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U.S. Foreign Intelligence
Surveillance Court

March 6, 2002

MEMORANDUM

TO: Director, FBI
Assistant Attorney General, Criminal Division
Counsel for Intelligence Policy
United States Attorneys

FROM: The Attorney General *[Signature]*

SUBJECT: Intelligence Sharing Procedures for Foreign
Intelligence and Foreign Counterintelligence
Investigations Conducted by the FBI

I. INTRODUCTION AND STATEMENT OF GENERAL PRINCIPLES

Unless otherwise specified by the Attorney General, these procedures apply to foreign intelligence (FI) and foreign counterintelligence (FCI) investigations conducted by the Federal Bureau of Investigation (FBI). They are designed to ensure that FI and FCI investigations are conducted lawfully, particularly in light of requirements imposed by the Foreign Intelligence Surveillance Act (FISA), and to promote the effective coordination and performance of the criminal and counterintelligence functions of the Department of Justice (DOJ). These procedures supersede the procedures adopted by the Attorney General on July 19, 1995 (including the annex concerning the Southern District of New York), the interim measures approved by the Attorney General on January 21, 2000, and the memorandum issued by the Deputy Attorney General on August 6, 2001. Terms used in these procedures shall be interpreted in keeping with definitions contained in FISA. References in these procedures to particular positions or components within the Department of Justice shall apply to any successor position or component.

Prior to the USA Patriot Act, FISA could be used only for the "primary purpose" of obtaining "foreign intelligence information." The term "foreign intelligence information" was and is defined to include information that is necessary, or relevant, to the ability of the United States to protect against

foreign threats to national security, such as attack, sabotage, terrorism, or clandestine intelligence activities. See 50 U.S.C. § 1801(e)(1). Under the primary purpose standard, the government could have a significant law enforcement purpose for using FISA, but only if it was subordinate to a primary foreign intelligence purpose. The USA Patriot Act allows FISA to be used for "a significant purpose," rather than the primary purpose, of obtaining foreign intelligence information. Thus, it allows FISA to be used primarily for a law enforcement purpose, as long as a significant foreign intelligence purpose remains. See 50 U.S.C. §§ 1804(a)(7)(B), 1823(a)(7)(B).

The Act also expressly authorizes intelligence officers who are using FISA to "consult" with federal law enforcement officers to "coordinate efforts to investigate or protect against" foreign threats to national security. Under this authority, intelligence and law enforcement officers may exchange a full range of information and advice concerning such efforts in FI or FCI investigations, including information and advice designed to preserve or enhance the possibility of a criminal prosecution. The USA Patriot Act provides that such consultation between intelligence and law enforcement officers "shall not" preclude the government's certification of a significant foreign intelligence purpose or the issuance of a FISA warrant. See 50 U.S.C. §§ 1806(k), 1825(k).

Consistent with the USA Patriot Act and with standards of effective management, all relevant DOJ components, including the Criminal Division, the relevant United States Attorney's Offices (USAOs), and the Office of Intelligence Policy and Review (OIPR), must be fully informed about the nature, scope, and conduct of all full field FI and FCI investigations, whether or not those investigations involve the use of FISA. Correspondingly, the Attorney General can most effectively direct and control such FI and FCI investigations only if all relevant DOJ components are free to offer advice and make recommendations, both strategic and tactical, about the conduct and goals of the investigations. The overriding need to protect the national security from foreign threats compels a full and free exchange of information and ideas.

II. INTELLIGENCE SHARING PROCEDURES CONCERNING THE CRIMINAL DIVISION

A. Disseminating Information.

The Criminal Division and OIPR shall have access to all information developed in full field FI and FCI investigations

except as limited by orders issued by the Foreign Intelligence Surveillance Court, controls imposed by the originators of sensitive material, and restrictions established by the Attorney General or the Deputy Attorney General in particular cases. See 50 U.S.C. §§ 1801(h), 1806(a), 1825(a).

The FBI shall keep the Criminal Division and OIPR apprised of all information developed in full field FI and FCI investigations that is necessary to the ability of the United States to investigate or protect against foreign attack, sabotage, terrorism, and clandestine intelligence activities, subject to the limits set forth above. Relevant information includes both foreign intelligence information and information concerning a crime which has been, is being, or is about to be committed. The Criminal Division and OIPR must have access to this information to ensure the ability of the United States to coordinate efforts to investigate and protect against foreign threats to national security, including protection against such threats through criminal investigation and prosecution, and in keeping with the need of the United States to obtain, produce, and disseminate foreign intelligence information. See 50 U.S.C. §§ 1801(h)(1), 1806(k), 1825(k).

The FBI shall also keep the Criminal Division and OIPR apprised of information developed in full field FI and FCI investigations that concerns any crime which has been, is being, or is about to be committed. See 50 U.S.C. § 1801(h)(3).

As part of its responsibility under the preceding paragraphs, the FBI shall provide to the Criminal Division and OIPR copies of annual Letterhead Memoranda (or successor summary documents) in all full field FI and FCI investigations, and shall make available to the Criminal Division and OIPR relevant information from investigative files, as appropriate. The Criminal Division shall adhere to any reasonable conditions on the storage and disclosure of such documents and information that the FBI or OIPR may require.

All information acquired pursuant to a FISA electronic surveillance or physical search that is disseminated to the Criminal Division shall be accompanied by a statement that such information, or any information derived therefrom, may only be used in any criminal proceeding (including search and arrest warrant affidavits and grand jury subpoenas and proceedings) with the advance authorization of the Attorney General. See 50 U.S.C. §§ 1806(b), 1825(c).

B. Providing Advice.

The FBI, the Criminal Division, and OIPR shall consult with one another concerning full field FI and FCI investigations except as limited by these procedures, orders issued by the Foreign Intelligence Surveillance Court, and restrictions established by the Attorney General or the Deputy Attorney General in particular cases.

Consultations may include the exchange of advice and recommendations on all issues necessary to the ability of the United States to investigate or protect against foreign attack, sabotage, terrorism, and clandestine intelligence activities, including protection against the foregoing through criminal investigation and prosecution, subject to the limits set forth above. Relevant issues include, but are not limited to, the strategy and goals for the investigation; the law enforcement and intelligence methods to be used in conducting the investigation; the interaction between intelligence and law enforcement components as part of the investigation; and the initiation, operation, continuation, or expansion of FISA searches or surveillance. Such consultations are necessary to the ability of the United States to coordinate efforts to investigate and protect against foreign threats to national security as set forth in 50 U.S.C. §§ 1806(k), 1825(k).

The FBI, the Criminal Division, and OIPR shall meet regularly to conduct consultations. Consultations may also be conducted directly between two or more components at any time. Disagreements arising from consultations may be presented to the Deputy Attorney General or the Attorney General for resolution.

III. INTELLIGENCE SHARING PROCEDURES CONCERNING A USAO

With respect to FI or FCI investigations involving international terrorism, the relevant USAOs shall receive information and engage in consultations to the same extent as the Criminal Division under Parts II.A and II.B of these procedures. Thus, the relevant USAOs shall have access to information developed in full field investigations, shall be kept apprised of information necessary to protect national security, shall be kept apprised of information concerning crimes, shall receive copies of LHMs or successor summary documents, and shall have access to FBI files to the same extent as the Criminal Division. The relevant USAOs shall receive such information and access from the FBI field offices. The relevant USAOs also may and shall engage in regular consultations with the FBI and OIPR to the same extent as the Criminal Division.

With respect to FI or FCI investigations involving espionage, the Criminal Division shall, as appropriate, authorize the dissemination of information to a USAO, and shall also, as appropriate, authorize consultations between the FBI and a USAO, subject to the limits set forth in Parts II.A and II.B of these procedures. In an emergency, the FBI may disseminate information to, and consult with, a United States Attorney's Office concerning an espionage investigation without the approval of the Criminal Division, but shall notify the Criminal Division as soon as possible after the fact.

All information disseminated to a USAO pursuant to these procedures, whether or not the information is derived from FISA and whether or not it concerns a terrorism or espionage investigation, shall be disseminated only to the United States Attorney (USA) and/or any Assistant United States Attorneys (AUSAs) designated to the Department of Justice by the USA as points of contact to receive such information. The USAs and the designated AUSAs shall have appropriate security clearances and shall receive training in the handling of classified information and information derived from FISA, including training concerning restrictions on the use and dissemination of such information.

Except in an emergency, where circumstances preclude the opportunity for consultation, the USAOs shall take no action on the information disseminated pursuant to these procedures without consulting with the Criminal Division and OIPR. The term "action" is defined to include the use of such information in any criminal proceeding (including search and arrest warrant affidavits and grand jury subpoenas and proceedings), and the disclosure of such information to a court or to any non-government personnel. See also U.S. Attorney's Manual §§ 9-2.136, 9-90.020. Disagreements arising from consultations pursuant to this paragraph may be presented to the Deputy Attorney General or the Attorney General for resolution.

All information acquired pursuant to a FISA electronic surveillance or physical search that is disseminated to a USAO shall be accompanied by a statement that such information, or any information derived therefrom, may only be used in any criminal proceeding (including search and arrest warrant affidavits and grand jury subpoenas and proceedings) with the advance authorization of the Attorney General. See 50 U.S.C. §§ 1806(b), 1825(c). Whenever a USAO requests authority from the Attorney General to use such information in a criminal proceeding, it shall simultaneously notify the Criminal Division.