Activities which may not be authorized

for UCE or CHS (AGG-CHS V.A.2; DIOG

for UCE or CHS (AGG-CHS V.A.2; DIOL

17.7; AGG-UCO IV.H.(3); CHSPM 10.2;

17.7; AGG-UCO IV.H.(3); CHSPM 10.2;

1988 OIA Procedures VII.A.3; AGG

1988 OIA Procedures VII.A.3; AGG-



DOM V.C.4):

DOM V.C.4):

- 
- Acts of violence except self-defense.  
Acts of violence except self-defense.
- 
- Acts which are unlawful if conducted by  
Acts which are unlawful if conducted by

law enforcement agent} including illegal I

law enforcement agent, including illegal

wiretaps or searches.

wiretaps or searches.

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DOMESTIC  
DOMESTICDOMESTIC

OTHERWISE ILLEGAL ACTIVITY

,OTHERWISE ~~~~~AL ACTIVITY

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01A PER AGG-DOM

.~J\_; OIA -PE~.~GG-DOM

- 
- UCE alA criminal:  
UCE 01A criminal:
- Follow AGG-UCO, (AGG-DOM V~C~l; see  
Follow AGG-UCO. (AGG-DOM V. .1, see  
also DIOG, 17.3.B)  
afso DIOG, 17.3.8)

- 
- CHS OIA criminal and national  
security:  
security:security:  
CHS OIA criminal and national

, see

- 
- Fotlow AGG-CHS. (AGG-DOM V.C.2; see Follow AGG-CHS. (AGG-DOM V.C.2.

also DrOG 17.4)

also DIOG 17.4)

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OIC - PER AGG-DOM

--'It OIA ~ ~~~GG-DOM

- UCE OIA national security (AGGUCE OM national security (AGG-

DOM V1C.3; see also DIOL 17.5):

DOM V.C.3; see also DrOG 17.5):

Very closely tracks ACG-U00, Section IV.1-1,(5),

- Very closely tracks AGG-UCO, Section IV. H ,(5)1 requirements for UCE criminal OIA as to list of

requirements for UCE criminal OIA as to list of

offenses req u lring SAC approval on Iy butt unl ike

offenses requiring SAC approval only but, unlike

AGG-UCO (which requires eUORe and FBIHQ

AGG-UCO (which requires CU RC and FBIHQ

approval in certain cases)t requires DO] approval

approval in certain cases), requires DO] approval

in certain cases.

in certain cases.

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UCE OIA National Security

UCE OIA National Security

PER AGG-DOM

;t.

PER AGG-DOM

., UCE OIA national security -NSD must

UCE OIA national security — NSD must

approve all OIA except that SAC can

approve all OM except that SAC can

approve (AGG-DOM V.C.3):

approve (AGG-DOM V. C.3):

. Conduct would not be a felony under federal,

- Conduct would not be a felony under federal f  
state, local, or tri ba~ law.

state, local, or tribal law.

Consensual monitoring (but if sensitive

- 
- Consensual monitoring (but if sensitive  
circumstance, need DOJ NSD approval; see AGG

circumstance" need DOJ NSD approval; see AGG

DOM V.A.4; DIOG 17.5.B).

DOM V.A.4; DIOL 17.5.B).

- \* Controlled purchase of drugs, stolen property,
- Controlled purchase of drugs, stolen property,  
other contraband.

other contraband"

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OIA Security

PER AGG-DOM

CIA national SAC cont.):

. Payment of bribes.

• Making false representations to conceal identity or true ownership of proprietary.

. Money laundering not exceeding \$1 million.

(see DIOL 17.5)

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UCE National "I PER A~G-• UCE 9IA national security - ~AC can approve (cant.):

• Making false representations conceal proprietary

• laundering exceeding million, on I

DIOG ~.

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PER AGG-DOM

UCE OTA national security (AGG-DOM V.C.3):

. activity Involving:

. Violation export control laws.

. Proliferation of WMD.

. In theory, under AGG-DOM 3, SAC can approve UCE support guidelines established agreement of FBI and DOJ.

. Such guidelines failed to allow SAC to approve any material import nit, irscl-riaci

1 ]

i In emergency, should try to obtain oral approvals ps4b\_tiogC\E -n. ir engage in OIA without advance approval.

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UCE OIA National Security

.. ~I. if UCE OIA national security- (AGG-DOM V.C.3):

.. NSD must approve activity Involving:

• Violation of export control I • • theory, under AGG-DOM V.C.31 SAC material SUP?Qrt OIA under guidelines to be established by

ooJ.

• guidelines fail~ aHow .. In emergency, SOU try to 0 in oral approvals but if not possible).. UCE may lAGG-OuM V .C.S)

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CHS OIA Criminal

CHS AIA Criminal

and National Security

and National Security

- Two tiers of offenses ..
- 2 Two tiers of offenses

Tier 1 b2

- Tier 1 f I
- br~

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. I b2

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- Tier 2\_\_I
- "I Tier 2 -I ]

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CHS OIA Criminal

CHS OIA Criminal

and National Security

..~~ and National Security

r "

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- - Two tiers of offenses:
- Two tiers of offenses:

a Tier 1 -1-- b2

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• Tier 2  
Tier 2 ~

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CHS OIA Criminal

CHS OTA Criminal

and National Security

and National Security

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Tier 1 — Defined E

- Tier 1 -Defined [L-\_------•
- Any activity that would constitute a misdemeanor or felony under federal, misdemeanor or felony under federal I, b2
- Any activity that would constitute a

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state or local law (see also state, or local law (see also T 1

2  
I and involves one additional criteria.

and involves one additional criteria.

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CHS OIA Criminal

CHS OTA Criminal .

..It and National Security

and Na!o.~~1~Securi~

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• Tier 1 — DefinedTier 1 -Defined [ ~ -blE

cont.:

cant:

• And involves -

And involves -

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CHS OIA Criminal

CHS OIA Criminal

and National Security

"!\_ and Nati?~~1 Security .

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1i Tier 1— Defined

• Tier 1 -Definedl . 1--cont:

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s And involves -

• And involves ,

b2

h7E .

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b2

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CHS OIA Criminal

CHS OIA Criminal

and National Security

\* and Nationa~ \_\_Security  
. i e r 1 -Defined I .

ier 1 Defined

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cont •

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b2  
~ b7E

b2  
b7E

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CHS OIA Criminal

CHS OIA Criminal

and National Security

;\* and Nat~~~al Security

-..1nIn

.Tier 2 -1

• Tier 2 • Defined  
DefinedDefinedI  
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• any other activity that would constitute a misdemeanor or a any other activity that would constitute a misdemeanor or

felony under federal, state, or local law if enc

ferony under federal, state, or local law if engagedJo DY a

~acting without authorization (see also

acting wjthout authorlzation (see alsoL....-\_\_\_-.....I

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EXTRATERRITORIAL

EXTRATERRITORIALEXTRATERRITORIAL

OTHERWISE ILLEGAL ACTIVITY

OTHERWISE ILLEGAL ACTIVITY

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CHS and UCE

CHS and UCE

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National Security OIA

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National Security

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Tier 1-- any activity that Is federal crime or felony or serious

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- ner 1 ~ any activity that Is federal crime 0 r fe10ny or serlo us  
crime under state a

crIme under state or 'ocal law'

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- Exception  
ExceptionExceptionj .1

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CHS and UCE

CHS and UCE

National Security OIA

National Security OIA

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ier any activity that is not a telony or serious  
crime under state or local law:

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hiE:

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CONSENSUAL MONITORING

CONSENSUAL MONITORING

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If one party consent is contrary to law of state in

- 
- If one party consent is contrary to law of state in which non-consenting party is located (i.e., two party which non-consenting party is located (i.e., two party consent state or state that does not recognizes law consent state or state that does not recognizes law enforcement exception) enforcement exception)

. SAC approval for 01A — can delegate approval authority

- SA approval for a1A -SAC  
SACSAC can delegate approval authority to MAC or SSA. (131.1.5.43.2)\_

or to or SSA. ~IOG 11.5.4.B.ZI 1 b2

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OIA FOR CHS

OIA FOR CHS

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1. • ~In~m~~LI.M.IoI..-.,L.\_\_\_\_" "" "" "" "" ust consider (and recite in N In moa findings. SAC\_r must consider

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~\_-----",\_\_-----.I the followin~ \_~ I

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ACLURM000052

EMERGENCY,

EMERGENCY

OTHERWISE ILLEGAL ACTIVITY

"iOTHERWISE!~~EGAL ACTIVITY

ACLURM000053

EMERGENCY OIA

EMERGENCY OIA

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-.W~-----~----.-...:-:....\_

- Emergency authorization for domestic CHS to engage B Emergency authorization for domestic CHS to engage

inOIA in criminal and national security cases wrthout

in OIA in criminal and national security cases without

. entation requirements ....

rnmnivina with. , d.ocarntation requirements 1 \_\_\_....J

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EMERGENCY OIA

EMERGENCY OIA

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- Ambiguous as to whether it allows for OIA with the ut
- Ambiguous as to whether it allows for OIA without

nlJriL~ to FBI/case agent:

mace tQl FBI/case agent:

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EMERGENCY OIA

- EME~~,ENCY OIA  
Emergency authorization for domestic UCE to

- 
- Emergency authorization for domestic UCE to  
engage in OIA in national security cases .

engage in OIA in national security cases

. . . in situation involving

without notifying F in situation involving

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- use repc—Igl—tb7-  
131575-to a Tbie to rbiriC2 and  
D03,  
and  
3 5 17  
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EMERGENCY OIA

:~~ EME~.~~CY OIA

- "Emergency authorization for ET CH 5 to engage  
Emergency authorization for ET CHS to engage

in OIA in criminal and national security cases

in OIA in criminal and national security cases

without notifying the FBI (

without notifying the FBI (

b2  
MB.

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## EMERGENCY OIA

- EMERGENCY OIA  
Emergency authorization for domestic UCE to

- 
- Emergency authorization for domestic UCE to  
engage in OIA in criminal and national security

engage in OIA in criminal and national security

cases without notifying the FBI (DrOG 17.8):

cases without notifying the FBI (DIOL 17,8):

Without prior approval, [a UCE] may engage in [emergency]

- "Without prior approval, [a UCE] may engage in [emergency]

OIA. In such a case prior to engaging In the OIA, every effort

CIA. In such a case, prior to engaging In the OIA, every effort

should be made by [the UCE to consult with the SAC, and by

should be made by the UCE to consult with the SAC, and by

the SAC to consult with [DO] unless the circumstances

the SAC to consult with [DO] unless the circumstances

preclude such consultation. In cases in which OIA occur pursuant

preclude such consultation. In cases in which OIA occur pursuant

to this paragraph without the authorization required must be

to this paragraph without the authorization required must be reported as soon as possible to the SAC, and by the SAC to reported as soon as possible to the SAC, and by the SAC to

FBIHQ and to [DOJ

.IT

FBIHQ, and to [DOJ]"

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QUESTIONS?

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NSLB b6  
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