



ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-22-2010 BY 60324 UC BAW SAB/sab

Significant Changes to the AGG Affecting Criminal Investigations



AGGCrim -vs- AGGDom

Checking of Leads

- Predication: Receipt of information of such a nature that some follow-up as to the possibility of criminal activity is warranted
- Purpose: To promptly determine whether further investigation should be conducted

Assessments

Predication: None

Purpose: To detect, obtain information about, or prevent or protect against federal crimes...



AGGCrim -vs- AGGDom

Checking of Leads

Authorized activities:

- Determining whether to initiate a preliminary of full field investigation.

Assessments

Authorized activities:

- Seeking information, proactively or in response to investigative leads, relating to:
 - a. Activities constituting violations of federal criminal law
 - b. The involvement or role of individuals, groups, or organizations in such activities
- Identifying and obtaining information about potential targets of or vulnerabilities to criminal activities in violation of federal law
- Identify, assess, validate or maintain the cover or credibility of human sources
- Obtain information to inform or facilitate intelligence analysis and planning



AGGCrim -vs- AGGDom

Checking of Leads

Authorized methods:

- 

Assessments

Authorized methods:

- Obtain publicly available information
- Access and examine FBI and DOJ records and obtain information from any other FBI or DOJ personnel
- Access and examine records maintained by, and request information from, other federal state, local, or tribal or foreign government entities
- Use online services and resources (whether nonprofit or commercial)
- Use and recruit human sources
- Interview or request information from members of the public and private entities
- Accept information voluntarily provided by government or private entities

b7E



AGGCrim -vs- AGGDom

General Crimes Investigation

Preliminary Inquiry

Purpose: Obtain information necessary to make an informed judgment as to whether a full investigation is warranted

Predication: Information or an allegation indicating the possibility of criminal activity

Predicated Investigations

Preliminary Investigation

Purpose: To detect, obtain information about, or prevent or protect against federal crimes

Predication: Information or allegation indicating the existence of:

- a. an activity constituting a federal crime has or may have occurred, is or may be occurring, or will or may occur and the investigation may obtain information relating to the activity or the involvement or role of an individual, group, or organization in such activity
- b. an individual, group, organization, entity, information, property, or activity is or may be a target of attack, victimization, acquisition, infiltration, or recruitment in connection with criminal activity in violation of federal law...and the investigation may obtain information that would help to protect against such activity



AGGCrim -vs- AGGDom

General Crimes Investigation

Preliminary Inquiry

Investigative Techniques:

All lawful techniques EXCEPT:

-
-



Techniques NOT Requiring Prior Supervisory Approval:

- Examination of files and indices
- Examination of records available to the public and other sources of information
- Examination of available federal, state, and local government records
- Interviews of complainant, previously established informants, and other sources of information
- Interview of the potential subject
- Interview of persons who should be readily able to corroborate or deny the truth of the allegations, except this does not include pretext interviews or interviews of the potential subject's employer or coworker unless they were the complainant
- Physical or photographic surveillance of any person

Predicated Investigations

Preliminary Investigation

Investigative Methods:

All lawful methods EXCEPT:

- Physical searches, including
- Mail openings
- Electronic surveillance requiring judicial order or warrant

b7E

Techniques NOT Requiring Prior Supervisory Approval:

Not specified, but reference back to Assessments Methods, which do not need supervisory approval.



AGGCrim -vs- AGGDom

General Crimes Investigation

Preliminary Inquiry

Duration:

- Must be completed within 180 days after initiation of the first investigative step.*** An extension for succeeding 90-days periods may be granted twice by the SAC. FBIHQ approval required beyond

Approval:

- FBI supervisor

Notification to DOJ of Sensitive Investigative Matter:

- As soon as practicable after the opening of the inquiry

Predicated Investigations

Preliminary Investigation

Duration:

- Must be concluded within 6 months of its initiation, which may be extended by up to six months by the SAC. FBIHQ approval required beyond.

Approval:

- Requires supervisory approval at a level or levels specified by FBI policy.

Notification to DOJ of Sensitive Investigative Matter:

- As soon as practicable, but no later than 30 days after the initiation of the investigation



AGGCrim -vs- AGGDom

General Crimes Investigation

Full Investigation

Predication:

- When facts or circumstances reasonably indicate that a federal crime has been, is being, or will be committed.

Predicated Investigations

Full Investigation

Predication:

- An articulable factual basis for the investigation that reasonably indicates the existence of a circumstance warranting investigation:
 - a. an activity constituting a federal crime has or may have occurred, is or may be occurring, or will or may occur and the investigation may obtain information relating to the activity or the involvement or role of an individual, group, or organization in such activity
 - b. an individual, group, organization, entity, information, property, or activity is or may be a target of attack, victimization, acquisition, infiltration, or recruitment in connection with criminal activity in violation of federal law...and the investigation may obtain information that would help to protect against such activity



AGGCrim -vs- AGGDom

General Crimes Investigation

Full Investigation

Purpose:

- To prevent, solve, or prosecute such criminal activity

Investigative Techniques:

- All lawful techniques

Approval:

- FBI supervisor

Predicated Investigations

Full Investigation

Purpose:

- To detect, obtain information about, or prevent or protect against federal crimes

Investigative Methods:

- All lawful methods

Approval:

- Requires supervisory approval at a level or levels specified by FBI policy



AGGCrim -vs- AGGDom

Criminal Intelligence Investigations

Purpose:

- To obtain information concerning the nature and structure of the enterprise, with a view towards the longer range objective of detection, prevention, and prosecution of the criminal activities of the enterprise.

Investigative Techniques:

- All lawful techniques

Approval:

- SAC, with notification to FBIHQ.
- FBIHQ notifies DOJ and affected USAO

Enterprise Investigations

Purpose:

- To detect, obtain information about, or prevent or protect against federal crimes.

Investigative Methods:

- All lawful methods

Approval:

- Requires supervisory approval at a level or levels specified by FBI policy, with notification to FBIHQ.
- FBIHQ notifies DOJ and affected USAO



AGGCrim -vs- AGGDom

Criminal Intelligence Investigations

Scope:

General examination of the nature and structure of the enterprise, including:

- The members of the enterprise and other persons likely to be knowingly acting in furtherance of its criminal objectives
- Finances
- Geographic dimensions
- Past and future activities and goals

Enterprise Investigations

Scope:

General examination of the structure, scope, and nature of the group or organization, including:

- Relationship, if any, to a foreign power
- The identity and relationship of its members, employees, or other persons who may be acting in furtherance of its objectives
- Finances and resources
- Geographic dimensions
- Past and future activities and goals



AGGCrim -vs- AGGDom

Criminal Intelligence Investigations

Types:

- Racketeering Enterprise Investigations (REI)
- Terrorism Enterprise Investigations (TEI)

Initiation:

- Pattern of racketeering activity as defined at 18 USC 1961(5)
- Furthering political or social goals wholly in part through activities that involve force or violence and a violation of federal law
- Engaging in terrorism as defined in 18 USC 2331(1) or (5) that involve a violation of federal criminal law
- Committing any offense described in 18 USC 2332b(g)(5)(B)

Enterprise Investigations

Types:

- Enterprise Investigation

Initiation:

- Pattern of racketeering activity as defined at 18 USC 1961(5)
- International terrorism or other threats to national security
- Domestic terrorism as defined in 18 USC 2331(5) involving a violation of federal criminal law
- Furthering political or social goals wholly in part through activities that involve force or violence and a violation of federal law
- Committing any offense described in 18 USC 2332b(g)(5)(B) or 18 USC 43



AGGCrim -vs- AGGDom

Other Authorizations

Cooperation with Secret Service

- The FBI is authorized to provide investigative assistance in support of the protective responsibilities of the Secret Service.

Assistance to Other Agencies

Federal Agencies

- May provide assistance to any federal agency in the investigation of federal crimes, and investigative assistance to any federal agency for any other purpose that may be legally authorized, including investigative assistance to the Secret Service in support of its protective responsibilities

State, Local, or Tribal Agencies

- The FBI is authorized to provide investigative assistance to state, local, or tribal agencies in the investigation of matters that may involve federal crimes..., or for such other purposes as may be legally authorized

Foreign Agencies

- At the request of foreign law enforcement, intelligence, or security agencies, the FBI may conduct investigations or provide assistance to investigations by such agencies, consistent with the interests of the United States...



AGGCrim -vs- AGGDom

Other Authorizations

[Standards and Procedures]

Not addressed

Assistance to Other Agencies

Standards and Procedures

- All lawful methods may be used in providing investigative assistance activities
- If methods go beyond those authorized in Assessments, MUST:
 - Obtain supervisory approval
 - Provided notice if a sensitive investigative matter
 - Maintain a database or record of the details of the investigative assistance provided



AGGCrim -vs- AGGDom

Other Authorizations

General Topical Research

- The FBI is authorized to carry out general topical research, including conducting online searches and accessing online sites and forums as part of such research on the same terms and conditions as members of the public generally. "

Reports and Assessments

- The FBI is authorized to prepare general reports and assessments concerning terrorism or other criminal activities for purposes of strategic planning or in support of investigative activities.

Intelligence Analysis and Planning

Strategic Intelligence Analysis

- The FBI is authorized to develop overviews and analyses of threats to and vulnerabilities of the United States and its interests in areas related to the FBI's responsibilities, including domestic and international criminal threats and activities; domestic and international activities, circumstances, and developments affecting the national security; and matters relevant to the conduct of the United States' foreign affairs. The overviews and analyses prepared under this Subpart may encompass present, emergent, and potential threats and vulnerabilities, their contexts and causes, and identification and analysis of means of responding to them.

Reports and Assessment Generally

- The FBI is authorized to conduct research, analyze information, and prepare reports and assessments concerning matters relevant to authorized FBI activities, such as reports and assessments concerning types of criminals or criminal activities, organized crime groups, terrorism and other threats to the national security, foreign intelligence matters, or the scope and nature of criminal activity in particular geographic areas or sectors of the economy.



AGGCrim -vs- AGGDom

Other Authorizations

Visiting Public Places and Events

For the purpose of detecting or preventing terrorist activities, the FBI is authorized to visit any place and attend any event that is open to the public, on the same terms and conditions as members of the public generally. No information obtained from such visits shall be retained unless it relates to potential criminal or terrorist activity

Definitions

Publicly Available:

Information that has been published or broadcast for public consumption, is available on request to the public, is accessible on-line or otherwise to the public, is available to the public by subscription or purchase, is made available at a meeting open to the public, is obtained by visiting any place or attending any event that is open to the public, or is obtained by other observation that is not subject to [electronic surveillance or search and seizure requirements]

Authorized at Assessment-level and above.



AGGCrim -vs- AGGDom

Dissemination and Maintenance of Information

[Permissive sharing]

- To US Attorney's, Criminal Division, and other components of the DOJ
- To another Federal agency or to a State or local criminal justice agency when the information:
 - Falls within the investigative or protective jurisdiction or litigative responsibility of the agency
 - May assist in preventing a crime or the use of violence or any other conduct dangerous to human life

Retention and Sharing of Information

Permissive sharing

- Within the FBI and other DOJ components
- To other federal, state, local, or tribal agencies if related to their responsibilities
- To congressional committees if authorized by DOJ OLA
- If dissemination of the information is otherwise permitted by the Privacy Act
- To foreign agencies if three conditions met:
 - Info is related to their responsibilities;
 - Dissemination consistent with US interests; and
 - FBI has considered effect dissemination may reasonably be expected to have on any identifiable US person;
- If information is publicly available, does not identify US person, or is disseminated with the consent of the person to whom it concerns
- If dissemination is necessary to protect the safety or security of persons or property, to protect against or prevent a crime or threat to national security, or to obtain information for the conduct of an authorized FBI investigation



AGGCrim -vs- AGGDom

Dissemination and Maintenance of Information

[Required sharing]

- To another Federal agency as required by EO 10450
- As required by statute, interagency agreement, or Presidential Directive

Retention and Sharing of Information

Required sharing

- FBI shall share and disseminate information as required by all statutes, treaties, Executive orders, Presidential directives, National Security and Homeland Security Council directives, policies, and AG-approved policies and MOUs/MOAs



AGGCrim -vs- AGGDom

Investigative Techniques

Consensual electronic monitoring must be authorized pursuant to Department (DOJ) policy

Otherwise Illegal Activity

- Not specifically addressed

Authorized Methods

Consensual monitoring" of communications, including consensual computer monitoring

- Prosecutor clearance no longer required in criminal cases;
- 2002 AG Consensual Monitoring Guidelines no longer apply to FBI
- FBI legal review by CDC or OGC required in all cases now

Otherwise Illegal Activity

- See AGG on FBI Undercover Operations and Use of CHSs—AGG-DOM does NOT modify Criminal UCOs and CHSs



AGGCrim -vs- AGGDom

1976 AGG on Reporting on Civil Disorders and Demonstrations Involving a Federal Interest

- Cross-referenced in TEI

1976 AGG on Reporting on Civil Disorders and Demonstrations Involving a Federal Interest

- REPEALED
- Additional authorities to assist the President concerning the deployment of troops to deal with civil disorders or to facilitate demonstrations and related health and safety measures do not limit the FBI's authority to investigate federal crimes or threats to national security that occur in the context of or in connection with civil disorders or demonstrations.
- Special Events Management Mission expressly authorized