



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

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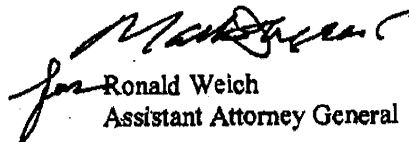
The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Enclosed please find responses to questions for the record arising from the appearance of FBI Director Robert Mueller, at a hearing before the Committee on June 8, 2011, entitled "The President's Request to Extend the Service of Director Robert Mueller of the FBI Until 2013."

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

Sincerely,


for Ronald Weich
Assistant Attorney General

Enclosure

cc: The Honorable Charles Grassley
Ranking Minority Member

**Responses of the Federal Bureau of Investigation
to Questions for the Record
Arising from the June 8, 2011, Hearing Before the
Senate Committee on the Judiciary
Regarding The President's Request to Extend the Service of
Director Robert Mueller of the FBI Until 2013**

Questions Posed by Senator Franken

1. On April 29th, the FBI reported it had issued over 24,000 national security letters requesting information on over 14,000 U.S. persons. This is more than double the number of people from the previous year, and the FBI's requests for business records is more than four times the number of requests filed in 2009. How can you explain these increases, and how can we trust that they're appropriate?

Response:

The chart below reflects three years of data regarding National Security Letters (NSLs).

Year	# of NSL Requests	# of Different USPERs
2008	24,744	7,225
2009	14,788	6,114
2010	24,287	14,212

As reflected in the chart, although the aggregate numbers of NSLs increased from 2009 to 2010, 2009 may be an anomalous year.¹

The FBI has robust policies and procedures in place to ensure that NSL usage is lawful and appropriate. An automated workflow tool deployed in 2008 requires the drafter of an NSL to enter information establishing that there is an appropriately opened investigation and that the information sought by the NSL is relevant to that investigation. The workflow tool requires the NSL and the justification for the NSL to be reviewed and approved by supervisory FBI employees, including an FBI attorney, before the NSL can be issued. The final approval by a high-ranking FBI official includes the procedural protections contained in the NSL statutes, all of which require an FBI certification of

¹ Data in years before 2008 were gathered in a different way and are not as reliable as the data beginning in 2008. Accordingly, comparing prior data to determine whether 2009 was anomalous or simply consistent with year-to-year variation is not possible.

relevance to the investigation before any record may be requested through an NSL.

The FBI and the Department of Justice (DOJ) National Security Division (NSD) regularly review the use of NSLs, further insuring this tool is used appropriately and that NSLs are issued in strict compliance with the statutory grants of authority. While not at zero, the instances of noncompliance associated with NSLs have been exceedingly low since the deployment of the automated workflow tool in 2008. This dual pronged approach – implementing clear policies and procedures and after-the-fact auditing – works to ensure that NSL usage is appropriate.

The use of the business records provision of the Foreign Intelligence Surveillance Act (FISA) has increased steadily since the FBI was given expanded authority in 2001 to obtain records during national security investigations. As with NSLs, the number of business record orders obtained in any given year is largely a function of the needs of national security investigations being conducted during that year. The FBI also believes the increasing use of this tool is a function of increased employee knowledge of how to use the tool and their comfort level in obtaining such orders.

In addition, over the last two years, the FBI has increasingly had to rely on business records orders to obtain electronic communications transactions records that historically were obtained with NSLs. Beginning in late 2009, certain electronic communications service providers no longer honored NSLs to obtain electronic communication transaction records because of an ambiguity in 18 U.S.C. § 2709 and, as a result, the FBI has had to use the business records provision to obtain these records. As an example, over the first 3 months of 2011, more than 80 percent of all business record requests were for electronic communications transactional records, which would previously have been obtained with National Security Letters. This change accounts for a significant increase in the volume of business records requests.

In all cases, a number of controls operate to insure that the business records provision is being used appropriately. In addition to the review of every request by the FBI's Office of the General Counsel (OGC), all of these requests are also reviewed by an attorney from DOJ's NSD, signed by a high ranking official in the FBI (generally a Deputy General Counsel), and approved by a judge of the Foreign Intelligence Surveillance Court.

2. One source of confusion and frustration surrounding the FBI's use of surveillance authorities and other tools is that the American public does not know and has never seen the legal interpretations that the executive branch relies on when interpreting the scope

and breadth of PATRIOT Act powers. Would you support an effort to disclose the executive branch's legal interpretation of the PATRIOT Act?

Response:

The FBI supports making available to the public as much information regarding the use of national security tools as is possible without disclosing sensitive sources and methods and properly classified information.

NOT RESPONSIVE