

DIOG TRAINING

Albany Legal Unit
July/August 2009

Administrative Matters

- Please silence all cell phones/blackberries
 - Please use blackberries only for emergency calls/e-mails
 - This 16.5 hours of DIOG training is mandatory and you will be certifying that you have received the training
 - Frequent breaks will be given.
 - If you do need to leave for a bathroom break, please return ASAP.
 - If you must leave for an extended period of time, you will be required to retake that 4 hour session (i.e. – AM or PM)
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~~ATTENTION~~ ...DIOG TEST INFO....



- After completion of your DIOG training you will be required to take an on-line DIOG test
- 80% is the passing grade
- If your score is between 70% - 80% you will be allowed to retake the test one time
- If your score is below 70% you will be required to take remedial DIOG training before retesting

Scope

- Applies to all investigative and intelligence activities conducted by the FBI within the U.S. and its territories or outside the territories of all countries.
- When any of the same activities are conducted in foreign countries, the AG Guidelines for extraterritorial FBI operations apply.

Purpose

The primary purpose of the AGG-Dom and the DIOG is to standardize policy so that criminal, national security and foreign intelligence investigative activities are accomplished in a legal and consistent manner.

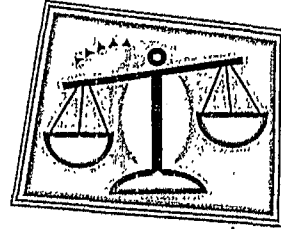
DIOG: Table of Contents

1. Scope and Purpose	10. Sensitive Investigative Matter
2. General Authorities and Principles	11. Investigative Methods
3. Core Values, Roles and Responsibilities	12. Assistance to Other Agencies
4. Privacy and Civil Liberties, and Least Intrusive Methods	13. Extraterritorial Provisions
5. Assessments	14. Retention and Sharing of Information
6. Preliminary Investigations	15. Intelligence Analysis and Planning
7. Full Investigations	16. Undisclosed Participation
8. Enterprise Investigations	17. Otherwise Illegal Activity
9. Foreign Intelligence	Appendices

Four General Authorities

The AGG-Dom recognizes four broad, general FBI authorities.
The FBI is authorized to:

- Conduct investigations to detect, obtain information about, and prevent and protect against federal crimes and threats to the national security and to collect foreign intelligence.
- Provide investigative assistance to other federal agencies, state, tribal or local agencies, and foreign agencies.
- Conduct intelligence analysis and planning.
- Retain and share information.



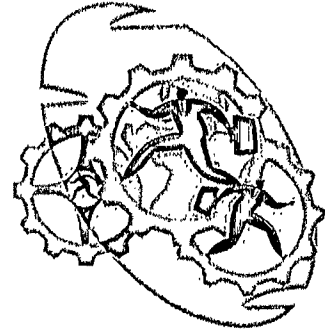
FBI Lead Investigative Authorities

- Investigating all crimes for which DOJ has primary or concurrent jurisdiction.
- All investigations involving terrorist activities or acts in preparation of terrorist activities within the statutory jurisdiction of the United States.
- Counterintelligence and espionage investigations.
- Foreign intelligence collection in the United States.
- Federal crimes of terrorism under 18 U.S.C. §2332b(f).

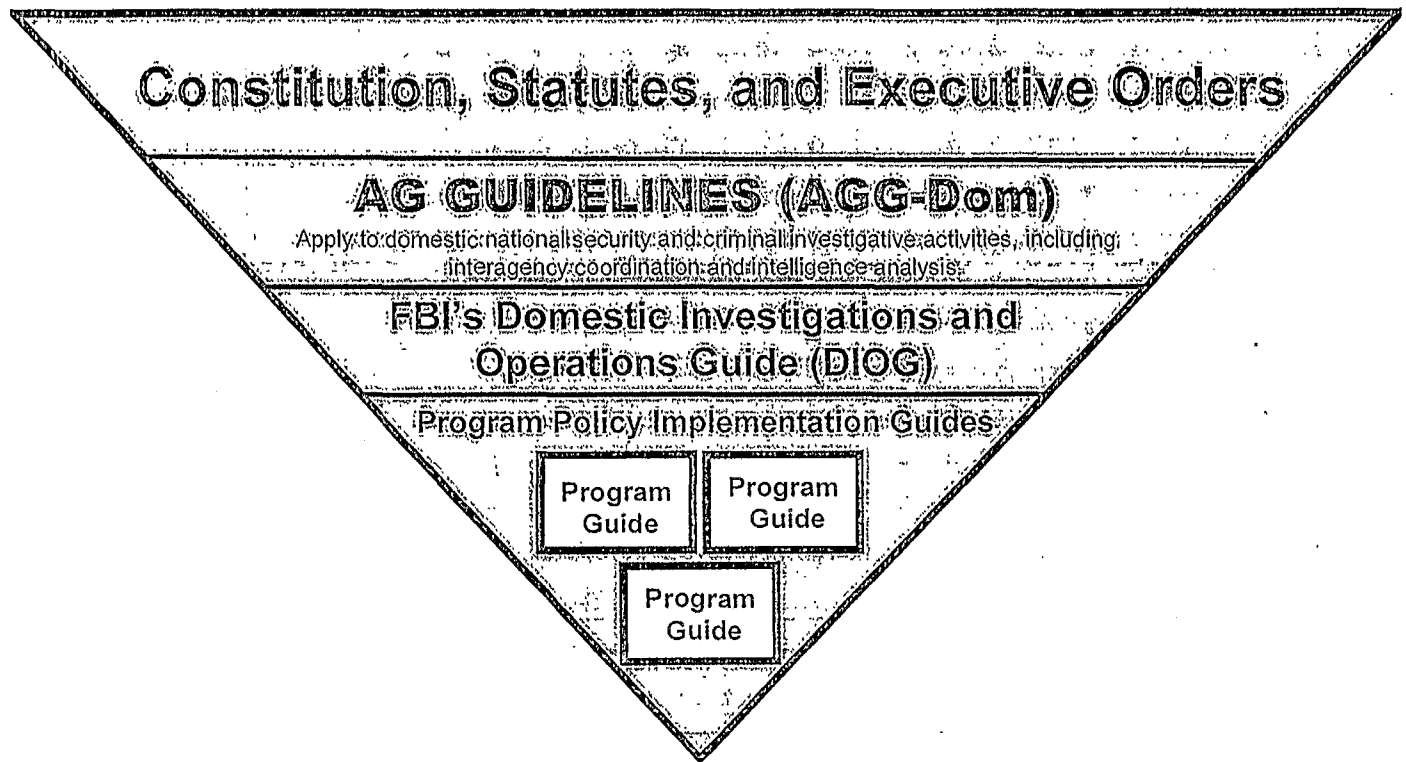
To Whom Does the DIOG Apply?

➤ FBI Employees

- Special Agents
- Task Force Officers
- Professional Support Staff
- Intelligence Analysts
- Detailees
- FBI Contractors
- Confidential Human Sources (CHS)



Policy Environment for Domestic Operations



Departures from the DIOG

- In Advance - Departures from the DIOG must be approved by the appropriate Assistant Director, and the General Counsel. The AD and the GC may each designate a Deputy to perform these approvals.
- Emergency - There is an Emergency Exception for Departure from DIOG, associated with immediate or grave threats to persons or property.

DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

- Responsibility to protect the American public, not only from crime and terrorism, but also from incursions into their constitutional rights; accordingly, all investigative activities must fully adhere to the Constitution and the principles of civil liberty and privacy.
- Provisions of the AGG-Dom, other AG guidelines, and oversight from DOJ components, are designed to ensure FBI's activities are lawful, appropriate, and ethical, as well as effective in protecting civil liberties and privacy.
- DOJ and FBI's Inspection Division, Office of Integrity and Compliance, the OGC, other Bureau components, and **you** share responsibility for ensuring the FBI meets these goals

DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

- No investigation or assessment can be commenced based solely on race, ethnicity, national origin, religion of the subject or the exercise of 1st Amendment rights.
- Corollary to this AGG requirement is the Privacy Act, which states that each agency that maintains a system of records shall “maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or **unless pertinent to and within the scope of an authorized law enforcement activity.** 5 U.S.C. 552a(e)(7).

DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

- The test is whether the collection of information is relevant to a law enforcement activity.
- Consider the following cases:
 - Patterson v. FBI, 893 F.2d 595 (3d Cir. 1990).
 - Bassiouni v. FBI, 436 F.3d 712 (7th Cir. 2006).

DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

- The AGG say that any activity undertaken pursuant to the Guidelines is an authorized law enforcement activity for purposes of the Privacy Act.
- Is this enough?

Start thinking.....

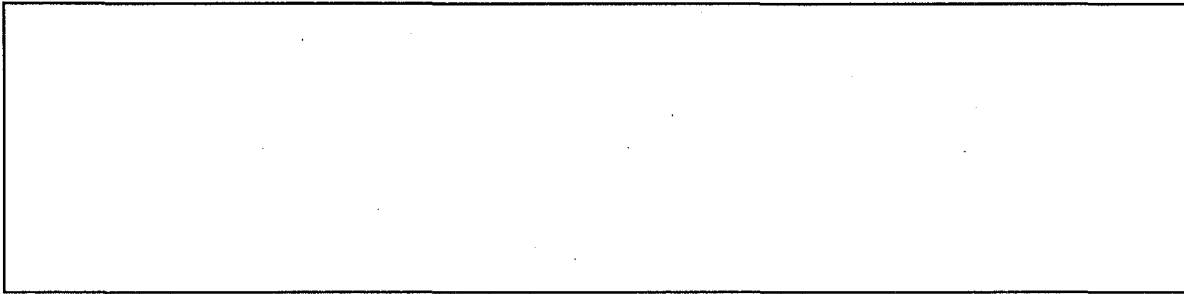


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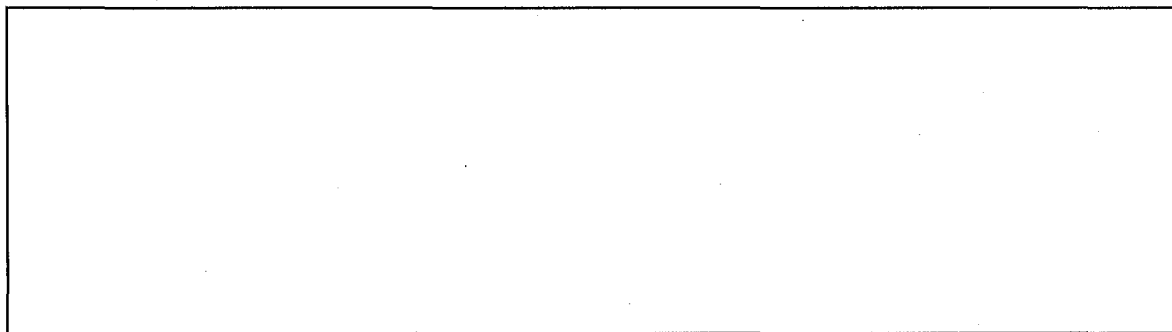
➤ What can you do with this information?



Continued...



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DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

FIRST AMENDMENT RIGHTS:

Individuals or groups who communicate with each other or with members of the public in any form in pursuit of social or political causes—such as opposing war or foreign policy, protesting government actions, promoting certain religious beliefs, championing particular local, national, or international causes, or a change in government through non-criminal means, and actively recruit others to join their causes—have a fundamental constitutional right to do so. An assessment may not be initiated based solely on the exercise of these First Amendment rights. If, however, a group exercising its First Amendment rights also threatens or advocates violence or destruction of property, an assessment would be appropriate

DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

FIRST AMENDMENT RIGHTS (cont.):

- No investigative activity, including assessments, may be taken solely on the basis of activities that are protected by the First Amendment or on the race, ethnicity, national origin or religion of the subject.

- If an assessment or predicated investigation touches on or is partially motivated by First Amendment activities, race, ethnicity, national origin or religion, it is particularly important to identify and document the basis for the assessment with clarity

DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

All activities must be consistent with the Attorney General's 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies (forbids the use of racial profiling and requires activities involving the investigation or prevention of threats to the national security to comply with the Constitution and laws of the United States)

The DIOG stresses several points in each section:

- No investigation or assessment can be commenced based solely on race, ethnicity, national origin, religion, or exercise of First Amendment rights
- The FBI must use the least intrusive method that is feasible under the circumstances
- In connection with Foreign Intelligence collection, agents must operate openly and consensually with U.S. Persons, to the extent practicable
- All investigative activities must have an "authorized purpose"

DIOG Section 4:

Use of Race or Ethnicity

DIOG Guidance on use of Race or Ethnicity

As to individuals:

1. Permits the consideration of ethnic and racial identity information based on specific reporting;
2. The race or ethnicity of suspected members, associates, or supporters of an ethnic-based gang or criminal enterprise may be collected when gathering information about or investigating the organization; or
3. Ethnicity may be considered in evaluating whether a subject is - or is not - a possible associate of a criminal or terrorist group that is known to be comprised of members of the same ethnic grouping - as long as it is not the dominant factor for focusing on a particular person

DIOG Section 4:

Use of Race or Ethnicity

DIOG Guidance on use of Race or Ethnicity

As to a COMMUNITY:

1. Collecting and analyzing demographics – if these locations will reasonably aid the analysis of potential threats and vulnerabilities, and, overall, assist domain awareness
2. Geo-Mapping ethnic/racial demographics – if properly collected
3. General ethnic/racial behavior – cannot be collected, unless it bears a rational relationship to a valid investigative or analytical need
4. Specific and relevant ethnic behavior
5. Exploitive ethnic behavior – by criminal or terrorist groups

Least Intrusive Methods

DIOG Sec. 4.4

The AGG-DOM and the DIOG require that the “least intrusive” means or method be considered and, if operationally sound and effective, used to obtain intelligence or evidence in lieu of a more intrusive method

DIOG Section 4: Privacy and Civil Liberties,
and Least Intrusive Methods

By emphasizing the use of less
intrusive means, employees will
be able to balance:

Our need for evidence/intelligence

vs.

*Mitigating potential negative impact on the
privacy and civil liberties of people/public*

DIOG Section 4:
Least Intrusive Investigative Method
Factors to Determine “Intrusiveness”:

1. Nature of the information sought
 2. Scope of the information sought
 3. Scope of the use of the investigative method
 4. Source of the information sought
 5. Risk of public exposure
-

DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

Primary factor in determining “intrusiveness”:

The degree of procedural protection that the law and the AGG-DOM provide for the use of the particular method.

- Examples of “more intrusive” methods: Search Warrants, wiretaps, UCOs
- Examples of “less intrusive” methods: checks of government databases, state or local criminal record checks, commercial databases, interviews

DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

Items to consider when determining the relative intrusiveness of an investigative method:

- Is method permitted prior to the initiation of an assessment?
- Is the method relevant to the assessment or investigation?
- Will the information collected or obtained likely further the investigative objective?
- What alternatives exist for gathering the same information?
- Are those alternatives relatively less intrusive?
- What time span is involved in using the investigative method (days, weeks, months)?
- What is the confidence level associated with the information gathered using the investigative method?
- Will the method resolve a pending investigative issue quickly?