

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION and)	
AMERICAN CIVIL LIBERTIES UNION)	
FOUNDATION,)	
)	
Plaintiffs,)	
)	
v.)	No. 13 Civ. 9198 (AT)
)	
NATIONAL SECURITY AGENCY,)	
CENTRAL INTELLIGENCE AGENCY,)	
DEPARTMENT OF DEFENSE,)	
DEPARTMENT OF JUSTICE, and)	
DEPARTMENT OF STATE,)	
)	
Defendants.)	

EXHIBIT A

LEGAL DEPARTMENT



May 13, 2013

BY USPS MAIL

Federal Bureau of Investigation
Attn: FOI/PA Request
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843

RE: FREEDOM OF INFORMATION ACT REQUEST

To Whom It May Concern:

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU") submit this request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for access to documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) ("EO 12,333"). Specifically, we request the following records¹:

1. Any records construing or interpreting the authority of the Federal Bureau of Investigation ("FBI") under Executive Order 12,333 or any regulations issued thereunder;
2. Any records describing the minimization procedures² used by the FBI with regard to both intelligence collection and intelligence interception conducted pursuant to the FBI's authority under EO 12,333 or any regulations issued thereunder; and
3. Any records describing the standards that must be satisfied for the "collection," "acquisition," or "interception" of communications, as the FBI defines these terms, pursuant to the FBI's authority under EO 12,333 or any regulations issued thereunder.

1 Records include but are not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, legal opinions, policy statements, and any other materials.

2 Minimization procedures include but are not limited to rules, policies, or procedures addressing the collection, interception, handling, use, retention, and destruction of information relating to U.S. persons that is acquired in the course of intelligence activities.

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SUSAN N. BERMAN PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

Request for a Fee Limitation and Public Interest Fee Waiver

The ACLU requests a waiver of search and review fees because the requested records are not sought for commercial use and because the ACLU is a “representative of the news media.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). Dissemination of information about actual or alleged government activity is a critical and substantial component of the ACLU’s mission and work. The ACLU disseminates this information to educate the public and promote the protection of civil liberties. Its regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, <http://www.aclu.org/accountability>; and a video series.

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ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

The ACLU therefore meets the statutory definition of a “representative of the news media” as an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. Am. Civil Liberties Union v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”). Indeed, the ACLU recently was held to be a “representative of the news media.” *Serv. Women’s Action Network v. Dep’t of Defense*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012); *see also Am. Civil Liberties Union of Wash. v. Dep’t of Justice*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a “representative of the news media”), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

The ACLU also requests a waiver of all search, review, or duplication fees on the ground that disclosure of the requested information is in the public interest because: (1) it “is likely to contribute significantly to public understanding of the operations or activities of the government,” and (2) it “is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). This request clearly satisfies these criteria.

First, the requested material concerns “the operations or activities” of the FBI. E.O. 12,333 is “intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers.” EO 12,333 § 2.2. It authorizes the intelligence community, including the FBI, to collect intelligence, and it sets forth certain limitations on intelligence-gathering activities relevant to civil liberties. In its brief in a recent case

before the Supreme Court of the United States, the Government emphasized its authority to conduct surveillance of Americans' foreign contacts abroad under Executive Order No. 12,333, without conforming to various statutory restrictions. Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949, at *45 (U.S. 2012). How the Government actually does this, and whether it appropriately accommodates the constitutional rights of American citizens and residents whose communications are intercepted in the course of that surveillance, are matters of great significance.

Moreover, the requested materials will "contribute significantly to the public understanding" of the FBI's operations or activities. 5 U.S.C. § 552(a)(4)(A)(iii). Though the subject of foreign-intelligence collection is a matter of great public interest and concern, little information on how the American intelligence community construes the authority conferred by EO 12,333 and its implementing regulations is currently publicly available.

For example, in the *Clapper* brief described above, the government makes no argument beyond a handful of one-sentence assertions of its authority under EO 12,333. See Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949 at *4, *33, *41, *45. Likewise, the publicly available administrative agency materials typically do little more than restate EO 12,333's limits on the intelligence community in slightly different ways or provide predictable definitions for terms left undefined in the executive order. See, e.g., Dep't of Def., DOD 5240 1-R, *Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons* § C2.3.12 (Dec. 1982); Nat'l Sec. Agency, *United States Signals Intelligence Directive* 18 (July 1993); Army Regulation 381-10, *U.S. Army Intelligence Procedures* § 2-2(l) (2007). Judicial treatments of EO 12,333 contribute equally little to the public understanding of the limits of intelligence-gathering powers under EO 12,333. See, e.g., *United States v. Marzook*, 435 F. Supp. 2d 778 (N.D. Ill. 2006); *United States v. Poindexter*, 727 F. Supp. 1470 (D.D.C. 1989); *United Presbyterian Church in the U.S.A. v. Reagan*, 738 F.2d 1375 (D.C. Cir. 1984).

For these reasons, we respectfully request that all fees related to the search, review, and duplication of the requested records be waived. If the search and review fees will not be waived, we ask that you contact us at the email address listed below should the estimated fees resulting from this request exceed \$100.

We request that responsive electronic records be provided electronically in their native file format, if possible. See 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and in separate, Bates-stamped files.

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OFFICERS AND DIRECTORS
SUSAN N. HERMAN, PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

We also request that you provide an estimated date on which you will finish processing this request. *See* 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

Sincerely,



Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union

Phone: (212) 549-2517
Email: aabdo@aclu.org

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OFFICERS AND DIRECTORS
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ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

U.S. Department of Justice



Federal Bureau of Investigation
Washington, D.C. 20535

June 7, 2013

Mr. Alexander Abdo
American Civil Liberties Union Foundation
National Office
18th Floor
125 Broad Street
New York, NY 10004

FOIPA Request No.: 1216886- 000
Subject: Executive Order 12333 (FBI
Authority)

Dear Mr. Abdo:

This acknowledges receipt of your Freedom of Information/Privacy Acts (FOIPA) request to the FBI.

- Your request has been received at FBI Headquarters for processing.
- Your request has been received at the [_____ Resident Agency / _____ Field Office] and forwarded to FBI Headquarters for processing.
- We are searching the indices to our Central Records System for the information responsive to this request. We will inform you of the results in future correspondence.
- Your request for a fee waiver is being considered and you will be advised of the decision at a later date.
- Please check for the status of your FOIPA request at www.fbi.gov/foia.

The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hardy", is written over the typed name.

David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DEPARTMENT OF DEFENSE,)	
DEPARTMENT OF JUSTICE, and)	
DEPARTMENT OF STATE,)	
)	
Defendants.)	

EXHIBIT C

NATIONAL SECURITY PROJECT



November 8, 2013

BY UPS

RECEIVED

NOV 12 2013

Office of Information Policy
U.S. Department of Justice, Suite 11050 Office of Information Policy
1425 New York Avenue, N.W.
Washington, D.C. 20530

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RE: FREEDOM OF INFORMATION ACT APPEAL
FEDERAL BUREAU OF INVESTIGATION

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

Dear Sir or Madam,

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU") write to appeal from the constructive denial of their Freedom of Information Act request, submitted on May 13, 2013, for documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) ("EO 12,333"). A copy of the request is attached here for reference. The ACLU received an acknowledgement of receipt dated June 7, 2013 in a letter signed by David M. Hardy. The request was assigned the following identification number: 1216886-000.

Under the Freedom of Information Act, determinations about whether an agency will produce documents must be made within 20 business days. *See* 5 U.S.C. § 552(a)(6)(A)(i); 28 C.F.R. § 16.6(b). Where an agency cannot meet the statutory time limit due to unusual circumstances, the agency may extend the time limit by ten working days with written notice to the requester. 5 U.S.C. § 552(a)(6)(B). An agency denying a request in any respect must send the requester a signed letter including, among other things, a brief statement of the reasons for denial. 5 U.S.C. § 552(a)(6)(A)(i).

Because the twenty-day statutory time has elapsed without a substantive response, the Federal Bureau of Investigation has constructively failed to meet its legal obligation to disclose the information requested. By this appeal, we ask you to direct the timely disclosure of all records responsive to our request.



We thank you for your consideration of this appeal. Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), we expect a response regarding this appeal within twenty days. If you have any questions or concerns, please do not hesitate to contact me at the email address or telephone number indicated below.

Sincerely,



Alexander Abdo

Staff Attorney

National Security Project

American Civil Liberties Union

Phone: (212) 549-2517

Email: aabdo@aclu.org

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

LEGAL DEPARTMENT



May 13, 2013

BY USPS MAIL

Federal Bureau of Investigation
Attn: FOI/PA Request
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843

RE: FREEDOM OF INFORMATION ACT REQUEST

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3. Any records describing the standards that must be satisfied for the "collection," "acquisition," or "interception" of communications, as the FBI defines these terms, pursuant to the FBI's authority under EO 12,333 or any regulations issued thereunder.

¹ Records include but are not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, legal opinions, policy statements, and any other materials.

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The ACLU therefore meets the statutory definition of a “representative of the news media” as an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. Am. Civil Liberties Union v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”). Indeed, the ACLU recently was held to be a “representative of the news media.” *Serv. Women’s Action Network v. Dep’t of Defense*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012); *see also Am. Civil Liberties Union of Wash. v. Dep’t of Justice*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a “representative of the news media”), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

The ACLU also requests a waiver of all search, review, or duplication fees on the ground that disclosure of the requested information is in the public interest because: (1) it “is likely to contribute significantly to public understanding of the operations or activities of the government,” and (2) it “is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). This request clearly satisfies these criteria.

First, the requested material concerns “the operations or activities” of the FBI. E.O. 12,333 is “intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers.” EO 12,333 § 2.2. It authorizes the intelligence community, including the FBI, to collect intelligence, and it sets forth certain limitations on intelligence-gathering activities relevant to civil liberties. In its brief in a recent case

before the Supreme Court of the United States, the Government emphasized its authority to conduct surveillance of Americans' foreign contacts abroad under Executive Order No. 12,333, without conforming to various statutory restrictions. Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949, at *45 (U.S. 2012). How the Government actually does this, and whether it appropriately accommodates the constitutional rights of American citizens and residents whose communications are intercepted in the course of that surveillance, are matters of great significance.

Moreover, the requested materials will "contribute significantly to the public understanding" of the FBI's operations or activities. 5 U.S.C. § 552(a)(4)(A)(iii). Though the subject of foreign-intelligence collection is a matter of great public interest and concern, little information on how the American intelligence community construes the authority conferred by EO 12,333 and its implementing regulations is currently publicly available.

For example, in the *Clapper* brief described above, the government makes no argument beyond a handful of one-sentence assertions of its authority under EO 12,333. *See* Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949 at *4, *33, *41, *45. Likewise, the publicly available administrative agency materials typically do little more than restate EO 12,333's limits on the intelligence community in slightly different ways or provide predictable definitions for terms left undefined in the executive order. *See, e.g.*, Dep't of Def., DOD 5240 1-R, *Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons* § C2.3.12 (Dec. 1982); Nat'l Sec. Agency, *United States Signals Intelligence Directive* 18 (July 1993); Army Regulation 381-10, *U.S. Army Intelligence Procedures* § 2-2(1) (2007). Judicial treatments of EO 12,333 contribute equally little to the public understanding of the limits of intelligence-gathering powers under EO 12,333. *See, e.g.*, *United States v. Marzook*, 435 F. Supp. 2d 778 (N.D. Ill. 2006); *United States v. Poindexter*, 727 F. Supp. 1470 (D.D.C. 1989); *United Presbyterian Church in the U.S.A. v. Reagan*, 738 F.2d 1375 (D.C. Cir. 1984).

For these reasons, we respectfully request that all fees related to the search, review, and duplication of the requested records be waived. If the search and review fees will not be waived, we ask that you contact us at the email address listed below should the estimated fees resulting from this request exceed \$100.

We request that responsive electronic records be provided electronically in their native file format, if possible. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and in separate, Bates-stamped files.

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ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

We also request that you provide an estimated date on which you will finish processing this request. *See* 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

Sincerely,



Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union

Phone: (212) 549-2517
Email: aabdo@aclu.org

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ANTHONY D. ROMERO
EXECUTIVE DIRECTOR



U.S. Department of Justice

Office of Information Policy

Telephone: (202) 514-3642

Washington, D.C. 20530

November 15, 2013

Alexander Abdo, Esq.
American Civil Liberties Union Foundation
18th Floor
125 Broad Street
New York, NY 10004

Re: Request No. 1216886

Dear Mr. Abdo:

This is to advise you that your administrative appeal from the action of the Federal Bureau of Investigation was received by this Office on November 12, 2013.

The Office of Information Policy has the responsibility of adjudicating such appeals. In an attempt to afford each appellant equal and impartial treatment, we have adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number **AP-2014-00477**. Please mention this number in any future correspondence to this Office regarding this matter. Please note that if you provide an e-mail address or another electronic means of communication with your appeal, this Office may respond to your appeal electronically even if you submitted your appeal to this Office via regular U.S. mail.

We will notify you of the decision on your appeal as soon as we can. If you have any questions about the status of your appeal, you may contact me at the number above. If you have submitted your appeal through this Office's online electronic appeal portal, you may also obtain an update on the status of your appeal by logging into your portal account.

Sincerely,

A handwritten signature in black ink, appearing to read "Priscilla Jones", written over a horizontal line.

Priscilla Jones
Supervisory Administrative Specialist



U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

December 30, 2013

Alexander Abdo, Esq.
ACLU
18th Floor
125 Broad Street
New York, NY 10004
aabdo@aclu.org

Re: Appeal No. AP-2014-00477
Request No. 1216886
ADW:MTC

VIA: E-mail

Dear Mr. Abdo:

You attempted to appeal from the action of the Federal Bureau of Investigation on your request for access to records concerning Executive Order 12,333.

Department of Justice regulations provide for an administrative appeal to the Office of Information Policy only after there has been an adverse determination by a component. See 28 C.F.R. § 16.9(a) (2013). As no adverse determination has yet been made by the FBI, there is no action for this Office to consider on appeal.

As you may know, the Freedom of Information Act authorizes requesters to file a lawsuit when an agency takes longer than the statutory time period to respond. See 5 U.S.C. § 552(a)(6)(C)(i). However, I can assure you that this Office has contacted the FBI and has been advised that your request is currently under consideration. If you are dissatisfied with the FBI's final response, you may appeal again to this Office.

This Office has forwarded a copy of your letter to the FBI. I suggest that you contact the FBI's Requester Service Center at 540-868-1535 for further updates regarding the status of your request.

Sincerely,

Sean R. O'Neill
Chief
Administrative Appeals Staff

By:

Anne D. Work
Senior Counsel
Administrative Appeals Staff



Federal Bureau of Investigation
Washington, D. C. 20535

September 22, 2014

MR. ALEXANDER ABDO
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
NATIONAL OFFICE
18TH FLOOR
125 BROAD STREET
NEW YORK, NY 10004-2400

FOIPA Request No.: 1216886-000
Subject: EXECUTIVE ORDER 12333 (FBI AUTHORITY)

Dear Mr. Abdo:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Deletions have been made to protect information which is exempt from disclosure, with the appropriate exemptions noted on the page next to the excision. In addition, a deleted page information sheet was inserted in the file to indicate where pages were withheld entirely. The exemptions used to withhold information are marked below and explained on the enclosed Explanation of Exemptions:

Section 552		Section 552a
<input checked="" type="checkbox"/> (b)(1)	<input type="checkbox"/> (b)(7)(A)	<input type="checkbox"/> (d)(5)
<input type="checkbox"/> (b)(2)	<input type="checkbox"/> (b)(7)(B)	<input type="checkbox"/> (j)(2)
<input checked="" type="checkbox"/> (b)(3)	<input checked="" type="checkbox"/> (b)(7)(C)	<input type="checkbox"/> (k)(1)
<u>50 U.S.C. § 3024(i)(1)</u>	<input type="checkbox"/> (b)(7)(D)	<input type="checkbox"/> (k)(2)
_____	<input checked="" type="checkbox"/> (b)(7)(E)	<input type="checkbox"/> (k)(3)
_____	<input type="checkbox"/> (b)(7)(F)	<input type="checkbox"/> (k)(4)
<input type="checkbox"/> (b)(4)	<input type="checkbox"/> (b)(8)	<input type="checkbox"/> (k)(5)
<input checked="" type="checkbox"/> (b)(5)	<input type="checkbox"/> (b)(9)	<input type="checkbox"/> (k)(6)
<input checked="" type="checkbox"/> (b)(6)		<input type="checkbox"/> (k)(7)

15 pages were reviewed and 11 pages are being released.

Documents were located which originated with, or contained information concerning, other Government agencies[OGAs].

This information has been referred to the OGA(s) for review and direct response to you.

We are consulting with OGAs. While the FBI has received some responses and included them within the enclosed documents, the FBI will correspond with you regarding this additional OGA information when these consultations are finished.

☐ In accordance with standard FBI practice and pursuant to FOIA exemption (b)(7)(E) and Privacy Act exemption (j)(2) [5 U.S.C. § 552/552a (b)(7)(E)/(j)(2)], this response neither confirms nor denies the existence of your subject's name on any watch lists.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. Enclosed for your information is a copy of the Explanation of Exemptions.

☑ You have the right to appeal any denials in this release. Appeals should be directed in writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's eFOIA portal at <http://www.justice.gov/oip/efoia-portal.html>. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

☐ The enclosed material is from the main investigative file(s) in which the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown when ident, references usually contain information similar to the information processed in the main file(s). Because of our significant backlog, we have given priority to processing only the main investigative file(s). If you want the references, you must submit a separate request for them in writing, and they will be reviewed at a later date, as time and resources permit.

☑ See additional information which follows.

Sincerely,



David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

Enclosure(s)

Please find attached the first interim release of information responsive to your FOIA request. In order to properly locate records responsive to your request, RIDS contacted the divisions within the FBI most likely to possess responsive records, and requested that they search their records. These divisions conducted broad searches for any FBI records pertaining to the FBI's investigative authorities stemming from Executive Order 12,333, and provided RIDS with a large amount of potentially responsive records. RIDS enlisted the help of the FBI's National Security Law Branch (NSLB) to determine which documents were truly responsive, pursuant to the parameters set forth in the Joint Stipulation dated May 9, 2014.

Once RIDS, with the help of NSLB, established the universe of responsive documents, it found that the overwhelming majority of records responsive to your request contained OGA equities. RIDS referred this information to the appropriate OGAs and is currently still consulting with OGAs concerning some of this information.

In a joint letter filed June 23, 2014, the FBI agreed to produce all information not requiring extensive review and/or consultation with OGAs by September 22, 2014. RIDS is providing all documents which did not require OGA review. Please note that RIDS has also included some records containing OGA equities since it has received responses to its referrals, and has completed its review of these documents at this time.

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.



Federal Bureau of Investigation
Washington, D.C. 20535

December 19, 2014

MR. ALEXANDER ABDO
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
NATIONAL OFFICE
18TH FLOOR
125 BROAD STREET
NEW YORK, NY 10004-2400

FOIPA Request No.: 1216886-000
Subject: EXECUTIVE ORDER 12333 (FBI AUTHORITY)

American Civil Liberties Union and American Civil Liberties Union
Foundation v. National Security Agency, et al.
Civil Action No.: 1:13-cv-09198

Dear Mr. Abdo:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Deletions have been made to protect information which is exempt from disclosure, with the appropriate exemptions noted on the page next to the excision. In addition, a deleted page information sheet was inserted in the file to indicate where pages were withheld entirely. The exemptions used to withhold information are marked below and explained on the enclosed Explanation of Exemptions:

Section 552		Section 552a	
<input checked="" type="checkbox"/> (b)(1)	<input checked="" type="checkbox"/> (b)(7)(A)	<input type="checkbox"/> (d)(5)	
<input type="checkbox"/> (b)(2)	<input type="checkbox"/> (b)(7)(B)	<input type="checkbox"/> (j)(2)	
<input checked="" type="checkbox"/> (b)(3)	<input checked="" type="checkbox"/> (b)(7)(C)	<input type="checkbox"/> (k)(1)	
<u>50 U.S.C. Section 30224 (i)(1)</u>	<input type="checkbox"/> (b)(7)(D)	<input type="checkbox"/> (k)(2)	
	<input checked="" type="checkbox"/> (b)(7)(E)	<input type="checkbox"/> (k)(3)	
	<input type="checkbox"/> (b)(7)(F)	<input type="checkbox"/> (k)(4)	
<input type="checkbox"/> (b)(4)	<input type="checkbox"/> (b)(8)	<input type="checkbox"/> (k)(5)	
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<input checked="" type="checkbox"/> (b)(6)		<input type="checkbox"/> (k)(7)	

50 pages were reviewed and 47 pages are being released.

Documents were located which originated with, or contained information concerning, other Government agencies [OGA].

This information has been referred to the OGA(s) for review and direct response to you.

We have consulted with OGAs. The FBI has included the responses with the enclosed documents.

☐ In accordance with standard FBI practice and pursuant to FOIA exemption (b)(7)(E) and Privacy Act exemption (j)(2) [5 U.S.C. § 552/552a (b)(7)(E)/(j)(2)], this response neither confirms nor denies the existence of your subject's name on any watch lists.

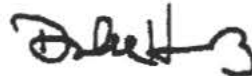
For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. Enclosed for your information is a copy of the Explanation of Exemptions.

☑ Although your request is in litigation, we are required by 5 U.S.C. § 552(a)(6)(A) to provide you the following information concerning your right to appeal. You may file an appeal by writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's eFOIA portal at <http://www.justice.gov/oip/efoia-portal.html>. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Request Number in any correspondence to us for proper identification of your request.

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☑ See additional information which follows.

Sincerely,



David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

Enclosures - 3

In response to your Freedom of Information Act (FOIA) request and subsequent civil action case pending in the U.S. District Court for the Southern District of New York, styled, *American Civil Liberties Union and American Civil Liberties Union Foundation v. National Security Agency, et al.*, Civil Action No. 1:13-cv-09198, enclosed is the second (and final) interim release. The pages released in part and in full have been consecutively numbered EO 12333-FBI-1 thru EO 12333-FBI-15 at the bottom of each page. Pages withheld in their entirety (e.g., removed per exemption and duplicates) were replaced by a Deleted Page Information Sheet ("DPIS"), which identifies the reason and/or the applicable FOIA exemptions relied upon to withhold the page in full, as well as, Bates numbers for the withheld material.

For efficiency and quick reference, we have also enclosed an additional copy of the records contained in the FBI's 1st Interim release to you dated September 22, 2014 which have been consecutively numbered EO 12333-FBI-16 thru EO 12333-FBI-65.

This material is being provided to you at no charge.

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

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U.S. Department of Justice



Federal Bureau of Investigation
Washington, D.C. 20535

January 14, 2015 (Revised)
December 19, 2014

MR. ALEXANDER ABDO
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
NATIONAL OFFICE
18TH FLOOR
125 BROAD STREET
NEW YORK, NY 10004-2400

FOIPA Request No.: 1216886-000
Subject: EXECUTIVE ORDER 12333 (FBI AUTHORITY)

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Sincerely,



David M. Hardy
Section Chief
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Dissemination Section
Records Management Division

Enclosures – 3

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For efficiency and quick reference, we have also enclosed an additional copy of the records contained in the FBI's 1st Interim release to you dated September 22, 2014 which have been consecutively numbered EO 12333-FBI-1 thru EO 12333-FBI-15 as follows:

1216886-0 – AD – Email	Email dated 12/11/2012 3:49 p.m. (1 page)	EO 12333-FBI-1 (1 page)
1216886-0 – Email #1	Email dated 12/07/2012 7:20 p.m. (2 pages)	EO 12333-FBI-2 and 3 (2 pages)
1216886-0 – Email #2	DPIS concerning <u>2 deleted pages</u> (1 page)	EO 12333-FBI-4 and 5 (2 pages)

1216886-0 – Email #3	DPIS concerning <u>2 deleted pages</u> (1 page)	EO 12333-FBI-6 and 7 (2 pages)
1216886-0 – Email #3 – Attachment	Memorandum dated 01/10/2013 (5 pages)	EO 12333-FBI-8 thru 12 (5 pages)
1216886-0 – DIOG	DIOG §9 [9.7, 9.8 and 9.9] (3 pages)	EO 12333-FBI-13 thru 15 (3 pages)

This material is being provided to you at no charge.

The password to remove the security setting from each of the documents is 12345.

EXPLANATION OF EXEMPTIONS

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§9

Domestic Investigations and Operations Guide

9.7 (U) STANDARDS FOR OPENING OR APPROVING THE USE OF AN AUTHORIZED INVESTIGATIVE METHOD IN A FULL POSITIVE FOREIGN INTELLIGENCE INVESTIGATION

(U//FOUO) Prior to opening or approving the use of an investigative method in a Full Investigation for the purpose of collecting positive foreign intelligence pursuant to a PFI Collection Requirement, an FBI employee or approving official must determine whether:

- A) (U//FOUO) The use of the particular investigative method is likely to further the authorized purpose of the Full Investigation;
- B) (U//FOUO) The investigative method selected is the least intrusive method, if reasonable based upon the circumstances of the investigation and, if taken relative to an USPER (USPER), the method involves open and consensual activities, to the extent practicable;
- C) (U//FOUO) Open and consensual activity would likely be successful (if it would, covert non-consensual contact with an USPER may not be approved); and
- D) (U//FOUO) The investigative method is an appropriate use of personnel and financial resources.

9.8 (U) AUTHORIZED INVESTIGATIVE METHODS IN A FULL POSITIVE FOREIGN INTELLIGENCE INVESTIGATION

(U//FOUO) Prior to opening or approving the use of an investigative method, an FBI employee and approving official must apply the standards as provided in DIOG Section 9.7. With the exceptions noted below, all lawful methods may be used during a Full Investigation to collect positive foreign intelligence pursuant to PFI Collection Requirements. If actions are to be taken with respect to an USPER, the method used must be open and consensual, to the extent practicable.

(U) See DIOG Section 18 for a complete description of the following methods that may be used in Full PFI Investigations. The methods are:

- A) (U) Public information. (See Section 18.5.1)
- B) (U) Records or information - FBI and DOJ. (See Section 18.5.2)
- C) (U) Records or information - Other federal, state, local, tribal, or foreign government agency. (See Section 18.5.3)
- D) (U) On-line services and resources. (See Section 18.5.4)
- E) (U) CHS use and recruitment. (See Section 18.5.5)
- F) (U) Interview or request information from the public or private entities. (See Section 18.5.6)
- G) (U) Information voluntarily provided by governmental or private entities. (See Section 18.5.7)
- H) (U) Physical Surveillance (not requiring a court order). (See Section 18.5.8)
- I) (U) Trash Covers (Searches that do not require a warrant or court order). (Section 18.6.12)
- J) (U) Consensual monitoring of communications, including electronic communications. (Section 18.6.1)

UNCLASSIFIED – FOR OFFICIAL USE ONLY
Domestic Investigations and Operations Guide

§9

(U//FOUO)

b7E

(U//FOUO) See the classified provisions in Appendix G for additional information.

- K) (U) Intercepting the communications of a computer trespasser. (Section 18.6.2)
- L) (U) Closed-circuit television/video surveillance, direction finders, and other monitoring devices. (Section 18.6.3)
- M)(U) Polygraph examinations. (Section 18.6.11)
- N) (U) Undercover Operations (Section 18.6.13)
- O) (U//FOUO) Pen registers and trap/trace devices for non-USPERs using FISA. (See Section 18.6.9)
- P) (U) Electronic surveillance using FISA or E.O. 12333. (See Section 18.7.3)
- Q) (U//FOUO) Searches – with a warrant or court order using FISA or E.O. 12333 § 2.5. The DIOG classified Appendix G provides additional information regarding certain searches. (AGG-Dom, Part V.A.12) (See Section 18.7.1)
- R) (U) FISA Title VII - Acquisition of positive foreign intelligence information. (See Section 18.7.3)
- S) (U//FOUO) FISA Order for business records (for records relating to a non-USPER only). (See Section 18.6.7)

9.9 (U) INVESTIGATIVE METHODS NOT AUTHORIZED DURING A FULL POSITIVE FOREIGN INTELLIGENCE INVESTIGATION

(U//FOUO) The following investigative methods are not permitted to be used for the purpose of collecting positive foreign intelligence pursuant to PFI Collection Requirements:

- A) (U//FOUO) National Security Letters (15 U.S.C. §§ 1681u, 1681v; 18 U.S.C. § 2709; 12 U.S.C. § 341[a][5][A]; 50 U.S.C. § 436). (Section 18.6.6)
- B) (U//FOUO) FISA Order for business records (for records relating to an USPER). (Section 18.6.7)
- C) (U//FOUO) Pen registers and trap/trace devices in conformity with FISA (on an USPER). (Section 18.6.9)
- D) (U//FOUO) Pen registers and trap/trace devices in conformity with chapter 206 of 18 U.S.C. §§ 3121-3127. (Section 18.6.9)
- E) (U//FOUO) Mail covers. (Section 18.6.10)
- F) (U//FOUO) Grand jury subpoenas. (Section 18.6.5)
- G) (U//FOUO) Administrative subpoenas. (Section 18.6.4)

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 Domestic Investigations and Operations Guide

§18

differences between Section 704 and traditional FISA authorities. First, the application is not required to identify the specific facilities, places, premises, or property at which the acquisition will be directed. Second, Section 704 allows for the targeting of “an officer or employee of a foreign power” even if the target is not knowingly engaging in clandestine intelligence gathering activities, sabotage, or international terrorism. Refer to the FISA Unit’s intranet website for further information. Section 704 also allows for emergency authorization. Unlike traditional FISA orders, however, surveillance authorized pursuant to this section must cease if the USPER enters the United States but may be re-started if the person is again reasonably believed to be outside the United States during the authorized period of surveillance. If there is a need to continue surveillance while the target is located inside the United States a separate court order must be obtained. The use of any information collected using FISA 704 authority must comply with the applicable minimization procedures.

(U//FOUO)

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18.7.3.3.6.4 (U) SECTION 705 - JOINT APPLICATIONS AND CONCURRENT
 AUTHORIZATIONS

(U//FOUO) Section 705(a) “joint applications” allow the FISC, upon request of the FBI, to approve a joint application targeting an USPER under both Sections 703 and 704 (authority to collect both when the facilities are located inside and outside the United States).

(U//FOUO) Section 705(b) provides that if an order has been obtained under Section 105 (electronic surveillance under Title I of FISA) or 304 (physical search under Title III of FISA), the Attorney General may authorize the targeting of the USPER target while such person is reasonably believed to be located outside the United States. The Attorney General has this authority under E.O. 12333 § 2.5. In other words, when the FISA Court authorizes surveillance of an USPER target, the Attorney General, under Section 705(b) and E.O. 12333 § 2.5, can simultaneously authorize surveillance to continue if the target travels outside the United States during the authorized period of the surveillance. According to Section 705(b), there is no need for a separate order pursuant to Section 703 or 704. During the FISA drafting process, an FBI employee should determine whether surveillance or physical search may occur for purpose of acquiring foreign intelligence while the person is reasonably believed to be outside the United States. If so, the FBI employee should consult with an OGC or DOJ-NSD attorney to ensure that appropriate language is added to the application.

(U//FOUO)

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CLASSIFIED BY NSICG J89J28T90
REASON: 1.4 (c)
DECLASSIFY ON: 07-21-2039
DATE: 07-21-2014

(Rev. 01-31-2003)

~~SECRET/NOFORN~~

FEDERAL BUREAU OF INVESTIGATION

ALL INFORMATION CONTAINED
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WHERE SHOWN OTHERWISE

Precedence: ROUTINE

Date: 03/31/2006

To: All Offices

Attn: ADICs, SACs, ASACs, CDCs
FBIHQ, Manuals Desk

From: Office of the General Counsel
National Security Law Branch

Contact: AGC [redacted] (for legal matters),
[redacted] or SSA [redacted] (for procedural
matters), [redacted]

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b7c

Approved By: Pistole John S
Bald Gary M
Caproni Valerie E
Thomas Julie F
[redacted]

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Drafted By: [redacted]

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Case ID #: (U) 66H-HQ1234599 (Pending)
(U) 66F-HQ-A1360914-N
(U) 66F-HQ-C1384970
(U) 319X-HQ-A1487720-OGC

(U) **Title:** ~~(S//NF)~~ POLICY AND PROCEDURE FOR REQUESTING
EXECUTIVE ORDER 12333 SECTION 2.5 AUTHORITY TO
CONDUCT ELECTRONIC SURVEILLANCE ON US PERSONS
TRAVELING OUTSIDE THE UNITED STATES

(U) **Synopsis:** ~~(S//NF)~~ Electronic communication (EC) sets out policy
and procedure for requesting Attorney General authority under E.O.
12333, Section 2.5 to collect intelligence on U.S. persons overseas.

~~(U)~~ **Derived From:** G-3
Declassify On: X1

(U) **Details:** ~~(S//NF)~~ [redacted]
[redacted]

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To: All Offices From: Office of the General Counsel
Re: (U) 66H-HQ1234599, 03/31/2006

[Redacted]

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(U) Policy

~~(S)~~ The Foreign Intelligence Surveillance Act (FISA) gives the U.S. government the authority to conduct physical search and electronic surveillance of subjects inside the United States.

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[Redacted]

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(S)

[Redacted]

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[Redacted]

Both Executive Order (EO) 12333, Section 2.5, and the Classified Annex to the Department of Defense (DoD) Procedures under EO 12333, require that the FBI obtain Attorney General approval [Redacted]

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[Redacted]

(U) EO 12333, Section 2.5, reads as follows:

"The Attorney General hereby is delegated the power to approve the use for intelligence purposes, within the United States or against a United States person abroad, of any technique for which a warrant would be required if undertaken for law enforcement purposes, provided that such techniques shall not be undertaken unless the Attorney General has determined in each case that there is probable cause to believe that the technique is directed against a foreign power or an agent of a foreign power. Electronic surveillance, as defined in the Foreign Intelligence Surveillance Act of 1978, shall be conducted in accordance with that Act, as well as this Order."

(U)

~~(S)~~ Under EO 12333, [Redacted]

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~~SECRET/NOFORN~~

To: All Offices From: Office of the General Counsel
Re: (U) 66H-HQ1234599, 03/31/2006

[Redacted]
[Redacted] and that the purpose of the [Redacted]
[Redacted]

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(U) Procedure

(U) Requests from the FBI [Redacted]

[Redacted]

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(U) Synopsis should contain language such as [Redacted]

[Redacted]

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~~(S)~~ Details should include [Redacted]

[Redacted]

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[Redacted]

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~~(S)~~

[Redacted]

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~~SECRET/NOFORN~~

To: All Offices From: Office of the General Counsel
Re: (U) 66H-HQ1234599, 03/31/2006

(U) Procedurally, upon receipt of the EC containing the Section 2.5 request, the FBIHQ substantive desk should, on a timely basis, coordinate the request with the National Security Law Branch (NSLB) who, in turn, will review and forward the request [redacted]

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[redacted]

(U) ~~(S//NF)~~ To reiterate, each request must meet the probable cause standard, [redacted]

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[redacted]

(U) [redacted]

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(U) ~~(S)~~ [redacted]

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* If the requesting office learns that the [redacted]

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[redacted]

[redacted]

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[redacted]

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(U) Conclusion

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~~SECRET/NOFORN~~

To: All Offices From: Office of the General Counsel
Re: (U) 66H-HQ1234599, 03/31/2006

General questions concerning Section 2.5 authority requests should be brought to the attention of NSLB. After a request is made, questions concerning the status of the request should be directed to the appropriate FBIHQ program manager who is ultimately responsible for processing the request for the requesting office.

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To: All Offices From: Office of the General Counsel
Re: (U) 66H-HQ1234599, 03/31/2006

LEAD(s) :

Set Lead 1: (Action)

ALL RECEIVING OFFICES

(U) ~~(S//NF)~~ Disseminate to all FBI personnel engaged in investigations or analyses in support of FBI investigations wherein there exists a [REDACTED]

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◆◆

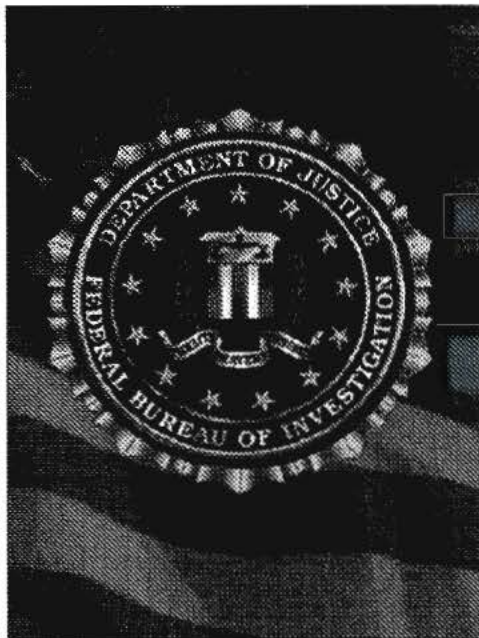
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~~SECRET//NOFORN~~

CLASSIFIED BY: 60308 JES/JST/90
REASON: 1.4 (c, d)
DECLASSIFY ON: 07-22-2039
DATE: 07-22-2014

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Counterintelligence Division Policy Implementation Guide



Federal Bureau of Investigation

0309PG

August 9, 2010

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Revised: 11/14/2011

EO 12333-FBI-57

~~SECRET//NOFORN~~

Counterintelligence Division Policy Implementation Guide

GENERAL INFORMATION: Questions or comments pertaining to this policy implementation guide can be directed to:

FBIHQ/Counterintelligence Division (CD)

Division Point of Contact: UC Counterintelligence Program

[Redacted]

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NOTE: All investigative activity authorized in this document will be carried out in accordance with the DIOG, in particular Section 4 (privacy, civil liberties and least intrusive methods) and Section 3.9 (Operational Program Manager Roles and Responsibilities).

SUPERSESION INFORMATION: This document supersedes sections of the National Foreign Intelligence Program Manual applicable to counterintelligence. See Appendix B for an extensive list of supersessions.

This document and its contents are the property of the FBI. If the document or its contents are provided to an outside agency, it and its contents are not to be distributed outside of that agency without the written permission of the FBI.

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~~SECRET//NOFORN~~

Counterintelligence Division Policy Implementation Guide

(S) approved [redacted]

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(S) [redacted]

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(S) [redacted]

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(U) Overseas travel also [redacted] In addition to the submission of appropriate forms, a pre-travel briefing and post-travel debriefing will likely be required. Consult the Security Division Intranet site for pertinent requirements. Personnel traveling overseas must always remain aware of their environment, and [redacted]

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(U) Unless otherwise specified, CD operations must conform with the extraterritorial provisions of the Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG), Section II.E.

4.18. (U) [redacted]

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A. (U) [redacted]

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1. [redacted]

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(S) 2. X [redacted]

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- a. X
- b. X
- c. X
- d. X
- e. X

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~~SECRET//NOFORN~~

Counterintelligence Division Policy Implementation Guide

b7E per FBI

3. [Redacted]

4. X [Redacted]

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(S)

5. X [Redacted]

b1 per FBI, DOS
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6. (U) [Redacted]

b7E per FBI

b7E per FBI

(U) When conducting authorized [Redacted] the FBI may seek to acquire business records from individuals and businesses, when the information sought is relevant to the subject matter of the investigation. One means to obtain such information in a national security investigation is through a court order [Redacted] compelling the production of records.

(U) Once the FBI [Redacted]

b7E per FBI

[Redacted]

[Redacted] There are special approval levels for [Redacted]

[Redacted]

B. (U) [Redacted]

b7E per FBI

1. (U) [Redacted]

authorized techniques, electronic surveillance (ELSUR), pen register trap and trace, and physical search must be submitted to FBIHQ through the FISAMS. Field offices/divisions without SCION access must submit their TS and/or SCI requests through appropriate secure channels (e.g., courier or secure fax). The FISAMS allows for electronic signature and approval of all documents associated with the request and

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Counterintelligence Division Policy Implementation Guide

[Redacted]

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2. (U) [Redacted]

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[Redacted]

3. [Redacted]

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4. ~~(S)~~ [Redacted]

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a. ~~(S)~~ [Redacted]

b. ~~(S)~~ [Redacted]

c. ~~(S)~~ [Redacted]

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Counterintelligence Division Policy Implementation Guide

d.

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(S) f.

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C. (U)

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1.

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5. (U) Should the field office or substantive SSA responsible

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Counterintelligence Division Policy Implementation Guide

D. (U) [redacted]

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1. [redacted]

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2. [redacted]

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E. (U) [redacted]

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1. [redacted]

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2. [redacted]

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3. [redacted]

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4. (U) As a practical matter, [redacted]

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[redacted]

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Counterintelligence Division Policy Implementation Guide

5. (U) [redacted] b7E

a. (U) Checks of the FBI's central recordkeeping system to determine whether the [redacted] b7E

b. [redacted] b7E

6. (U) Scrutiny of the [redacted] b7E
[redacted]

F. (U) [redacted] b7E
[redacted] b7E

1. [redacted] b7E

2. [redacted] b7E

3. [redacted] b7E

4. [redacted] b7E

4.19. (U) National Security Letters

A. (U) For general information regarding NSL procedures see DIOG, Section 118.6.6.

B. (U) NSLs are administrative demands for documents or records which can be made by the FBI in support of [redacted] NSLs may not be issued in [redacted] b7E

OPCA-20 (12-3-96)

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**FEDERAL BUREAU OF INVESTIGATION
FOIA/PA DELETED PAGE INFORMATION SHEET**

 1 Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

Deletions were made pursuant to the exemptions indicated below with no segregable material available for release to you.

Section 552

Section 552a

- (b)(1)
- (b)(2)
- (b)(3) _____
- _____
- _____
- (b)(4)
- (b)(5)
- (b)(6)

- (b)(7)(A)
- (b)(7)(B)
- (b)(7)(C)
- (b)(7)(D)
- (b)(7)(E)
- (b)(7)(F)
- (b)(8)
- (b)(9)

- (d)(5)
- (j)(2)
- (k)(1)
- (k)(2)
- (k)(3)
- (k)(4)
- (k)(5)
- (k)(6)
- (k)(7)

Information pertained only to a third party with no reference to the subject of your request or the subject of your request is listed in the title only.

Document(s) originated with another Government agency(ies). These documents were referred to that agency(ies) for review and direct response to you.

_____ Page(s) contain information furnished by another Government agency(ies). You will be advised by the FBI as to the releasability of this information following our consultation with the other agency(ies).

_____ Page(s) withheld inasmuch as a final release determination has not been made. You will be advised as to the disposition at a later date.

_____ Page(s) were not considered for release as they are duplicative of _____.

_____ Page(s) withheld for the following reason(s): _____

The following number(s) is (are) to be used for reference regarding these pages:

EO 12333-FBI-65

XXXXXXXXXXXXXXXXX
X Deleted Page(s) X
X No Duplication Fee X
X for this page X
XXXXXXXXXXXXXXXXX

American Civil Liberties Union and American Civil Liberties Union Foundation
v. National Security Agency, et al.,
Civil Action No. 1:13-cv-09198
U.S. District Court
Southern District of New York

Vaughn Index

This *Vaughn* Index provides a detailed description of the withheld material that is the subject of the motion. This Index specifies the relevant Bates page numbers, dates of records, a brief document description, specific FOIA exemptions applied to the pages, description of the withheld information, and a status of the action taken with respect to each responsive page (*i.e.*, released in part (“RIP”) and withheld in full (“WIF”) or duplicate).

Bate Page Number(s) and File Name contained in release to Plaintiffs	Dates of Documents	Description of Documents	FOIA Exemption(s) and Description of Withheld Information	Disposition
EO 12333-FBI-13 thru 15 ¹ 1216886-0 – DIOG	Versions Dated: 10/15/2011 and 10/16/2013	Sections of the FBI’s Domestic Investigations and Operation Guide (“DIOG”), specifically, §9.7 – Standards for Opening or Approving the Use of an Authorized Investigative Method in Full Positive Foreign Intelligence Investigation; §9.8 – Authorized Investigative Methods in a Full Positive Foreign Intelligence Investigation; §9.9 – Investigative Methods Not Authorized During a Full Positive Foreign Intelligence Investigation (<i>in</i>	(b)(7)(E) - General Electronic Surveillance Investigative Techniques and Procedures; -Collection/Analysis of Information; and -Operational Directives Concerning Sensitive Investigative Techniques and Strategies	RIP – 2 pages

¹ Bates page number EO 12333-FBI 13 was released in full to Plaintiffs.

		<i>part</i>); and Sub §18.7.3.3.6.4 – Section 705 – Joint Applications and Concurrent Authorizations.		
EO 12333-FBI-30 thru 35 ² EC 2.5 Authority 03.31.2006	03/31/2006	Electronic Communication (“EC”) from the FBI’s Office of General Counsel, National Security Law Branch to all FBI Offices setting out the policy and procedure for requesting Attorney General authority under Executive Order 12333, Section 2.5 to collect intelligence on U.S. persons overseas.	(b)(1) -[EO §1.4(c)] (b)(3) -[50 U.S.C. 3024(i)(1)] (b)(6)/(b)(7)(C) ³ (b)(7)(E) - General Electronic Surveillance Investigative Techniques and Procedures; -Collection/Analysis of Information; and -Information Concerning the Installation, Locations, Monitoring, and Types of Devises Utilized in surveillance	RIP – 5 pages
EO 12333-FBI-57 thru 65 ⁴ 1216886-0 – CD PIG	8/09/2010 and marked as Revised 11/14/2011	Counterintelligence Division Policy Implementation Guide Cover Page, Introduction Page, § 4.18 and Appendix E-2. The WIF page being EO 12333-FBI-65 is represented in the release by a Deleted Page Information Sheet (“DPIS”).	(b)(1) -[EO §1.4(c)] (b)(3) -[50 U.S.C. 3024(i)(1)] ⁵ (b)(7)(E) - General Electronic Surveillance Investigative Techniques and Procedures; -Collection/Analysis of Information; -Information Concerning the Installation, Locations, Monitoring, and Types of Devises Utilized in surveillance;	RIP – 7 pages WIF – 1 page

² Bates page number EO 12333-FBI 34 was released in full to Plaintiffs.

³ Plaintiffs are not challenging the FBI’s assertion of Exemptions (b)(6) and (b)(7)(C) to withhold information in the subset of documents they selected.

⁴ Bates page number EO 12333-FBI 57 was released in full to Plaintiffs.

⁵ Upon further review Exemption (b)(3) is also being asserted to withhold information in the 2nd redaction Block on Bates page numbered EO 12333-FBI 63 and in the 7th redaction Block on Bates page numbered EO 12333-FBI 64.

			<ul style="list-style-type: none"> -Dates and Types of Investigations (Preliminary or Full Investigations); -Operational Directives Concerning Sensitive Investigative Techniques and Strategies; -Names, Numbers and/or Alpha Designators of Sensitive FBI Squads and Units; and -Internal FBI Telephone Number 	
NSD000202-NSD000207	11/29/2006	Supplemental Guidelines for Collection, Retention, and Dissemination of Foreign Intelligence	<ul style="list-style-type: none"> (b)(1) -[EO §1.4(c)] (b)(3) -[50 U.S.C. 3024(i)(1)] (b)(7)(E) -General Electronic Surveillance Investigative Techniques and Procedures; -Collection/Analysis of Information; and -Operational Directives Concerning Sensitive Investigative Techniques and Strategies 	RIP – 6 pages
NSD 9	01/08/2010	OLC Legal Advice Memorandum to FBI General Counsel	<ul style="list-style-type: none"> (b)(1) -[EO §1.4(c)] (b)(3) -[50 U.S.C. 3024(i)(1)] 	WIF
OLC 5	April 2002	Legal advice memorandum discussing, among other things, legal issues pertaining to surveillance under EO 12333	<ul style="list-style-type: none"> (b)(1) -[EO §1.4(c)] (b)(3) -[50 U.S.C. 3024(i)(1)] (b)(7)(E) -- General Electronic Surveillance Investigative Techniques and Procedures; and -Collection/Analysis of Information 	WIF

OLC 6	May 2003	Legal advice memorandum discussing, among other things, legal issues pertaining to surveillance under EO 12333	<p>(b)(1) -[EO §1.4(c)]</p> <p>(b)(3) -[50 U.S.C. 3024(i)(1)]</p> <p>(b)(6)/(b)(7)(C)⁶</p> <p>(b)(7)(A) -Pending Law Enforcement Proceedings</p> <p>(b)(7)(D) -Expressed Assurance of Confidentiality</p> <p>(b)(7)(E) -General Electronic Surveillance Investigative Techniques and Procedures; and -Collection/Analysis of Information</p>	WIF
C06235758		Activities of CIA and FBI_0	<p>(b)(1) -[EO §1.4(c)]</p> <p>(b)(3) -[50 U.S.C. 3024(i)(1)]</p> <p>(b)(7)(E) -General Electronic Surveillance Investigative Techniques and Procedures</p>	RIP

⁶ See Footnote 3.