



FEDERAL BUREAU OF INVESTIGATION

**FREEDOM OF
INFORMATION AND
PRIVACY ACTS
REFERENCE MANUAL**

PART 7 OF 9

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To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Abstracts
Date: March 31, 1998

Description of Abstracts

Abstracts are 3x5 inch forms (**Attachment 1**) which were designed to summarize in one or two sentences the content of any serialized or recorded document and to facilitate the filing, accountability and location of all important mail placed in a file. Abstracts were previously prepared in duplicate except for communications in personnel matters wherein a single abstract was required. **The preparation of abstracts was discontinued on 10/16/79 for investigative files and on 4/11/89 for personnel and applicant matters.**

Abstracts of mail were previously filed in two ways:

(1) **Numerical Order** by file and serial number.

(These abstracts were maintained in the Numbering Unit where they were filed by the Bureau file number. They have since been boxed and sent to an off-site location and are not available for use.)

(2) **Alphabetical by their origin**

(These abstracts, which cover approximately 1959-1979, are still being utilized and are maintained at Pickett Street in file cabinets. Abstracts of mail originating **prior to 1959** may be found on microfilm.)

The Alphabetical abstracts were broken down into several categories with the mail being filed alphabetically under its respective category (incoming mail was filed alphabetically by source and outgoing by addressee):

- (a) Field Offices
- (b) Special Agent reports (filed by Agent's name)
- (c) U.S. Government Agency
- (d) Local and State (filed by State - usually police reports)
- (e) Foreign Governments (filed by country)
- (f) Private citizens (filed by last name first, e.g., Smith, John)

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Abstracts

The **personnel and applicant matter abstracts** are maintained at an off-site location and are not available for use.

In 1979, the Automated Incoming Mail Serialization (AIMS) System became operational. This system provides computerized positive accountability for each serial placed on record in FBI files. Information maintained in AIMS includes the date, subject, type of communication, status of the case, file classification, source and destination of every document. AIMS provides virtually all of the data describing a document which is contained on abstracts with the exception of the narrative portion. **Therefore, mail generated after 1979 and entered into the AIMS system is accessible through the Automated Case Support (ACS) System.**

Purpose and Procedures for Abstract Checks

The purpose of an Abstract check is to ascertain the specific file and serial number(s) of documents located within Bureau files. This is an extremely useful means of locating FBI documents that have been referred from other government agencies to the FBI for processing under the FOIPA.

For Abstract checks to be conducted at Pickett Street on mail dated 1959-1979, Form 4-860 (currently referred to as OPCA-13), Attachment 2, to this memorandum must be completed and contain the following information:

- (1) The origin of the document
- (2) The date of the document
- (3) The subject matter
- (4) Indicate whether the mail is incoming to FBIHQ or outgoing and the type of mail (e.g., Airtel, teletype, Special Agent report, etc.)

b2 For Abstract checks on mail prior to 1959, the same Form 4-860 (OPCA-13) should be completed and searched in the Micrographics Unit, Room [REDACTED] extension [REDACTED] by the LT/PLS. Currently, this unit is in the process of destroying the older abstracts.

b2 Mail generated after 1979 can be reviewed on the computer through the ACS System. If the LT/PLS does not have access to a computer to search the ACS System, he/she may submit Form 4-860 (OPCA-13) to the Service Unit located in the Special File Room, Room [REDACTED], and they will conduct the search and advise the LT/PLS of the file number(s) on the records.

Sample of an Abstract

<u>BUREAU FILE NUMBER</u>	<u>TYPIST</u>	<u>DATE OF COMMUNICATION</u>
25-16350-10	10	11/28/79
SAC, DN		ROBERT SMITH
<p>Subject born 1/26/49 at NYC, NY. Subject resides at 3186 New Haven St. NYC, NY. Subject was apprehended without incident.</p>		
<u>STATUS OF CASE</u>	C	

SUBJECT MATTER

SUMMARIZATION OF CASE

**FOIPA SECTION
REQUEST FOR ABSTRACT CHECK**

Date: _____

To: Service Unit
Room 5991

Return to: Name: _____ Ext. _____
Room 6361 6362 4356
Room 4362 4366 _____

Type of Communication	Date	Subject or Title	Results of Search: File Where Located
<input type="checkbox"/> Airtel	From: _____		
<input type="checkbox"/> Letter	_____		
<input type="checkbox"/> LHM			
<input type="checkbox"/> Memo	To: _____		
<input type="checkbox"/> Teletype	_____		
<input type="checkbox"/> Report of:	_____		
<hr/>			
Type of Communication	Date	Subject or Title	Results of Search: File Where Located
<input type="checkbox"/> Airtel	From: _____		
<input type="checkbox"/> Letter	_____		
<input type="checkbox"/> LHM			
<input type="checkbox"/> Memo	To: _____		
<input type="checkbox"/> Teletype	_____		
<input type="checkbox"/> Report of:	_____		
<hr/>			
Type of Communication	Date	Subject or Title	Results of Search: File Where Located
<input type="checkbox"/> Airtel	From: _____		
<input type="checkbox"/> Letter	_____		
<input type="checkbox"/> LHM			
<input type="checkbox"/> Memo	To: _____		
<input type="checkbox"/> Teletype	_____		
<input type="checkbox"/> Report of:	_____		

MEMO 1 - ATTACHMENT 2

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: **Accelerated Processing**
Date: March 31, 1998

Accelerated Processing

Individuals seeking accelerated processing of their requests should be advised that the established policy of the FBI is to process requests based upon the approximate order of receipt, to the extent consistent with sound administrative practices. Use of the chronological order system is an equitable procedure; however, exceptions may arise and must be recognized. See, Open America v. Watergate Special Prosecutor's Office, et al., 547 F. 2d 605 (D.C. Cir. 1976).

Priority processing will only be considered where there is some demonstrated exceptional need or urgency. These exceptional needs and urgencies are outlined below and are also addressed in the attached reprints of the Attorney General's press release "*Attorney General Reno Moves to Expedite Exceptional FOIA Requests*" (**Attachment 1**) and the FOIA Update from September, 1983, (**Attachment 2**) which should be included in the response to a request for accelerated processing.

- 1.) A loss to life or safety
- 2.) Loss of substantial due process rights
- 3.) Widespread and exceptional media interest in the requested information
- 4.) Involves possible questions about the government's integrity which affects public confidence

Where such factors have been presented, the decision to grant or deny the request for accelerated processing will be made by the FOIPA Section Chief or the DOJ Director of Public Affairs.

Death Row Inmates FOIPA Requests to be Expedited

Effective October 13, 1994, all requests from death row inmates will be expedited. Such requests will be identified by the Initial Processing Unit and immediately sent to the Request Management Unit (RMU) for preparation of the case for assignment to a Disclosure Unit. These requests will then be assigned to the Disclosure Units on a rotational basis for immediate processing.



Department of Justice

ATTORNEY GENERAL RENO MOVES TO EXPEDITE EXCEPTIONAL FOIA REQUESTS

WASHINGTON, D.C. -- Attorney General Janet Reno said today that she has authorized a change in Justice Department procedures to expedite the handling of Freedom of Information Act requests in certain cases of extraordinary interest to the news media.

Current law permits only two exceptions to normal first-in, first out processing: when information is needed to prevent a threat to life or safety, or when a delay would result in the loss of substantial due process rights such as the chance to file a claim.

The Justice Department's Office of Information and Privacy began studying whether a third category could be added after the Attorney General in December and January inquired why it was taking so long to process FOIA requests for the U.S. Park Service and FBI reports on the death of Vincent Foster? The reports were completed in August.

Under the new procedure, approved on February 1, ^{1994,} FOIA requests can be moved to the head of the line whenever the Justice Department's Director of Public Affairs expressly finds two things:

- there exists widespread and exceptional media interest in the requested information; and
- expedited processing is warranted because the information sought involves possible questions about the government's integrity which affect public confidence.

A memorandum communicating the Attorney General's new policy said "The goal of such expedited processing is to permit the public to make a prompt and informed assessment of the propriety of the government's actions in exceptional cases." However, it also cautioned that in some situations, especially involving active law enforcement investigations, the law may still prevent immediate disclosure no matter how quickly the request is processed.

The policy was implemented by a directive to Justice Department FOIA and Privacy Act coordinators from Richard L. Huff and Daniel J. Metcalfe, Co-Directors of the Office of Information and Privacy. They were assisted by Peggy Irving.

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U.S. Department of Justice
Office of Information and Privacy

FOIA UPDATE

OIP Guidance

When to Expedite FOIA Requests

An issue bound to be confronted sooner or later by all federal agencies is whether to give certain requesters expedited treatment under the Freedom of Information Act. Because the granting of a request for expedition necessarily works to the direct disadvantage of other FOIA requesters, the merits of such requests should be assessed carefully.

The FOIA requires that federal agencies determine whether to release requested records within 10 working days, but that period may be extended for an additional 10 working days whenever any of three statutorily defined "unusual circumstances" exist. 5 U.S.C. §552(a)(6)(B). Many agencies are often unable to meet these deadlines due to such factors as the number of requests received, the volume of records sought, decentralized recordkeeping procedures, and limitations on resources—often coupled with the need for a line-by-line review of sensitive documents. The U.S. Court of Appeals for the D.C. Circuit has recognized this problem and has specifically approved the equitable practice of handling requests on a "first-in, first-out" basis. See *Open America v. Watergate Special Prosecution Force*, 547 F.2d 605, 614-16 (D.C. Cir. 1976), citing 5 U.S.C. §552(a)(6)(C).

At the same time, however, the D.C. Circuit in *Open America* recognized that some FOIA requests necessarily involve a far greater degree of urgency than others and that when a requester can show "exceptional need or urgency," his request should be processed out of turn. 547 F.2d at 616. The *Open America* decision did not specify any particular circumstance which might constitute "exceptional need or urgency," so decisions on whether to grant expedition have been left for agency FOIA officers to make on a case-by-case basis. Several years of administrative practice in this area, though, together with at least some specific judicial precedents, have served to develop the following guidelines and considerations.

Threat to Life or Safety

First, FOIA processing should be expedited whenever it is demonstrated that an individual's life or personal safety would be jeopardized by the failure to process a request immediately. Of the handful of court decisions to have ordered expedited processing, almost all have fallen into this category. See, e.g., *Exner v. FBI*, 443 F. Supp. 1349, 1353 (S.D. Cal. 1978) (plaintiff obtained expedited treatment after leak of information exposed her to harm by organized crime figures), *aff'd*, 612 F.2d 1202 (9th Cir. 1980); *Cherov v. Kelley*, 427 F. Supp. 80, 81 (D.D.C. 1976) (plaintiff faced multiple criminal charges carrying possible death penalty in state court). At the administrative level, the Department of Justice has expedited a request to facilitate disclosure of medical information about a child's father vital to the child's emergency medical treatment. Another agency agreed to process immediately a request from the parents of a young woman believed to be facing a serious threat to her life in the custody of a cult. To be sure, FOIA requests involving substantiated "life-or-death" matters are rare, but no more

compelling justification can exist for special FOIA treatment.

Loss of Substantial Due Process Rights

As a general rule, a request also should be expedited if it is shown that substantial due process rights of the requester would be impaired by the failure to process immediately and that the information sought is not otherwise available. Indeed, the practices of many federal agencies reflect such concern for the due process rights of requesters. At the Justice Department's Drug Enforcement Administration, for example, the portion of a drug offender's file that is relevant to an upcoming parole hearing is routinely processed for release out of turn under the FOIA. Similarly, other agencies regularly expedite FOIA requests for information needed in contract award protests so that filing deadlines can be met.

It is not sufficient, however, for a requester merely to allege that requested records are "needed" in connection with some judicial or administrative proceeding; rather, the immediate use of the FOIA must be shown to be critical to the preservation of a substantial right. See *Rivera v. DEA*, 2 GDS ¶81,365 at 81,953 (D.D.C. 1981) ("A pending civil suit does not generally qualify a FOIA demand for expedited processing."). Indeed, in *Mitsubishi Electric Corp. v. Department of Justice*, 39 Ad L. Rep.2d (P&F) 1133, 1140-42 (D.D.C. 1976), the court pointedly refused to order expedited processing where a requester had not availed itself of existing civil discovery mechanisms for obtaining the records sought. In connection with criminal proceedings, weak "due process" claims have likewise been found inadequate. See, e.g., *Gonzalez v. DEA*, 2 GDS ¶81,016 at 81,069 (D.D.C. 1980) (use of FOIA as discovery tool to aid standard post-judgment attack on criminal conviction held insufficient); *Bubar v. United States Department of Justice*, 3 GDS ¶83,221 (D.D.C. 1981) (need for documents for preparation as witness in criminal trial held insufficient).

Other Considerations

Beyond these two narrow categories, it is unclear to what extent agencies have the discretion to grant requests for expedition under any other circumstances. Only one judicial decision has ventured beyond these categories—*Schacter v. IRS*, 3 GDS ¶82,515 at 83,302-03 (D.D.C. 1982), where a court somewhat perfunctorily ordered immediate disclosure of a record related to imminent action by Congress. Moreover, agencies should not forget the interests of all requesters in having their requests treated equitably, as well as the public interest in the integrity of FOIA processing. See *Mitsubishi Electric Corp. v. Department of Justice*, *supra*, 39 Ad L. Rep.2d (P&F) at 1142 (Expedited processing, "if granted, will adversely impact upon the conflicting interest of numerous individuals whose requests and appeals were filed [earlier]."). Because a decision to take a FOIA request out of turn necessarily entails further delay for other requesters waiting patiently in line, simple fairness demand that it be made only upon careful scrutiny of truly exceptional circumstances.

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Appeals, Administrative
Date: March 31, 1998

Appeals to be Filed Within 60 Days from the Release Date

DOJ regulations state that "the requester may appeal the denial of the request to the Attorney General within 60 days of his receipt of a notice denying his request." (28 C.F.R. § 16.8) The Office of Information and Privacy (OIP), previously accepted and adjudicated appeals filed late, but now enforces the 60-day time limit. Since OIP cannot determine the date the requester actually received notice of the denial (unless the requester tells OIP), in fairness to requesters they have adopted a rule that an administrative appeal received 60 days or more after the date of the final release and notice of denial will be deemed to be filed late, and will be dismissed.

In those cases where OIP can determine the date of the release from readily available information (i.e., where the requester mentions it in his appeal letter to OIP), OIP will apply this rule and not send late filed appeals to the FBI. All other appeals from FBI cases will still be sent to the FBI in the normal course of business.

Therefore, in order to avoid needless work by LTs/PLSs in gathering files and preparing for appeal adjudication, only to find out that the appeal was filed 60 or more days after the release, and OIP is willing to dismiss the appeal, the LT/PLS, who handled the request will take the following initial step:

Unless it is clear on the appeal correspondence that it was timely filed, the LT/PLS will review their case folder or the FOIPA computer to determine the date of the release/denial. If this search reveals the appeal was filed 60 or more days after the final release, the LT/PLS will return the appeal correspondence to OIP with a notation of the date of release and that the appeal was filed 60 days or more after the release. OIP will then advise the requester that his appeal will not be considered.

If the search reveals that the appeal was filed prior to 60 days of the date of the release letter, the appeal will be handled and adjudicated in the usual manner.

General Procedures for Handling Appeals

When an appeal has been submitted by a requester to OIP, the Field Coordination Team (FCT) will be notified of the appeal. The FCT will then identify the LT/PLS who is handling or handled the case and will forward a copy of the appeal letter to the LT/PLS. FCT will document this information in the appeal folder, including the date the LT/PLS was notified of the appeal. It is encouraged and recommended that the appeal review be handled by the PLS within ten working days from notification of the appeal. However, an appeal should not be scheduled until all files, processed documents, and any other pertinent materials have been located. Once all of the material is available, the LT/PLS is to schedule the appeal in the appointment book maintained in FCT by providing their name, extension, appeal number, and the approximate number of pages for review. On the date that the appeal has been scheduled, a DOJ appeals attorney will contact the LT/PLS for the material to be reviewed.

If during the appeal review, a determination is made to release additional material, that release may be made by either the PLS or the DOJ Attorney. If the release is to be made by the PLS, the additional release should not be made until a copy of the DOJ's adjudication letter has been received. Regardless of who makes the release, the PLS should ensure a copy of the final DOJ letter and the additional release is retained in the 190 file.

In addition to the above procedures, when an appeal involves classified information where (b)(1) was cited to the requester, that information must be further reviewed during the appeal stage by the Departmental Review Committee (DRC). OPCA-33 form (formerly 4-809) must be completed by the PLS and submitted to DCU along with a copy of the original DCU addendum and all pertinent files containing the classified material. Following DRC's review, any information which is declassified must be reviewed by the PLS for possible release or application of other FOIA exemptions. If information has been declassified by DRC and is now being withheld from disclosure pursuant to an exemption other than (b)(1), the OIP attorney is to review these excisions for their appropriateness. Upon completion of the entire DRC process, the requester must be advised in writing of the outcome and provided with copies of documents that contain any changes in processing. A copy of OPCA-33 form is attached.

Information From Other Agencies

For information which originated with another agency, notice to a requester of his right to appeal should advise him that any appeal concerning another agency's information should be sent to the appeal authority of that agency. The PLS should ensure throughout the appeal process that we are dealing only with information which originated with the FBI.

Classification Appeals Involving Referrals

When conducting a classification review, DCU prepares an addendum noting the results of the review. If appropriate, instructions are given regarding the referral of FBI documents to other agencies. Disclosure PLSs are responsible for making such referrals promptly.

In those cases where a classification decision is appealed, the results of the referral must be recorded prior to presentation of the appeal to the DRC. If the referral has not been made, DRC will instruct that it be done promptly. The results of the referral and the original documents are to be sent to the DCU for presentation to the DRC. DCU will note the classification action taken by DRC on the original documents.

Coordination of Headquarters/Field Office Appeals

If it is determined that a field office appeal involves an ongoing HQ request or appeal, the FCT Regional Program Manager, the PLS and his or her Team Captain will determine if the field office appeal should be assigned to the HQ PLS to ensure consistency in processing and coordination of the request and the appeal. Otherwise, if there are no apparent conflicts or problems, the FCT will routinely handle the field office appeal.

Exemption (b)(7)(A) Appeals

If a (b)(7)(A) case has been appealed, and the case is now closed, the processing of the material should commence after consultation with the OIP attorney. The appeal should be closed on the appeals statistical sheet under the "reversed" category.

Appeals Involving Preprocessed Cases

From time to time, a PLS may handle a request which was previously processed ("preprocessed") for another requester. Preprocessed cases are assigned to the Disclosure Units for prompt handling, since they do not require any processing, but rather, just duplicating the material for release. However, in several instances, the preprocessed cases were originally processed prior to the Landano/Reno guidelines. If requesters appeal any denials contained in the preprocessed material and DOJ/OIP remands the case for processing under the Landano/Reno guidelines, this action will involve reprocessing the case for any additional information to be released. It is the policy of the FOIPA Section to reopen the request and place it in the backlog based on the date of receipt of the initial request letter. These cases will then wait their turn in the queue along with those which require initial processing.

Appeals Involving the Cross-Reference Policy

The FOIPA Section's policy for processing requests is to only process identifiable main files even though cross-references for the subject may exist. Requesters are advised of this policy, and occasionally, will appeal this procedure. If an appeal by a requester includes an appeal of the cross-reference policy, the PLS should process the cross-reference(s) at this time.

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Applicants
Date: March 31, 1998

Background Investigations for Unsuccessful Job Applicants

When unsuccessful applicants for the FBI seek to determine why they were not hired, they are often told to submit FOIPA requests to the FBI for their background investigative file. This expedient response presents the following problems:

- 1) It takes much longer for the FOIPA Section to process a file than it would take a personnel officer or applicant coordinator to write a responsive letter;
- 2) Processing an entire file is much more expensive than drafting a letter; and
- 3) Records from the processed file may not inform the requester why he was not hired, especially in those cases where relevant information would be redacted or the applicant was just not as competitive a candidate as those hired.

This problem is being addressed by both the Special Agent Applicant Unit and the Bureau Support Applicant Unit, by advising field personnel who deal with applicant matters of the following:

- 1) If the applicant achieves an unsuccessful score in either an examination or interview, field applicant personnel will advise the applicant of the passing scores and the waiting period to be retested;
- 2) If the applicant was simply not as competitive a candidate as those hired, field applicant personnel will advise the applicant what must be done to become competitive; and
- 3) If the applicant was not hired due to derogatory information from the background investigation, the applicant's inquiry will be referred to the Personnel Resources Unit at FBIHQ. In those cases where the derogatory information came from credit, arrest, academic, or employment records, the Personnel Officer will advise the applicant of the specific reason he was not hired.

FOIPA Numbered Memo 4

Page 2

Applicants

Further, at FBIHQ, FOIPA letters from applicants denied employment will be sent to the Unit Chief of either the Special Agent Applicant Unit or the Bureau Support Applicant Unit if the requester is seeking the reason he or she was not hired. If the respective Unit cannot give the reason for denied employment (i.e., source giving derogatory information), then the letter will be returned to the FOIPA Section to be handled.

Periodically, we will receive FOIPA requests for records on FBI background investigations conducted on individuals applying or being appointed for other federal government positions (i.e., DOJ positions, DEA, Special Inquiries for White House appointments). If the requester, a non-FBI applicant, clearly indicates in the letter that he is primarily interested in determining why he was not hired for government employment, and the releasable records would not clearly indicate the reason for that decision, then a letter should be sent to the requester advising him of this and that an FOIPA release would not be very informative. The letter should explain that, although the FBI may conduct background investigations for another agency, the FBI does not make hiring decisions for that agency. The letter should suggest that the requester contact the official who made the hiring decision at the other agency and explain the situation to him or her. We cannot, of course, refuse to process an FOIPA request, so the requester must be asked if he would still like his request processed.

A final point concerns verification of the identity of the requester. If the requester's address in the request letter is identical to the address documented in the background investigative file, then it is not necessary to obtain a notarized signature or a certificate of identity from the requester.

Source Information in Applicant/Background Type Files - Confidentiality?

In some instances, applicant files compiled after September 27, 1975, the effective date of the Privacy Act, will not indicate whether a source of information requested confidentiality. Often it is felt that many of these sources would want confidentiality because of the type of information (i.e., derogatory information) being provided to the FBI. Therefore, if this situation occurs and there is a concern in the release of the information, it is suggested that the PLS contact the field office Case Agent prior to releasing the material. If the field Agent indicates the source did request confidentiality and it was overlooked in documenting it on the typed interview statement, it should be made a matter of record in the applicant/background file. In processing this material, the identity of the source and any information which would tend to identify the source should be protected. If the field Agent is unable to articulate or provide proof that confidentiality was requested the information must be released.

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Autopsy Reports and Photographs
Date: March 31, 1998

When processing FBI records pursuant to a third party request which contain autopsy reports **and/or** related photographs, initially deny those reports and/or photographs in order to protect the privacy interests of the heirs of the victim under Exemption (b)(6) and/or (b)(7)(C). Further, the PLS should identify to the requester on OPCA Form 20, the Deleted Page Sheet, an explanation under the "For your information" portion of the form, as to what the deleted material contains and the graphic nature of the material.

If the request is from the heirs' and/or family member of the victim, the requester should also be notified of what is contained in the material, such as any graphic photographs or summary autopsy reports. Once the heir and/or family member is fully advised of the contents and still requests a copy of the material, it will be forwarded to them.

One exception to the preceding paragraphs would be in those instances where the Coroner and/or Medical Examiner provided the autopsy reports and related photographs in confidence or there was a circumstance of foreseeable harm and implied confidentiality could be considered. In those situations, the autopsy reports and/or related photographs should be withheld pursuant to Exemption (b)(7)(D) in addition to the citing of (b)(6) and/or (b)(7)(C).

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: **Bureau Teletypes, Telegrams and Radiograms Originating Prior to 1955**
Date: March 31, 1998

**Handling of Bureau Teletypes, Telegrams and Radiograms
Originating Prior to 1955**

Certain information contained in Bureau teletypes, telegrams and radiograms originating prior to 1955 requires special handling to insure sensitive information is deleted prior to release pursuant to an FOIPA request.

To insure proper handling, the above described communications should be reviewed by the DCU whether located in Security or Criminal files prior to release.

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Caution Statements
Date: March 31, 1998

When processing FBI documents pursuant to the FOIPA, caution statements may appear on the document such as "ARMED AND DANGEROUS." In most cases, these statements are typed with upper case letters and/or underlined and usually appear at the bottom portion of the document, however, they may be found elsewhere. When caution type statements appear on a document, the PLS should thoroughly research the file(s) before releasing any statement in order to determine whether or not the statement was obtained from a confidential source. If the source's identity is not recorded and the statement appears to be singular in nature, the PLS should consider protecting the statement under exemption (b)(7)(D).

The following is an example of where the caution statement was released to the requester without excision: "ARMED AND DANGEROUS, SUBJECT MAY TAKE RETALIATION AGAINST SENTENCING JUDGE." On appeal, a review of the HQ file failed to determine the source of the information and the field office was telephonically requested to search its file. Through the review of the field office file, it was determined the source was the subject's mother, who had received the information from the subject's brother, and had alerted the FBI on a very confidential basis. Had this been known prior to the release, the caution statement would not have been disclosed.

~~SECRET~~

F O I P A

MEMO 8

M A N U A L

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Central Intelligence Agency (CIA)
Date: May 15, 1998

Referral of CIA Information (U)

The CIA has a representative currently assigned to the FBI's FOIPA Section, Litigation Unit, who can review CIA operational-type information in FBI files eliminating the need for the PLS to refer the information to the CIA. The CIA representative will make a release determination or classification/declassification decision only on documents or information that has never been reviewed or previously referred to the CIA. The procedures for directing all such referrals to the CIA representative are as follows: (U)

- 1) Provide the following information on a routing slip: (U)
 - a) FOIPA Number;
 - b) Subject of Request;
 - c) Name of PLS, Room Number and Extension. (U)
- 2) Mark or highlight the CIA information that requires review. (U)
- 3) Provide a photocopy of the referral document along with any background information necessary to determine the origin of the CIA information. (U)
- 4) Leave the referral package in the CIA incoming box in the Litigation Unit. (U)

5/15/98
CLASSIFIED BY: SP7 ci
REASON: 1.5 (C)
DECLASSIFY ON: X 1

General Referral Policy (U)



b1

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
EXCEPT WHERE SHOWN
OTHERWISE

~~SECRET~~

~~SECRET~~

b1

[REDACTED] (C)

b2

[REDACTED] (U)

In an effort to satisfy CIA concerns and at the same time hopefully shorten the time it takes the CIA to respond to our referrals, the following agreement has been made with the CIA for their material that cannot be handled by the CIA representative in the Litigation Unit: (U)

The PLS will hold in abeyance each FOIA/PA response to the requester for a period of 60 days starting from the date of the referral to the CIA. A referral may encompass FBI documents containing CIA information sent to the CIA for coordination which are to be returned for our response to the requester, or documents referred for direct response. (U)

The PLS will provide two copies (one redacted copy, one clean copy) of the referred documents/pages. The PLS will attempt to furnish the CIA with enough information to help them locate the records and determine what the investigation is about. The PLS will either process the pertinent documents/pages to be referred as they plan to release them to the requester or advise the CIA what they plan to release and/or deny. This facilitates their review. (U)

The CIA, upon receipt of the referral, will review the material. If the CIA determines that the material warrants further treatment, the CIA Coordinator's office will notify the FBI within the 60-day period stipulated above. This notification will include an identification of the affected portions of the material, applicable exemptions and statutes and the responsible authority for the determination reached by the CIA. (U)

The absence of such CIA notice to the FBI within the stipulated time will indicate full CIA concurrence with the FBI's proposed action. (U)

b2

[REDACTED] (U)

~~SECRET~~

~~SECRET~~

CIA Name Check Information (U)

When the PLS locates information in an FBI document which indicates that a name check was made with the CIA, this fact may be released by the PLS without coordination with the CIA, provided the check reveals that the CIA has no record, no information or no trace. However, if this same name check shows that coordination was effected with a CIA person by name or with a CIA component, the document should be reviewed by the CIA representative currently assigned to the Litigation Unit prior to release. References to major CIA components, at the Directorate or Office level, or the titles of their Directors, may be released without referral or coordination.

b3
per
CIA

[REDACTED] (U)

b1

[REDACTED] (C)

b1

[REDACTED] (S)

b1

[REDACTED] (S)

If any such document is located during a review pursuant to an FOIPA request, it should be referred to the CIA in the normal manner. (U)

b1

[REDACTED] (C)

b2

Bureau Source [REDACTED] - Hunter Project (U)

b2

Bureau Source [REDACTED] (Hunter Project) was a CIA mail opening operation for foreign mail in New York City. When mail was opened which was of interest to the FBI, the content of the

~~SECRET~~

~~SECRET~~

letter was furnished to the FBI. Such material was consistently stamped "Secret". Project Hunter has been discontinued by the CIA and both its existence and its nature publicly acknowledged by that agency. The CIA called this mail intercept program HTLINGUAL. (U)

On 5/13/98, Information and Privacy Office, CIA, advised they want the documents referred to the CIA. The agency indicated that in almost all instances the information would be declassified and released in its entirety.

b5 [REDACTED] It is also not possible to rule out an item retaining classification for some reason other than the fact the item was acquired from interception of mail, [REDACTED] (U)

b3
per
CIA

CIA Employee Names and Component Designations (U)

By letter dated 3/16/76, Mr. Gene F. Wilson, Information and Privacy Coordinator, CIA, requested we ensure that all CIA employee names and component designations are deleted from any CIA document, or from any other document containing CIA information, which is being released to a requester through the FBI, after such documents have been coordinated with the CIA. (U)

Such deletions are authorized under Exemptions (b)(3) of the FOIA, and (j)(1) of the PA. The (b)(3) exemption applies to the Director's statutory obligations to protect from disclosure intelligence sources and methods, as well as the organization, functions, names, official titles, salaries and number of personnel employed by the CIA, in accordance with subsection 102(d)(3) of the National Security Act of 1947 {Public Law 86-36 Section 6(a)}, and section six of the CIA Act of 1949 (50 U.S.C. Section 403), respectively. (U)

CIA Operational Files (U)

Operational files of the CIA are exempt from the provisions of the FOIA which require publication or disclosure, or search or review in connection therewith (See 50 U.S.C. Section 431). The term "operational files" means: (U)

1) files of the Directorate of Operations which document the conduct of foreign intelligence or counterintelligence operations or intelligence or security liaison arrangements or information exchanges with foreign governments or their intelligence or security services; (U)

2) files of the Directorate for Science and Technology which document the means by

~~SECRET~~

~~SECRET~~

which foreign intelligence or counterintelligence is collected through scientific and technical systems; and (U)

3) files of the Office of Security which document investigations conducted to determine the suitability of potential foreign intelligence or counterintelligence sources; except that files which are the sole repository of disseminated intelligence are not operational files. This law applies to any FOIA request for records, even if made prior to the enactment of the aforementioned statute. (U)

CIA Presence Abroad (U)

b1

[REDACTED]

(C)

[REDACTED]

b1

(C)

b1

[REDACTED]

(C)

~~SECRET~~

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Classification Stamps, Use of
Date: March 31, 1998

Referral Form OPCA-6

When referring classified information to other agencies, OPCA-6 referral form letter must be properly marked to indicate the level of classification of the information contained in the referral document(s). If the referral document contains unredacted "classified" information, (i.e., "Confidential" information) then **all copies** of the referral form should be stamped to indicate the highest level of unredacted classified information. For example...**"Confidential" on both the front and back of the form at the top and bottom of the page, "Confidential Material Attached" and "This Communication Is Unclassified Upon the Removal of Classified Enclosures"** stamps are to be placed on the front of the form at the bottom. See Attachment 1.

If no exposed classified information is contained in the copy of a document being referred to the other agency, there is no reason to place the above stamps on the referral form letter. For example, an FBI document consisting of one page was surfaced during the processing of a request and the document contains one paragraph of other agency information. Lets assume that paragraph one of the referral document contains classified FBI information which has been deleted/blacked-out by the FBI, paragraph two is bracketed because it contains the other agency information which the FBI wants the other agency to review, and paragraph three is left in because it contains information being released to the requester, **do not send the document to the other agency with the classification stamps on the referral form since there is no classified material on the copy of the document being sent to the other agency.**

Disclosure Form OPCA-16

When the **(b)(1) block is checked** on the OPCA-16 disclosure form, it will be necessary for **the tickler and the yellow copies only** to be properly marked to indicate the highest level of classification contained in the processed (red-out) documents. For example, if the highest level of classification indicated by the DCU addendum is "Secret," then the **"Secret" stamp should be placed on both the front and back and at the top and bottom of the page of the tickler and yellow copies. The "Secret Material Enclosed" and "This Communication Is**

FOIPA Numbered Memo 9

Page 2

Classification Stamps, Use of

Is Unclassified Upon Removal of the Enclosures” stamps are to be placed on the bottom of the front of both copies. Do not place the classification stamps on the copy of the disclosure letter going to the requester. See Attachment 2.

Electronic Communications (EC)

There will be times when classification stamps will be placed on ECs. For example, if the Electronic Surveillance (Elsur) Indices search slip is classified and the LT/PLS is enclosing the search slip to the EC going to the field office(s). The “_____ Material Attached” and “This Communication Is Unclassified Upon Removal of the Enclosures” stamps will need to be placed on all copies of the EC. The classification level will be indicated on the EC when it is prepared.

For information concerning the transmittal of classified material also review **Memo 10** concerning the “**Handling and Transmittal of Classified Material.**”



CONFIDENTIAL

U.S. Department of Justice

Federal Bureau of Investigation
935 Pennsylvania Ave., N.W.

Washington, D.C. 20535-0001

To:

From: Chief
Freedom of Information/Privacy Acts (FOIPA) Section
Federal Bureau of Investigation

Subject: FOI/PA Request of _____
FBI FOI/PA# _____ Re: _____

In connection with review of FBI files responsive to the above request, the following was surfaced:

- _____ unclassified document(s) which originated with your agency is/are being referred to you for direct response to the requester. We will advise the requester that your agency will correspond directly concerning this matter, and request that you furnish us a copy of your letter to the requester reflecting final determination regarding the document(s). (See index A).
- _____ FBI document(s) containing information furnished by or related to your agency. Please review this information (outlined in red) and return the document(s) to us, making any deletions you deem appropriate, and citing the exemption(s) claimed. (See index B).
- _____ classified document(s) which originated with your agency is/are being referred to you for direct response to the requester. We will advise the requester that your agency will correspond directly concerning this matter, and request that you furnish us a copy of your letter to the requester reflecting final determination regarding the document(s). Additionally, please advise us if the classification of the document(s) is changed so that we may amend our files. (See index C).
- _____ classified FBI document(s) containing information furnished by or related to your agency. Please review this information (outlined in red) and return the document(s) to us, making any deletions you deem appropriate, citing the exemption(s) claimed, and advising if the document(s) still warrant(s) classification. (See index D).
- Please note that some of the enclosed documents contain deletions made by this Bureau. The appropriate exemption appears next to the redacted information. Please advise the requester they may appeal these denials to the following address: Co-Director, Office of Information and Privacy, U.S. Department of Justice, Flag Building, Suite 570, Washington, D.C. 20530-0001.

A copy of the requester's initial letter and any other significant correspondence is enclosed for your convenience. If you have any questions concerning this referral, please contact _____ on (202) 324-_____. The FBI file number appearing on the lower right-hand corner of the enclosed document(s) as well as on the Index Listing (see reverse) should be utilized during any consultation with this Bureau concerning this referral.

Additional Remarks: _____

Enclosure(s) ()

MEMO 9 - ATTACHMENT 1 (FRONT) (Index Listing on Reverse)

CONFIDENTIAL

THIS COMMUNICATION IS UNCLASSIFIED UPON THE REMOVAL OF CLASSIFIED ENCLOSURES

CONFIDENTIAL MATERIAL ENCLOSED

CONFIDENTIAL

Index A:

Index B:

Index C:

Index D:

MEMO 9 - ATTACHMENT 1
(BACK)

CONFIDENTIAL

SECRET

U.S. Department of Justice



Federal Bureau of Investigation
935 Pennsylvania Ave., N.W.

Washington, D.C. 20535-0001

Subject of Request: _____

FOIPA No. _____ /190- _____

Dear Requester:

Enclosed are copies of documents from FBI records. Excisions have been made to protect information exempt from disclosure pursuant to Title 5, United States Code, Section 552 (Freedom of Information Act) and/or Section 552a (Privacy Act). In addition, where excisions were made, the appropriate exempting subsections have been cited opposite the deletions. Where pages have been withheld in their entirety, a deleted page information sheet has been substituted showing the reasons or basis for the deletion. The subsections cited for withholding information from the enclosed documents are marked below:

- | Section 552 | | Section 552a |
|--|------------------------------------|---------------------------------|
| <input checked="" type="checkbox"/> (b)(1) | | <input type="checkbox"/> (d)(5) |
| <input type="checkbox"/> (b)(2) | <input type="checkbox"/> (b)(7)(A) | <input type="checkbox"/> (j)(2) |
| <input type="checkbox"/> (b)(3) _____ | <input type="checkbox"/> (b)(7)(B) | <input type="checkbox"/> (k)(1) |
| _____ | <input type="checkbox"/> (b)(7)(C) | <input type="checkbox"/> (k)(2) |
| _____ | <input type="checkbox"/> (b)(7)(D) | <input type="checkbox"/> (k)(3) |
| _____ | <input type="checkbox"/> (b)(7)(E) | <input type="checkbox"/> (k)(4) |
| <input type="checkbox"/> (b)(4) | <input type="checkbox"/> (b)(7)(F) | <input type="checkbox"/> (k)(5) |
| <input type="checkbox"/> (b)(5) | <input type="checkbox"/> (b)(8) | <input type="checkbox"/> (k)(6) |
| <input type="checkbox"/> (b)(6) | <input type="checkbox"/> (b)(9) | <input type="checkbox"/> (k)(7) |

(See Form OPCA-16a, enclosed, for an explanation of these exemptions.)

Pursuant to your request, _____ page(s) were reviewed and _____ page(s) are being released.

During the review of material pertinent to the subject of your request, documents were located which

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

MEMO 9 - ATTACHMENT 2
(FRONT)

SECRET

THIS COMMUNICATION IS UNCLASSIFIED
UPON THE REMOVAL OF CLASSIFIED ENCLOSURE

SECRET MATERIAL ENCLOSED

SECRET

- If you desire, you may appeal any denials contained herein. Appeals should be directed in writing to the Co-Director, Office of Information and Privacy, U.S. Department of Justice, Flag Building, Suite 570, Washington, D.C. 20530-0001 within thirty days from receipt of this letter. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal." Please cite the FOIPA 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 of your request was the subject of the investigation. There are additional references to the subject(s) of your request in files relating to other individuals, organizations, events or activities. These additional mentions or references have not been reviewed to determine if, in fact, they are identifiable with the subject(s) of your request. Our experience has shown that such references are frequently similar to information contained in the processed main file(s). We will process these references if you now make a specific request for them. However, because of a significant increase in FOIPA requests and an expanding backlog, we have given priority to the processing of main investigative files and can only complete the processing of these additional references as time and resources permit.

- See additional information which follows.

Sincerely yours,

Chief
Freedom of Information-
Privacy Acts Section
Office of Public and Congressional Affairs

Enclosures ()

MEMO 9 - ATTACHMENT 2
(BACK)

SECRET

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Classified Material, Handling and Transmittal of
Date: March 31, 1998

**Handling Top Secret/Sensitive Compartmented
Information (TS/SCI) and Elsur Records**

A. Information Upgraded by Document Classification Unit (DCU)

1. When DCU reviews information in FBI Headquarters (FBIHQ) files which requires classification at the TS or SCI level and which has not been marked previously (such as documents dated prior to July 1, 1977), DCU will mark the information. DCU will also locate and mark any other FBIHQ files containing the same document, then hand carry these files to the Special File Room (SFR). (If there is outside agency information within the file or document, the information must be referred to the outside agency before being sent to the SFR.)
2. The SFR will remove the original TS/SCI document from the file for retention in the SFR and prepare a Custody Control Form, FD-501a, for each document. They will then stamp the file front "TOP SECRET FILE EXISTS."
3. When the LT/PLS is advised by DCU that a document is upgraded to TS, the LT/PLS will obtain a copy of the document from the SFR. (See the "Special File Room" numbered memorandum for procedures when the SFR advises the LT/PLS that he/she does not have the appropriate clearance to review the document.)

B. Information Downgraded by DCU

When DCU discovers that information in a document maintained by the SFR is no longer classified at the TS/SCI level, DCU will take the FD-501a and document to the SFR. The SFR will make a notation on the SFR copy of the FD-501a, remove the FD-501a form from the document and retain the FD-501a. The document will be returned to the PLS to complete the FOIPA processing.

Thereafter, the document will be routed to the SFR so that they can remove the serial charge-out and put the downgraded document in the proper investigative file.

C. Referrals of TS/SCI Information

1. When FBI information in other-agency documents is classified at the TS/SCI level, regardless of the date of the document, DCU will have the SFR remove the document from the file and stamp the file front "**TOP SECRET FILE EXISTS.**" At the request of the Disclosure PLS, the SFR will copy the document. The PLS will prepare a referral to the other agency with directions to delete exempt FBI-originated information from its document. Once the referral has been finalized, the PLS will take all copies of the referral form (OPCA-6) and the enclosure(s) to the SFR where an FD-502a will be prepared. The SFR will place a note in the margin of the yellow copy to indicate that the originals of the enclosures are retained in the SFR. **Do not retain copies of the TS/SCI documents behind the yellow of the referral form.** The SFR will handle the delivery of other agency referrals with the exception of NSA. NSA referrals will be handled by the PLS who will hand deliver the material to the FBI's NSA Liaison Agent in Room [REDACTED] (See the "Special File Room" numbered memorandum for procedures when the SFR advises the LT/PLS that he/she does not have the appropriate clearance to review the document.)

2. When other-agency information in FBI documents is classified TS and/or contains SCI, DCU will not automatically act to have the TS/SCI information removed from the file, but will await notification from the other agency of its intent to retain the classification. Thus the FBI document will be retained in the file until after the PLS sends a referral to the other agency, and the other agency responds to the referral. The PLS will take all copies of the referral form (OPCA-6) and the enclosure(s) to the SFR where an FD-502a will be prepared by the SFR. **Do not retain copies of the TS/SCI documents behind the yellow of the referral form.**

a. If the other agency indicates that the information is to retain its classification, the PLS will hand carry the referral response along with the original FBI document to DCU. DCU will update the classification in the FBI document and hand carry the file to the SFR for filing in the SFR. The PLS will obtain a copy of the document from SFR in order to complete the processing of the FOIPA request. (See paragraph A.3.)

b. If the other-agency information is downgraded below the TS level or no longer considered SCI, DCU will handle the document as described in paragraph B above.

D. Handling Disclosure Packages with TS/SCI

When the red-outs of a disclosure package contains TS/SCI material, the TC will date stamp all copies of the disclosure form, place appropriate stamps on the original and the yellow file copy, but the TC will not package the material or send it to the Mail Services Unit (MSU). The PLS will hand carry all copies of the disclosure form (OPCA-16) and all enclosure(s), including the black-outs, to the SFR, who will then prepare an FD-501a. Once this has been handled the original disclosure form and the black-outs can be packaged for mailing.

E. Transfer of TS/SCI Information

b2
If a TS/SCI document (that is not filed in a TS folder or file maintained by the SFR) needs to be reviewed by another individual, it is the responsibility of the person who has the document to ensure that the person to whom the document is transferred has a "need to know" and, if it is SCI, the necessary SCI access. This can be accomplished by calling the Personnel Security Unit on extension [REDACTED]. To transfer the TS/SCI document, call the SFR on extension [REDACTED]. Any TS/SCI document must be hand carried to another individual. When not being used, the TS/SCI document must be maintained in a combination safe when it is outside of the SFR.

F. Filing TS/SCI And Elsur Documents

It is the policy of Information Resources Division that when any part of a document or enclosure to a document is TS, the entire serial is treated as TS. Therefore, when a TS document is in a FOIPA disclosure package (processed documents), the SFR considers the entire disclosure package as TS. The FOIPA disclosure form should be stamped "Top Secret" on the top and bottom and "Top Secret Material Attached" and "This Communication Is Unclassified Upon the Removal of Classified Enclosures" on the bottom by the PLS. Similar handling is given to Elsur records. The disclosure package should be hand carried to the SFR for filing in their portion of the 190 file. Be aware that any original document or yellow/white file copy that is stamped "Top Secret" or has "Top Secret" material attached must be filed in the SFR.

Transmittal of Classified Materials Within FBIHQ

All FBIHQ employees are reminded of the importance of properly handling classified information in order to prevent the loss or disclosure of that information. The following procedures should be adhered to in all cases involving the routing of classified information within FBIHQ:

Top Secret (TS) Documents or documents containing Sensitive Compartmented Information (SCI) must have an attached form FD-501a and be hand-carried in an envelope when being moved within FBIHQ. SCI documents must be hand-carried by an individual who has been cleared for SCI access. TS and SCI documents must never be placed in outgoing mailboxes or routed through MSU.

Confidential and Secret documents may be placed in outgoing mailboxes and be delivered by MSU, but must be inside a messenger envelope.

Transmittal of Classified Materials Outside FBIHQ

b2 TS and SCI documents being sent outside FBIHQ must have an attached form FD-502a and be hand-carried to the Special File Room (Room [REDACTED]) for recording and packaging. These documents will be delivered by a designated FBI courier or the Defense Courier Service. If the package is designated for the Washington Metropolitan area, delivery will be handled by the FBI courier. For this reason, there must be a point of contact listed on the address label. If the PLS does not know who the point of contact is for a particular agency, the PLS should contact the agency for this information. If the designated addressee is outside of the Washington Metropolitan area, delivery will be handled by the Defense Courier Service.

Confidential and Secret Documents being sent to FBI offices must be placed in a messenger envelope and then routed to MSU, Room 1B341. Confidential and Secret documents being sent to other government agencies (including DOJ) must be placed in a messenger envelope and routed to MSU, Room 1B341, for recording, receipting, and packaging. However, if the TC packages this material, the TC should place a sticky on the outside mailing envelope indicating whether there is "Confidential" or "Secret" material inside the package, and place in a messenger envelope or hand carry to the MSU.

b6
b2
1 Everyone has a responsibility to protect classified information. Additional information concerning the handling and marking of classified information can be found in the MIOG, Part II, Section 26, "Classified National Security Information and Material." Questions may be directed to [REDACTED], Information Systems Security Unit, National Security Division, extension [REDACTED]. Questions regarding mail room procedures may be directed to MSU, Information Resources Division, extension [REDACTED] Room 1B006.

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Closing a FOIPA Request
Date: March 31, 1998

**Closing an FBIHQ FOIPA Request and
Advising Field Offices of Final Disclosure**

A FOIPA request may be closed through processing when there is no further action to be taken by the PLS on the request. An example of this is when a final disclosure has been made, including responses to final determinations on any and all documents referred for consultation. A request may also be closed administratively in situations where the requester fails to respond within 60 days to an action sought by the LT/PLS. For example, if there is no response from the requester after asking for their willingness to pay for duplication fees prior to processing the material or if the requester provided his or her willingness to pay and then never responded to the "cost" or "money" letter. It is suggested that the LT/PLS maintain the case folder and all pertinent mail or files after closing a request for a minimum of 60 to 90 days. If after this time no further communication has been received, any original mail should be sent to the 190 file and all FBI files returned to the Filing Unit or the field office(s).

Furthermore, when a FBIHQ request is closed, wherein a release of information was made, an information copy of the final disclosure letter should be forwarded to the field office in which the greater portion of the investigation was conducted. The disclosure letter should contain a brief note to the field office identifying the Bureau file(s) processed and any details which may be relevant to the request, a requester or the files processed. There will be certain cases where it would not be necessary to notify the field office of a release, such as, third party historical interest cases, requests on deceased individuals or personnel files. If in doubt on whether to provide a copy of the letter to the field office, resolve the doubt in favor of furnishing the field with a copy.

Closing Field Office FOIPA Requests When Referred to FBIHQ

On many occasions, FOIPA requests are made directly to a field office for subject matters and records of interest. If the request is for records maintained in the field office only and the responsive file(s) contain 500 pages or less, that field office will process the file(s), make the release or denial of any material and close the case. Requests of 501 pages or more are to be referred to FBIHQ by Electronic Communication (EC) for handling. Upon referring these

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Page 2

Closing a FOIPA Request

requests to FBIHQ, the field office will no longer maintain their 190 file in a pending status as in the past, but rather, close the 190 field office file by the date of the EC. It is ultimately the responsibility of the FBIHQ PLS processing the case to ensure all issues in the request letter and further correspondence which pertain to your subject matter have been addressed. Once the processing of the case has been completed or if interim releases are made, the field office which originally referred the request should be provided with a copy of the disclosure letter(s) for their 190 file.

Abandoned Cases - Use of Form OPCA-25 **(Transmitting Processed Documents to File)**

To close FOIPA requests when material has been prepared for release and the requester has abandoned fees, withdrawn the request, etc., OPCA-25 (previously referred to as Form 4-780) should be completed in order to document the reason for closing the case and to send the processed material to the 190 file. Attached is copy of OPCA-25 which should be utilized for this purpose.

Closing of Multiple Requests from One Requester **When Failure to Submit Fees**

Some requesters submit numerous requests (multiple requests) for information concerning various subject matters. When these requesters do not submit requested fees, no further processing of their requests should be done. Further, no releases should be made to these individuals until they pay the requested fees. **A stop should be placed with RTSS** to insure that the FBI's FOIPA Section does not accept further requests from the requester. If payment of fees is not made within 60 days from the date of the FBI's request for payment, all of this individual's requests should be closed for failure to pay requested fees.

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Congressional Documents
Date: March 31, 1998

Occasionally FBI files contain documents which were generated by Congress such as transcripts of Congressional hearings which were held either in executive (closed to the public) or open sessions. The issue is whether those documents are "agency records" subject to access under the Freedom of Information Act (FOIA) or Privacy Act (PA).

The FOIA and PA only apply to records maintained by agencies within the Executive Branch of the Federal Government. Records maintained by Congress (the Legislative Branch) are not subject to FOIPA processing. The test which is used to determine whether a document is an agency record or a Congressional record was established in Paisley v. Central Intelligence Agency, 712 F.2d 686 (D.C. Cir. 1983). In that case, the court focused on the following factors: 1) whether at the time Congress created the document, it placed any indicia of control or confidentiality on the face of the document (a congressional document is one generated by any official body of Congress {i.e., a committee}, or by a member acting on behalf of an official body of Congress, but not a document generated by an individual Congressman on behalf of a constituent); 2) whether the hearing or activity which generated the document was conducted under any special conditions of secrecy (e.g., executive session documents); and, 3) whether the document was sent to the agency under contemporaneous and specific instructions from Congress limiting its use or disclosure. The Court further remarked that if Congress neither created the document nor physically possessed the document, it would be difficult to find the document a Congressional record.

If it is determine under this test that a document in an FBI file is a Congressional record, the requester should be advised of the existence of the document and it cannot be accessed under the FOIPA. If the document is an "agency record," it is subject to the provisions of the FOIPA and should be processed accordingly. See Department of Justice v. Tax Analysts, No. 88-782 (U.S.S. Ct. June 23, 1989).

Note that an FBI-originated document may contain Congressional or Judicial information such as direct quotes from an Executive Session hearing, which may not be accessible under the FOIPA. In making that determination, consideration should be given as to how the FBI acquired the information, whether any restrictions were placed on the derivative Congressional or Judicial material or if there would be a substantial harm in the disclosure of the information.

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Coordination of FOIPA Releases
Date: March 31, 1998

Coordination of FOIPA Releases with Other Divisions

From time to time material proposed for release will have to be coordinated and reviewed by other investigative or administrative divisions at FBIHQ. This is particularly true in organized crime, sensitive FCI, and terrorist cases where the material being processed, even though a closed investigation, may relate to a pending matter on another individual or organization. The substantive division and/or field office must always be consulted when processing records which are part of an active investigation, even if the case has been ongoing for a number of years. It is also necessary to contact the Laboratory Division whenever the material being processed relates to a sophisticated scientific laboratory technique (especially those in support of FCI investigations), or the Finance Division on contract matters.

In addition, any material being processed which relates to a matter currently in litigation (197 classification), or which relates to an OPR inquiry (62 and 263 classifications) should be closely coordinated with and reviewed by personnel in the Office of General Counsel and/or OPR prior to release. (See Memo 39 for further information on processing 197 files for lawsuits involving civil actions or administrative claims.)

A note should be included on the file copy of the disclosure letter identifying the persons(s) consulted, the date, and whether or not they requested to review the material prior to release.

Coordination of FOIPA Releases Between Paralegal Specialists

LTs and PLSs should be alert for documents/information which have been previously processed or are currently being processed, as well as, requests which are subject to aggregate fees. It is imperative that these requests be coordinated by all LTs and PLSs when necessary. This will enable the **handling** of the FOIPA releases, requests and/or requesters in a consistent and accurate manner.

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Correction / Expungement of Information in FBI Files
Date: March 31, 1998

b6 When an incoming letter requests a correction, change or destruction of information in FBI records, it should be referred on the same day to PLS [REDACTED] in the Field Coordination Team (FCT) who handles all correction and amendment requests. Every effort should be made to provided PLS [REDACTED] with the following:

- 1) all correspondence between the Bureau and the requester
- 2) the actual excised (processed) documents of the material released to the requester

PLSs are expected to cooperate in any way possible in locating the above material and resolving the request, as the Privacy Act requires a response and notification of the FBI's intentions within ten working days after the date of receipt of the request.

Furthermore, there are times when a citizen requests only an addition to his or her file clarifying material which was submitted to the FBI. In such cases, the PLS should follow the above procedures and promptly refer the request to the FCT.

The only person who can make a request for amendment/correction is the subject of the record. However, even improper requests, such as repeated submissions of written data from an organization for inclusion in the organizational file, should be coordinated with PLS [REDACTED] b6

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Correspondence
Date: March 31, 1998

Annotating Correspondence by LTs/PLSs

When action has been taken by the LT or PLS on correspondence from FOIPA requesters, a penciled notation should be made on the incoming communication showing the action taken, the date of the action, and the initials of the person who took the action. This notation should be made at the lower left margin of the document. If, after reviewing the correspondence, the supervisor determines no acknowledgment is necessary, this notation should also be documented on the mail and initialed for filing. Proper notations on the incoming communication will help the 190 Processing Subunit recognize that necessary action has been taken and that the correspondence is ready to be sent to the 190 file.

Also, insure that notations of any action taken in response to teletypes, radiograms, and other communications are recorded on the original communication since, in most cases, copies of these communications are destroyed. Copies with notations of action taken held for reference purposes by supervisory personnel should not be sent for filing, but destroyed, unless the copy is designated for a Bureau file other than the file where the original communication is maintained.

**Annotation of Incoming FOIPA Request Letters
by the Request Tracking and Statistics Subunit (RTSS)**

When RTSS receives a request letter, the FOIPA database will be searched to determine if the requester has made a previous request and/or if the subject has been previously requested. The results of the search will be noted on the bottom left corner of the request as follows:

<u>NOTATION</u>	<u>MEANING</u>
NP	No previous request by requester and/or subject
PR	Previous requester (consider aggregate fees if multiple)
PS	Previous subject
Poss 190	Possible 190 file exists, however RTSS is unable to determine if same requester

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Page 2

Correspondence

If there is a previous history of either the requester or subject, RTSS will affix the appropriate computer printout(s) to the letter.

Incoming mail concerning requests which have been closed administratively will be handled by RTSS in one of two ways. If the request was closed for no notary, insufficient information, no fees guaranteed, or abandoned fees, RTSS will reopen the old request if warranted. If the request was closed administratively for any other reason, such as a no record or withdrawn, RTSS will open a new request. However, if a request was closed by a Disclosure PLS through processing and the same requester writes in about the same subject matter, if necessary, RTSS will confer with the Disclosure PLS and/or team captain for instructions on opening, reopening or assignment of the case.

When correspondence assigned to a LT in RMU is identified as a previous request on the same subject matter, they will indicate the name and team of the PLS who previously processed the request. If the processed material is maintained in the FOIPA Reading Room, RMU will handle the new request. If the previous request is still pending in Disclosure, the LT should consult with the PLS handling the prior request for a response to the new request. RMU will then direct the new request to the PLS handling the subject matter. If the previous request has been closed, RMU will consult with Disclosure to determine if fees are at issue. If there are no fees involved, RMU will designate the new request to the same PLS who previously processed the subject.

Classification of Notes and Addenda

Classification regulations require that any notes or addenda which are added to a communication/correspondence, or to certain copies of it should be treated separately. In order to comply with these regulations, the following guidelines should be followed:

1. When classifiable national security information is set forth in a note or addendum to a communication, the note or addendum should be prepared on a separate page. This allows for independent classification marking of the note or addendum.
2. Top Secret or Sensitive Compartmentalized (SCI) Information should be avoided in a note or addendum. If possible, every effort should be made to exclude all classifiable information from the note or addenda.

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Court Orders Affecting FBI Processing of FOIPA Requests
Date: March 31, 1998

National Caucus of Labor Committees (NCLC)
United States Labor Party (USLP)
Fusion Energy Foundation (FEF)

Since 1975, the NCLC has been involved in civil litigation with the FBI in the matter of Lyndon H. LaRouche, Jr. v. Clarence M. Kelley, Civil Action Number 75-CIV-6010, (S.D.N.Y. 1975) One of the issues in the litigation concerns accessibility, by parties other than plaintiffs, of investigative records maintained by the FBI regarding NCLC.

On March 5, 1979, the Court ordered that the FBI could not release to requesters under the FOIPA or make public generally any of the documents pertaining to the NCLC. This order includes documents pertaining to the USLP and the FEF, whether contained in NCLC main files or in other files such as SDS, SWP, or CPUSA. All employees should remain alert for any information pertaining to NCLC, USLP, and FEF so that releases of documents are not inadvertently made. See "Attachment 1" for a copy of the Court Order included for your review and assistance.

National Lawyers Guild

On 10/13/89, an Order of Settlement and Dismissal was entered in National Lawyers Guild v. Attorney General, 77 Civ. 999 (U.S.D.C., S.D.N.Y.). The settlement requires in part that the FBI's investigative files on the National Lawyers Guild (NLG) be maintained in secure storage at FBIHQ until they are transferred to the National Archives and Records Administration (NARA) in or after the year 2025. Covered are the following records:

- (1) all Headquarters, Field Office and Legat main files on the NLG and its projects (see Appendix A), including all enclosures behind the files (EBF's) and bulky exhibits;
- (2) electronic surveillance (ELSUR) logs contained in the Headquarters and Field Office main file of ROBERT SILBERSTEIN, including all EBFs;

FOIPA Numbered Memo 16

Page 2

Court Orders

- (3) reference cards and any similar computerized or non-computerized reference system capable of locating NLG-related information in files other than the NLG main file;
- (4) references to the NLG in the ELSUR Index and any informant file indices; and
- (5) any copies of the foregoing documents and any summaries thereof which may be included in the FBI litigation file (62-117572).

This portion of the Order, which is limited to documents created prior to 10/13/89, prohibits the FBI from using, or granting access to, these records prior to their transfer to NARA, subject to the following exceptions: (1) The records can be used by the government to defend itself in civil actions for activities prior to 10/13/89; and 2) The records can be used to respond to FOIA requests from the NLG submitted on or after 1/1/94. All other FOIA requests for these records should be denied.

Another portion of the Order covers records on an individual, created prior to 3/1/77, which reflect an affiliation with the NLG. Included are main files on the individual, cross-references to the NLG, and serials which are see-referenced to the individual and accessed through the name of the individual. (At this time these records are still being identified.) The FBI may not use, release, or disclose these records, within or outside the Government, except with the authorization of the individual mentioned in the records.

In order to clarify this Order, the following points should be noted: 1) The NLG may not receive information on one of its individual members; 2) An individual member may not receive information from an NLG file; 3) The NLG may not authorize release of information pertaining to it to a third party, and; 4) Cross-references to the NLG, as opposed to one of its members, are not protected by the Order. Only the reference cards, or equivalent finding aids, are protected.

Most of the records covered by this Order will be stored in the Special File Room (SFR). If you have any questions as to whether specific records are covered, please contact your Team Captain first, and then your Unit Chief, for guidance. If a determination cannot be made at that level, then the Civil Litigation Unit of the Office of General Counsel should be consulted.

Denial letters should cite the full caption of the NLG case and advise that the Order of Settlement and Dismissal dated 10/13/89 prohibits the FBI from releasing the requested records.

See Memorandum dated 8/9/90, designated as "Attachment 2," for a copy of the Court Order and a list of the National Projects and Committees, and individuals of the NLG protected under this Court Order. In addition, a memorandum dated 5/13/85 is attached for informational

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Page 3

Court Orders

purposes on handling NLG material and a list of NLG Organizations with the known file numbers which are protected under the Court Order is also included in this attachment..

Spartacist League; Spartacus Youth League

On 11/30/84, settlement was reached in a civil action against the Department of Justice and the FBI by referenced Leagues. (FBIHQ Airtel to All SACS, 12/18/84, Captioned "SPARTACIST LEAGUE; SPARTACUS YOUTH LEAGUE; JAMES M. ROBERTSON AND SUSAN ADAMS V. ATTORNEY GENERAL OF THE UNITED STATES, et al., (U.S.D.C., S.D.N.Y.) CIVIL ACTION NO. 83-CIV-7680.)

In the settlement agreement, the FBI agreed to change its characterization of the Spartacist League. The text of the new characterization is provided below. Effective 11/30/84, all PLSs are instructed to advise the requester that a new characterization exists and should include the court-approved characterization in the disclosure letter of any future FOIPA releases containing a prior Spartacist League characterization.

"The Spartacist League (SPL), a Marxist political organization, was founded in 1966. The historical and theoretical roots of the SPL derive from the early Communist Party, U.S.A. and the Socialist Workers Party. The immediate precursor of the SPL was the Revolutionary Tendency of the Socialist Workers Party. The SPL has an official youth section named the Spartacus Youth League."

" The SPL was once the subject of an FBI domestic security investigation. The investigation was closed in 1977, however, and it did not result in any criminal prosecution."

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
FILED
MAR - 6 1979
S. D. OF N. Y.

LYNDON H. LAROUCHE JR.,
et al.,

Plaintiffs,

STIPULATION AND ORDER

- against -

CLARENCE M. KELLEY, et al.,

Defendants.

75 Civ. 6010 (MJL)
NOSWICK 1/24/79
COMM. SUPV. 2/1/79
6/19/79 - CIV

IT IS HEREBY STIPULATED AND AGREED, by and
between the above parties, as follows:

1. Defendants and the Federal Bureau of
Investigation ("the FBI") are enjoined from releasing
to requesters under the Freedom of Information Act or
the Privacy Act, and from making available to the
public generally, other than plaintiffs herein, any of
the documents in their possession, custody or control
production of which has been requested by plaintiff
herein pursuant to the Freedom of Information Act, except
as provided by all terms of the Privacy Act save 5 U.S.C.
§ 552a(b)(2).

2. Any infra-governmental transfers of the
subject documents or the information contained therein
pursuant to the Privacy Act shall be accompanied and
governed by this Stipulation and Order.

3. This Stipulation and Order shall remain in
effect until the final disposition of this case, including
the final determination of any appeals herein; and until
the time for filing any such appeals has run.

Dated: New York, New York

February 27, 1979

David S. Hirsch
DAVID S. HIRSCH, Esq.
Attorney for Plaintiffs
304 West 50th Street
New York, New York 10019

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for Defendants

By:

Carl T. Solberg
CARL T. SOLBERG
Assistant United States Attorney
One St. Andrew's Plaza
New York, New York 10007
Telephone: (212) 791-1966

SO ORDERED: MARCH 5, 1979

Mary Johnson-Rae
United States District Judge *u*

day of

NATIONAL CAUCUS OF LABOR COMMITTEES

The National Caucus of Labor Committees (NCLC) was a violence-oriented, self-described "organization of revolutionary socialists" which was formed in 1969 with its stated aim to identify with American workers and orient them toward a socialist America. In its attempt to become the dominant Left group in the United States, NCLC members have attacked attendees at meetings, demonstrations, conferences and conventions of various communist, Trotskyist and socialist organizations because it contended that it is necessary to use violence to achieve socialism. According to statements made by LYN MARCUS, National Chairman, NCLC will have gained state power in the United States by 1979 and by the year 2000 in the world. NCLC, which was headquartered in New York City, had chapters in more than 40 cities in this country and had affiliated chapters in five foreign countries.

NCLC utilized its front group, the North American Unemployed and Welfare Rights Organization (NAUWRO), to attract poor people to its philosophy; its youth group, the Revolutionary Youth Movement (RYM), to organize ghetto youths; and its political arm, the United States Labor Party (USLP), to conduct political campaigns aimed at acquainting the general public with the activities of NCLC.

The FBI ceased investigating the NCLC in September, 1977, pursuant to the Attorney General's Guidelines for Domestic Security Investigations. Therefore, receipt of an allegation that an individual is a member of the NCLC would no longer warrant an FBI investigation.

For your additional information, the NCLC has a pending suit against the FBI in the Southern District of New York. Attached is a copy of the Stipulation and Order Number 75 Civ. 6010 (MJL) governing what information may be disseminated concerning this organization. You may desire to consult Assistant United States Attorney Steven E. Obus, Southern District of New York, for information regarding the pending suit.

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency. This is in answer to your request for a check of FBI files.

Memorandum



Dep. Dir. _____
 ADD Adm. _____
 ADD Inv. _____
 Asst. Dir.:

- Adm. Servs. _____
- Crim. Inv. _____
- Ident. _____
- Info. Mgnt. _____
- Insp. _____
- Intell. _____
- Lab. _____
- Legal Coun. _____
- Tech. Servs. _____
- Training _____
- Cong. Affs. Off. _____
- Off. of EEO _____
- Off. Liaison & _____
- Int. Affs. _____
- Off. of Public Affs. _____
- Telephone Rm. _____
- Director's Sec'y _____

To : *YNG* Assistant Director
 Information Management Division

Date 8/9/90

From : Legal Counsel *SEP*

Subject : NATIONAL LAWYERS GUILD v.
 ATTORNEY GENERAL, et al.
 (U.S.D.C., S-D.N.Y.)
 CIVIL ACTION NO. 77 CIV 999 (PKL)
 MAJOR CASE NO. 41

TOP SERIAL
THIS COMMUNICATION MUST
REMAIN AS THE TOP SERIAL
IN FILE. DO NOT FILE
MAIL ON TOP OF THIS
COMMUNICATION.

PURPOSE: To request that Information Management Division (IMD) conduct a search of general indices to identify any person on the attached list that has an individual file reflecting activities in or affiliation with the National Lawyers Guild (NLG) and its projects and to appropriately label the file to insure compliance with the attached settlement.

RECOMMENDATION: (1) That IMD conduct a search of general indices to determine whether any individual on the attached list has a file identifiable with the NLG or its projects.

APPROVED: _____

Adm. Servs. _____	Legal Coun. <i>JRO</i>	Off. of Liaison _____
Crim. Inv. _____	Rec. Mgnt. _____	Int. Affs. _____
Director _____	Ident. _____	Tech. Servs. _____
Dep. Dir. _____	Inspection _____	Training _____
ADD-Adm. _____	Intell. _____	Cong. Affs. Off. _____
ADD-Inv. _____	Laboratory _____	Off. of EEO _____

(2) That IMD place a copy of the attached settlement in each file identified or otherwise appropriately label each file to insure compliance with the attached settlement.

APPROVED: _____

Adm. Servs. _____	Legal Coun. <i>JRO</i>	Off. of Liaison _____
Crim. Inv. _____	Rec. Mgnt. _____	Int. Affs. _____
Director _____	Ident. _____	Tech. Servs. _____
Dep. Dir. _____	Inspection _____	Training _____
ADD-Adm. _____	Intell. _____	Cong. Affs. Off. _____
ADD-Inv. _____	Laboratory _____	Off. of EEO _____

DETAILS: On 10/12/90, the parties to the captioned civil action entered into the attached Settlement and Stipulation of Dismissal. The Settlement was approved by the Court on 10/13/90. In addition to a general prohibition on the use or dissemination

Enclosures (2)

NOT RECORDED

MEMO 16 - ATTACHMENT 2

MAY 24 1991

Memorandum from Legal Counsel to Assistant Director,
Information Management Division
Re: National Lawyers Guild v. Attorney General, et al.

of information on the NLG or its projects, the court approved settlement provides that present or former NLG members may request that their individual files which reflect Guild affiliation or activities be similarly withheld. Pursuant to this provision, the NLG has compiled the attached list of individual NLG members who have requested relief under 8c(iv) of the Settlement.¹

Accordingly, IMD is requested to identify any individual on the attached list who has a file reflecting NLG affiliation or activities which was created prior to 3/1/77. Any identified file should be appropriately labeled to insure non-disclosure as required by the settlement. Please advise Legal Counsel Division as to the results of the indices search, including the number of individual files identifiable with the NLG, individuals for whom no file could be located or are not identical, and the actions taken to comply with the order. In addition, please preserve all search slips in case we are required to respond to the Court regarding our compliance. It is likely that no files will be identified with a substantial number of the individuals on the attached list. Finally, inasmuch as the Settlement applies to all FBI files, the Field should also be requested to conduct indices searches and to appropriately label their files.

We recognize that this is a time-consuming chore that is being imposed on IMD during a time of limited resources. Nevertheless, we have made this commitment to the court and we are

¹ 8c(iv) provides in part:

c. The federal agencies which are parties defendant to this action (specifically, the FBI, the Central Intelligence Agency, the National Security Agency, the Internal Revenue Service, the Office of Personnel Management, the Postal Service, and the Departments of Defense, Justice, State, the Treasury, the Army, the Navy and the Air Force) shall not use, release or disclose, within or outside the Government:

(iv) any portion of any document or record created prior to March 1, 1977, or the information contained therein, to the extent that it mentions the Guild affiliation or Guild activities of any individual, provided, however, that because of the federal defendants' representation of the practical impossibility of assuring compliance with such broad restrictions, the following limitations shall apply:

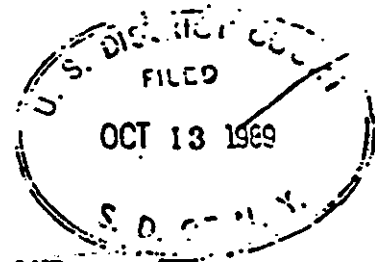
Memorandum from Legal Counsel to Assistant Director,
Information Management Division
Re: National Lawyers Guild v. Attorney General, et al.

obligated to comply irrespective of the unreasonably large number of individuals. Therefore your cooperation will be appreciated.

Any questions regarding this matter may be directed to Supervisory Special Agent WILLIAM D. CHASE, Administrative Law Unit, LCD, at extension ~~4528~~.

PKM:cb
4-967/2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----x
NATIONAL LAWYERS GUILD, :

Plaintiff, :

- against - :

ATTORNEY GENERAL OF THE :
UNITED STATES, et al., :

Defendants. :

STIPULATION AND
ORDER OF SETTLEMENT
AND DISMISSAL

77 Civ. 999 (PKL)

-----x

IT IS HEREBY STIPULATED AND AGREED by and among the parties as follows:

1. The parties agree to settle and compromise this action on the terms indicated below.

2. This action is hereby dismissed with prejudice as to all defendants except the City of New York, i.e., the "federal defendants."

3. Plaintiff hereby releases and forever discharges, and for its administrators, successors and assigns releases and forever discharges, the United States of America, its departments, agencies and past or present officials, officers and employees (and their heirs, executors, administrators, successors and assigns) from all claims whatsoever, in law, admiralty, or equity, which plaintiff and its administrators, successors and assigns hereafter can, shall or may have for, upon or by reason of any surveillance, investigation, disruption, or similar conduct by the Federal Bureau of Investigation ("FBI") directed toward the National Lawyers Guild (the "Guild") at any time prior to the date of this stipulation; provided, however, that

plaintiff is entitled to rely upon the federal defendants' representations set forth in paragraph 7 below, and any claim based upon any conduct of the federal defendants inconsistent with such representations shall not be barred by the above release.

4. Each party shall bear the costs and expenses of this litigation as they have been incurred or paid as of the date of this stipulation and no costs or expenses shall be taxed subsequently. Plaintiff and its attorneys waive all claims for attorneys' fees and expenses in connection with the prosecution of this action.

5. This stipulation and agreement does not constitute an admission by the plaintiff that any of the conduct of the federal defendants was lawful, or an admission by the federal defendants or any of their present or former officials, officers or employees that any of their conduct was unlawful or legally actionable.

6. Without conceding the legality or illegality of any of the federal defendants' actions, the parties agree that the discovery in this case has shown the following:

a. The FBI engaged in extensive activities with respect to the Guild for the period 1940 through March 1975, and in the course of those activities generated voluminous files on the Guild.

b. It appears more likely than not that between 1940 and 1951 the FBI surreptitiously entered the Guild's national office approximately 7 times without judicial warrant or

Attorney General authorization and copied the Guild's internal records. Some of the material thus obtained provided the Government in advance with drafts of a report the Guild was planning to release criticizing FBI surveillance practices, and with details of the Guild's related public campaign calling for an investigation of the FBI. The FBI used this material in an effort to counter the Guild's report even before its issuance.

c. The FBI without judicial warrant maintained a wiretap on the Guild's national office telephone between 1947 and 1951.

d. Information derived from the surreptitious entries formed a material part of the information placed before the Attorney General for his consideration in deciding whether to initiate proceedings to designate the Guild as a subversive organization under the Federal Employment Loyalty Security Program, Executive Order 10450. Such designation proceedings were begun in 1953.

e. The FBI received information from an informant on the national executive board of the Guild in 1953 and 1954 who reported on its deliberations and discussions with counsel concerning the Guild's defense of the EO 10450 administrative designation proceedings and its conduct of related litigation against the Government.

f. In 1958, the Department of Justice determined that on the basis of the evidence then available it was unable to go forward with the designation proceedings, and the Attorney General therefore rescinded the proposal to designate the Guild

as a subversive organization under EO 10450. There were no further proceedings against the Guild under EO 10450.

g. The FBI continued its activities with respect to the Guild after the designation proceedings were discontinued in 1958. A Department of Justice review conducted in 1972 of the FBI's files on the Guild for the preceding five years concluded that there was no basis at that time for an investigation of the Guild under the Internal Security Act of 1950. In 1974-1975 the FBI, with Department of Justice authorization, conducted a preliminary inquiry concerning the Guild's prison work without discovering any basis for a further investigation.

h. Alleged or suspected criminal wrongdoing was not the predicate or reason for FBI activity concerning the Guild. No criminal prosecutions of the Guild were ever authorized or undertaken by the Department of Justice.

i. From 1940 through the early 1970's, the FBI placed Guild members on its Security Index, Adex and related indices because of their leadership positions in the Guild or, in some cases, because of their membership in the Guild in conjunction with their actual or suspected membership in other organizations.

j. The FBI engaged in certain COINTELPRO and similar disruptive operations against the Guild and Guild members. The FBI used information it had derived from its other activities with respect to the Guild and Guild members for that purpose.

k. The FBI over several decades provided information from its files on the Guild affiliation and activities of individuals to the National Conference of Bar Examiners at the request of the NCBE.

1. Further, at various times in its activities with respect to the Guild, the FBI used numerous informants and confidential sources, including Guild members and staff and third parties in contact with the Guild; obtained Guild bank records from banks with which the Guild had banking relations; obtained information from the National Conference of Bar Examiners and from some character committees; monitored trash covers on the Guild; and obtained information about the Guild from its surveillance of the law offices of some Guild members, which surveillance included use of trash covers, wiretaps, informants on the temporary or permanent staff of the law offices, bank records and surreptitious entries.

m. The conclusions stated here do not imply that the FBI did or did not engage in other activities.

7. The federal defendants represent as follows:

a. There is not now, and has not been since March 1977, any FBI investigation or preliminary inquiry of any nature of the Guild or its chapters, or of its projects, activities or enterprises readily identifiable as such or of individuals based upon their Guild affiliation or activities, and the FBI does not presently have information warranting any such investigation or preliminary inquiry.

b. To the extent, if any, that FBI inquiries or investigation of third parties has resulted in surveillance or acquisition of information about the Guild since March 1, 1977, no information so acquired has been stored in FBI investigative (i.e., non-litigation) main files on the Guild or its projects (as specified in Appendix A hereto) or see-referenced or otherwise indexed to the Guild or its projects, except as may have been disclosed to the plaintiff in this litigation.

c. There have been no additions to FBI investigative (i.e., non-litigation) main files on the Guild or its projects (as specified in Appendix A) or to see-references on the Guild or its projects, since March 1977, except as may have been disclosed to the plaintiff in this litigation.

d. The FBI is not now, and has not since March 1977, engaged in any activities intended to disrupt or impede the activities of the Guild or the Guild activities of its members, or the activities of individuals based upon their Guild affiliation.

e. The FBI does not now, and has not since March 1977, used Guild members as informants or confidential sources with respect to matters involving the Guild or Guild activities, placed wiretaps or pen registers on Guild telephones, surreptitiously entered Guild premises, obtained access to Guild bank records, maintained mail covers on Guild mail, maintained trash covers on the Guild, obtained access to Guild information at mailhouses used by the Guild, otherwise secured mailing or

membership lists of the Guild or obtained phone records on the Guild's phones.

f. Since March 1, 1977, and presently, the FBI has not provided information on the Guild affiliation or activities of individuals to the National Conference of Bar Examiners or to bar admission committees.

8. The federal defendants agree to the following disposition of their files concerning the plaintiff:

a. For purposes of this provision, the "FBI files on the Guild" means Headquarters, Field Office and Legat main files on the National Lawyers Guild and its projects (as specified in Appendix A); wiretap logs included in the main file on Robert Silberstein; EBF's to the Guild main files and the wiretap logs in the Silberstein main file; the see-reference cards and any other similar computerized or non-computerized reference capable of locating Guild-related information in files other than main files on the Guild, as well as references to the Guild in the Elsur Index and any indices to the informant files; and copies of the foregoing and any summaries thereof included in the FBI file on this litigation (62-117572). It is limited to documents created prior to the date of this stipulation.

b. Within 180 days after the date of this stipulation, the FBI shall place all copies of the "FBI files on the Guild" in its possession or custody in secure storage under the supervision of the Deputy Assistant Director, Legal Counsel Division, and shall not dispose of, or permit access to, such

files before the year 2025. At that time the files may be transferred to the National Archives and Records Service.

c. The federal agencies which are parties defendant to this action (specifically, the FBI, the Central Intelligence Agency, the National Security Agency, the Internal Revenue Service, the Office of Personnel Management,* the Postal Service, and the Departments of Defense, Justice, State, the Treasury, the Army, the Navy and the Air Force) shall not use, release or disclose, within or outside the Government:

(i) any "FBI files on the Guild" readily identifiable as such, or copies thereof, in their possession or custody;

(ii) any portion of any document or record which is shown on its face to have been generated, prior to the date of this stipulation, in the course of any FBI activities directed in whole or in part toward the Guild, to the extent it concerns the Guild or its activities or the Guild affiliation or Guild activities of any individual;

(iii) any information contained in (i) and (ii) or reasonably identifiable as having been derived from (i) and (ii); or

* The Office of Personnel Management is substituted as a party defendant in place of the Civil Service Commission pursuant to Rule 25 of the Federal Rules of Civil Procedure.

(iv) any portion of any document or record created prior to March 1, 1977, or the information contained therein, to the extent that it mentions the Guild affiliation or Guild activities of any individual, provided, however, that because of the federal defendants' representation of the practical impossibility of assuring compliance with such broad restrictions, the following limitations shall apply:

(a) With respect to documents or records of defendant federal agencies other than the FBI, this subparagraph (iv) shall apply only to such documents or records as are contained in a file the subject of which is either the Guild or a "Requesting Individual" (as defined below).

(b) With respect to documents or records of the FBI, this subparagraph (iv) shall apply only to such documents or records as are contained in a main file the subject of which is a "Requesting Individual" (as defined below), or in a volume containing see-references to the Guild, or in serials which are see-referenced to a

Requesting Individual (but only to the extent that such serials are accessed through the name of the Requesting Individual).'

(c) A "Requesting Individual" is a present or former Guild member who requests, in writing, that this subparagraph (iv) be applied to him or her, and who includes in such request his or her full name, any previous names, date and place of birth, and social security number. Such information is required to identify relevant documents and records and will not be used for any other purpose. Requests must be sent to plaintiff's counsel and forwarded by them to counsel for the federal defendants within 180 days of the date of this stipulation.

d. Nothing herein shall preclude any agency from returning to the FBI any "FBI files on the Guild" or copies thereof in its possession (in which event the FBI shall handle such files as provided in subparagraph (b) above), or from disposing of any files by either destroying them in the ordinary course of business, or transferring them to the National Archives and Records Service in or after the year 2025. The United States Attorney's Office for the Southern District of New York will

return any copies of the "FBI files on the Guild" in its possession to the FBI within 90 days of the date of this Stipulation.

e. If, upon the application of a third party, subparagraphs (b) or (c) above, or any portion thereof, shall be invalidated by any court, no other provision of this stipulation and order shall thereby be affected.

f. Anything in this stipulation to the contrary notwithstanding, the Department of Justice may have access to and use of any of the documents and records described in subparagraphs (a), (b) and (c) above to the extent relevant and material to the defense of the United States or any of its departments, agencies, officers or employees in any judicial or administrative proceedings the gravamen of which arises from conduct alleged to have occurred prior to the date of this stipulation. Appropriate records shall be maintained of any such use. Upon completion of the litigation for which the records were necessary, they and any records derived from them shall be restored to the status quo ante except if they were filed as part of the court record in the litigation.

g. Nothing in this stipulation shall preclude the Guild from requesting the release to it, under the Freedom of Information Act or any successor statutes, of those portions of the "FBI files on the Guild" not previously released to it, or the FBI from releasing the same to the Guild if appropriate under such statutes; provided, however, that the Guild shall make no such request prior to January 1, 1994.

h. Nothing in this stipulation shall preclude the federal defendants from releasing or disclosing any document or file at the request or with the authorization of the subject of such document or file.

Dated: New York, New York
October 12, 1989

RABINOWITZ, BOUDIN, STANDARD,
KRINSKY & LIEBERMAN, P.C.
Attorneys for Plaintiff

By: 

MICHAEL KRINSKY, ESQ.
740 Broadway at Astor Place
New York, New York 10003
Telephone: (212) 254-1111

BENITO ROMANO
United States Attorney for the
Southern District of New York
Attorney for Federal Defendants

By: 

PAUL K. MILMED
Assistant United States Attorney
One St. Andrew's Plaza
New York, New York 10007
Telephone: (212) 791-9175

SO ORDERED:


United States District Judge

11-12-89 85

NATIONAL LAWYERS GUILD

National Projects & Committees

National Labor Project
National Labor Committee
Labor Law Center Task Force
National Labor Law Center
Labor Committee
National Immigration Project
National Interim Commission on Oppression of Women
National Committee to Combat Women's Oppression (NCCWO)
National Committee on Women's Oppression
Police Crimes Task Force
Task Force on Minority Legal Resources
International Committee
Prison Task Force
National Prison Network
Military Law Project
Military Law Office
Military Law Task Force
Military Law Office/Military Law Task Force
Summer Projects Committee
NLG Law Student Clearinghouse
Law Students in Action
National Housing Task Force
Legal Services Task Force
Task Force on Minority Adms.
Puerto Rico Project
Puerto Rico Subcommittee
Instituto Puertorriqueno de Derechos Civiles
Grand Jury Project
Affirmative Action/Anti-Discrimination Committee
Anti-Fascist Contact
Anti-Nuke Legal Project
Anti-Semitism Task Force

Housing Contact
Immigration Project
Subcommittee on China, International Committee
Subcommittee on Cuba, International Committee
Cuba Subcommittee
Subcommittee on Southern Africa, International Committee
Subcommittee on Vietnam, International Committee
Law Student Organizing Committee
Legal Workers Caucus
National Committee Against Gov't Repression & Police Crimes
Prison Committee
Red Baiting Task Force
Theoretical Studies on the Law and the State
Theoretical Studies Committee
Central America Task Force
Civil Liberties Committee

NATIONAL LAWYERS GUILD

National Energy Project
People's Energy Project
Subcommittee on Racist Groups
The Public Eye
Irish Task Force
Ireland Task Force
Middle East Subcommittee
South African Subcommittee
Travel Subcommittee
Visa Denial Project
Third World Caucus
Criminal Law Task Force
Criminal Justice Committee
Economic Rights Task Force
International Debt Crisis Subcommittee
Legal Services Task Force
Anti-Sexism Task Force
Gay Rights Subcommittee
Gay Rights Task Force
AIDS Network
Committee on Native American Struggles (CONAS)
Rethinking Indian Law
Anti-Repression Task Force
Faculty Network
Asia Subcommittee
Chile Task Force
Disinformation & Information Restriction
International Law Subcommittee
Peace & Disarmament Subcommittee
Philippines Subcommittee
Relations - International Organizations
Central America Refugee Defense Fund (CARDF)
Movement Support Network
Rural Justice Committee
50th Anniversary Committee
Air War Project
Attica Legal Defense
Attica Brothers Offense-Defense
Attica Memorial Day Rally, Buffalo, N.Y., 9/14/74
Attica Now
Attica Brothers Legal Defense, AKA Attica Defense Committee
Committee for Legal Assistance in the South, AKA Committee to
Aid Southern Lawyers
Grand Jury Defense Office
Midnight Special
Military Legal Center
National Electronic Surveillance Project
Selective Service Law Committee
Southeast Asia Military Law Office
Wounded Knee Offense/Defense Committee

APPENDIX A

XXXXXX
XXXXXX
XXXXXX

FEDERAL BUREAU OF INVESTIGATION
FOIPA
DELETED PAGE INFORMATION SHEET

18 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)(7)(A)

(d)(5)

(b)(2)

(b)(7)(B)

(j)(2)

(b)(3)

(b)(7)(C)

(k)(1)

(b)(7)(D)

(k)(2)

(b)(7)(E)

(k)(3)

(b)(7)(F)

(k)(4)

(b)(4)

(b)(8)

(k)(5)

(b)(5)

(b)(9)

(k)(6)

(b)(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.

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

_____ Pages 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.

_____ Pages were not considered for release as they are duplicative of _____

Page(s) withheld for the following reason(s): This is a list of the names, SSNs and the DOBs of NLG members.

The following number is to be used for reference regarding these pages:

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

XXXXXX
XXXXXX
XXXXXX

ORGANIZATIONS
(and known file numbers)

- 1) National Lawyers Guild
HQ 100-7321

- 2) Southeast Asia Military Law Office
aka Peoples House
SF 100-75891

- 3) Committee for Legal Aid in the South
aka Committee to Aid Southern Lawyers
DE 100-31330

- 4) Selective Service Law Committee
HQ 25-579217
LA 100-71639
BH 100-5696
CO 100-605
LA 25-81540
SF 100-61391

- 5) Demonstration Known as Air War Project
NK 100-54465
PH 100-53960

- 6) Military Legal Center
NY 100-174506

- 7) Attica Legal Defense Committee, AKA-
HQ 157-30240
AL 100-23968 Attica Brothers Defense Group
AL 157-1469 Attica Defense Committee
AL 157-1637 Attica Memorial Day Rally
BS 100-46777 Attica Brothers Legal Defense
BS 157-5301 Attica Memorial Day Rally
BU 157-1495 Attica Brothers Legal Defense
Attica Defense Committee

Wounded Knee Offense Defense Comm.

BU 157-2236 Attica Memorial Day Rally
BU 175-83 Attica Defense Committee
CG 100-55519 Attica Memorial Day Rally
DE 157-10230 Attica Defense Committee
DE 157-10825 Attica Memorial Day Rally
IP 100-26923 Attica Trial Demonstration
IP 100-27006 Attica Brothers Legal Defense
MI 175-54 Attica Defense Committee
MP 157-4142 Attica Memorial Day Rally
NK 100-56734 Attica Memorial Day Rally
NY 157-10646 Attica Defense Committee
PG 157-2332 Attica Memorial Day Rally
PH 157-9270 Attica Memorial Day Rally
SF 157-10735 Attica Memorial Day Rally
WFO 100-58764 Demonstration Sponsored By The
Washington Area Attica Brothers
Legal Defense Committee

8) Midnight Special

HQ 100-460251
NO 100-18762
BU 100-21461
MI 100-18382
NY 100-179625
SF 100-79556

Memorandum



Exec AD Inv. _____
 Exec AD LES _____
 Asst. Dir.:
 Adm. Servs. _____
 Crim. Inv. _____
 Ident. _____
 Insp. _____
 Intell. _____
 Lab. _____
 Legal Coun. _____
 Off. Cong. & Public Affs. _____
 Rec. Mgnt. _____
 Tech. Servs. _____
 Training _____
 Telephone Rm. _____
 Director's Sec'y _____

To : Assistant Director
 Records Management Division (RMD)

Date 5/13/85

From : Legal Counsel *SM*

Subject : NATIONAL LAWYERS GUILD v.
 ATTORNEY GENERAL OF THE UNITED STATES, ET AL.
 (U.S.D.C., S.D.N.Y.)
 CIVIL ACTION NO. 77-CIV-0999 (PKL)
 MAJOR CASE 41

PURPOSE: To provide further explanation to the Freedom of Information/Privacy Acts Section (FOIPA), RMD, concerning Pretrial Order 115 (PTO 115) issued in the captioned civil litigation.

RECOMMENDATION: That FOIPA follow guidelines set forth in this memorandum.

APPROVED:	Adm. Servs. _____	Laboratory _____
	Crim. Inv. _____	Legal Coun. _____
Director _____		Off. of Cong. & Public Affs. _____
Exec. AD-Adm. _____	Ident. _____	Rec. Mgnt. _____
Exec. AD-Inv. _____	Inspection _____	Tech. Servs. _____
Exec. AD-LES _____	Intell. _____	Training _____

DETAILS: As FOIPA is aware, PTO 115 supersedes Pretrial Order 100 which prohibited the FBI from releasing to persons not a party to the NLG litigation any document produced to plaintiff as part of discovery. PTO 115 has considerably lessened the burden on the FBI, and particularly on FOIPA. This memorandum will outline the provisions of PTO 115 and will address several questions still outstanding.

A) Coverage of PTO 115:

1) PTO 115 prohibits the release to third party requesters of any document filed in Headquarters or field main files on the NLG or one of the NLG projects. (Refer to number C1 below for a list of the projects.) This prohibition, of course, would include requests specifically for materials on the NLG or the projects. However, first person requesters may be provided documents from these files if those documents are referenced to them. This exception is

- 2 - Mr. Monroe
 Attention: Mr. Hall
 Attention: Mr. [redacted] *b6*
- 1 - Mr. Kelley
- 1 - Mr. [redacted] *b6*
- 1 - Mr. [redacted] *b6*
- 1 - Third Party Disclosure Folder

AL:jmw (7)

(CONTINUED - OVER)

Memorandum from Legal Counsel to Assistant Director,
Records Management Division (RMD)
Re: National Lawyers Guild v.
Attorney General of the United States, et al.

reiterated in number B2 below. Also, see references to the NLG and projects appearing in other files could not be released to persons requesting material about the NLG or projects. As discussed in number B3 below, though, these same documents could be released if the request was on another subject.

2) If we refuse to release documents pursuant to PTO 115, we should inform the requester that the NLG can waive the provisions of the order and grant access. A request for such a waiver should be directed to MICHAEL KRINSKY or JONATHAN MOORE, of the law firm of RABINOWITZ, BOUDIN, STANDARD, KRINSKY & LIEBERMAN, 740 Broadway at Astor Place, New York, NY 10003, telephone (212) 254-1111. If the requester does not receive permission for access from the NLG, he would still have the right to intervene in the litigation to gain access.

B) Material Covered by PTO 100 not Covered by PTO 115:

1) None of the files or see references relating to the 71 member "Representative Group" are covered by PTO 115. Requesters may be given normal access to these materials.

2) First party requesters may receive see references to themselves filed in NLG main files and files on the projects. FOIPA should process these documents as they normally would handle see references to first party requesters.

3) Documents which incidentally happen to be see referenced to the NLG or projects, and which appear in files not on the NLG or projects, may be released to first or third party requesters who have made requests on subjects other than the NLG or projects.

C) Issues Left Outstanding

1) In issuing PTO 115, the Court directed both sides to the litigation to come to an agreement on a definitive list of the NLG projects inasmuch as there has been some dispute over the inclusion of certain projects. Plaintiff's counsel has yet to respond to our request for a final list. Once that list is received, it will be immediately forwarded to FOIPA. In the interim, however, the following list should be used.

(CONTINUED - OVER)

Memorandum from Legal Counsel to Assistant Director,
Records Management Division (RMD)
Re: National Lawyers Guild v.
Attorney General of the United States, et al.

a) Committee to Assist Southern Lawyers, a/k/a
Committee to Aid Southern Lawyers, a/k/a
Committee of Legal Aid in the South

b) The Midnight Special (We have found that there were two publications in the 1970s which were named The Midnight Special and which the FBI investigated. One was affiliated with the NLG and is the publication in question here. The other was affiliated with the Students for a Democratic Society (SDS) and is not covered by PTO 115. The NLG publication was directed towards prisoners of the nation's penitentiaries.)

c) The National Electronic Surveillance Project.

d) Attica Legal Defense Committee

e) Wounded Knee Offense/Defense Committee

f) Selective Service Law Committee

g) Grand Jury Defense Office

h) Southeast Asia Military Law Office, aka the
People's House

2) Another issue has been presented to the Court for resolution. We are unsure whether PTO 115 covers two classes of documents. The first class is made up of serials appearing in files other than those on the NLG or projects and which carry in their titles the name of the NLG or one of the projects. The second class of documents is made up of serials appearing in files other than those on the NLG or projects, which do not carry the name of the NLG or projects in their titles, but which indicate in their copy counts that copies had been channelized to a file on the NLG or one of the projects. Clearly, first party requesters can be given access to these documents under the terms of PTO 115. At this point, however, we are not certain whether these documents can be released to third party requesters, although we suspect that the Court will not object to such releases. FOIPA will be immediately informed of the Court's decision. In the meantime, FOIPA should not release these two classes of documents to third party requesters.

(CONTINUED - OVER)

Memorandum from Legal Counsel to Assistant Director,
Records Management Division (RMD)
Re: National Lawyers Guild v.
Attorney General of the United States, et al.

b6
b2
Questions in this regard should be addressed to SA [REDACTED]
[REDACTED] extension 4532 or to Legal Technician [REDACTED]
NLG Task Force, extension [REDACTED]

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Cross-References
Date: March 31, 1998

CROSS-REFERENCE POLICY

The FBI FOIPA Section cross-reference policy is as follows:

When a FOIPA request was received prior to approximately 2/20/97, the IPU Legal Assistant listed main files and identifiable cross-references. During the processing of the responsive material, PLSs will initially process only the "main" files which are identified on the request search slip. If cross-references also exist, the PLS should advise the requester of the existence of the cross-references and that he should separately request the cross references if he wants them processed. Each Unit will maintain a log of all requests received for processing of cross-references. Those references will be processed as time and resources permit. However, if the requester appeals the FBI's cross-reference policy, the PLS should process all cross references pursuant to that appeal.

If there are only cross-references listed on the search slip, then the PLS should process those cross-references. If there are numerous cross-references (15 or more) listed on the search slip, which are identifiable to the subject matter, the PLS may want to discuss with their Team Captain about producing a "sampling" of the material for the requester. In this regard, the requester could be advised of a release being a "sampling" of references, how many existing references remain to be processed and if they are still interested in receiving the rest of the material.

For FOIPA requests received after approximately 2/20/97, cross-references will no longer be listed on the search slip. The File Assistant will not advise requesters as to the existence of cross-references nor will they advise requesters that a description of any such references will be furnished to the requester at a later date.

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Defunct Agencies or Departments
Date: March 31, 1998

Information From Defunct Agencies or Departments

On occasion, information appears in FBI files which was obtained from other U.S. Government agencies which have been abolished, transferred, or terminated. Referrals or consultation concerning this information can usually be made if the functions of the former agency were transferred to another department or agency of the U.S. Government. The list of Defunct Agencies can be located in Appendix C of the U.S. Government Manual, of which copies of this Appendix have been reproduced and provided to all PLS's for inclusion into the FOIPA manual. If the functions of the former agency were not transferred to another agency, the records from the defunct agency are probably at the National Archives and Records Administration (NARA). Referral questions should be directed to Director of Records Declassification Division, telephone number 9-301-713-6620.

DOJ has also made the following partial list of defunct offices of the DOJ available, as well as the current record holder or component now responsible for their functions.

DEFUNCT COMPONENTS OF DOJ

CURRENT RECORD HOLDER

Administrative Division

Justice Management Division

Bond and Spirit Division

Criminal Division

Bureau of Criminal Identification

FBI

Bureau of Narcotics and Dangerous Drugs

DEA

Bureau of Prohibition

Criminal Division

Bureau of War Risk Litigation

Civil Division

FOIPA Numbered Memo 18

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Defunct Agencies or Departments

DEFUNCT COMPONENTS OF DOJ

CURRENT RECORD HOLDER

Civil Liberties Unit	Civil Rights Division
Claims Division	Civil Division
Communications and Records Section	Justice Management Division
Criminal Statistical Bureau	FBI
Customs Division	Civil Division
Department of Veterans Insurance	Civil Division
Internal Security Division	Criminal Division
Office of Alien Property	Civil Division
Office of Criminal Justice	Office for Improvements in the Administration of Justice
Office of Policy and Planning	Office for Improvements in the Administration of Justice
Office of the Special Prosecutor	National Archives and Records Administration
Public Lands Division	Land and Natural Resources Division
Special War Policies Unit	Criminal Division
War Contract Division	Criminal Division
War Division	Criminal Division

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Department of Health and Human Services
Date: March 31, 1998

Social Security Information in FBI Files

Effective 11/21/88, Russell Roberts, Director, FOIPA Division, Department of Health and Human Services, advised that information from Social Security records which is contained in FBI files may be released to first party requesters. Such material is to be denied to all third party requesters under FOIA exemptions (b)(6) and/or (b)(7)(C). Furthermore, Social Security numbers of deceased individuals are releasable.

It is to be noted that this type of information is occasionally set forth in our records as b2 attributed to a symbol source, for example [REDACTED]. When processing this material for release to first party requesters, the symbol numbers are to be excised pursuant to FOIA exemption (b) (2).

F O I P A

MEMO 20

M A N U A L

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Department of Justice, Civil Rights Division
Date: March 31, 1998

The Department of Justice, Civil Rights Division, has requested that the FBI provide a clean copy of documents originated by their agency along with the redacted (blacked-out or highlighted) referral copy.

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Department of Justice, Criminal Division
Date: March 31, 1998

Direct Response Referrals

When referring documents to the Criminal Division for their direct response, any FBI information you wish redacted should be highlighted and/or bracketed along with the request that the stated exemptions be asserted on behalf of the FBI. Do not black out the information.

Foreign Agents Registration List

On 4/29/76, Mr. O'Shea, Criminal Division, Department of Justice, advised the Foreign Agents Registry is a public record and is available to anyone having an interest in it. Consequently, there is no necessity for referring material or contacting the Department regarding the release of information derived from examination of the list of persons or organizations registered as agents of a foreign government as required by the Foreign Agents Registration Act of 1938.

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F O I P A

M A N U A L

MEMO 22

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Document Classification Unit (DCU)
Date: March 31, 1998

Submitting Files to DCU

Effective July 9, 1997, Legal Technicians (LTs) in the Request Management Unit are responsible for submitting FBIHQ and/or the field office file(s) which may warrant or require classification review to DCU. OPCA -18 form should be completed and attached to the file(s) submitted for review. All forms should have the appropriate "PA" or "FOIA" box checked, to notify DCU whether the review is for a Privacy Act or Freedom of Information Act request. DCU personnel will then conduct a preliminary review of the file(s) and determine if they actually warrant a classification review. If it is determined a review is necessary, the file(s) will be placed in the DCU backlog maintained in RMU. If it is determined a file does not warrant classification review, Form 4-774 (See Attachment 1) will be placed as the top serial of the file and will indicate this fact. The file(s) will then be returned to RMU to be placed in one of the three queues for the Section's backlog.

When submitting material for DCU review, LTs/PLSs are responsible for providing DCU with all raw files, EBFs and Bulky enclosures for classification review (for files, EBFs and Bulky enclosures maintained by the Special File Room (SFR) See Numbered Memo 79). This includes referrals from other government agencies of FBI documents or information which requires DCU review. The LT/PLS should submit all material requiring review to DCU as one package. Some exceptions to this would be if certain files/documents have been on locate for an extended period of time and cannot be found or if the case is in litigation with a Court deadline.

Questions regarding this or any other DCU policy should be discussed with the DCU Unit Chief or Administrative Team Captain.

DCU "Regular Review" or "Walk-Up"

DCU will process all requests requiring classification review which involves 50 pages or less, as part of its "walk-up" program. This program was designed as an administrative practice in order to allow cases involving minimal pages requiring classification review to be handled within a few days of being submitted to DCU, rather than sitting in the backlog for an extended

CLASSIFIED BY: SP5/als
REASON: 1.5 C
DECLASSIFY ON: X1

9-29-98

~~SECRET~~

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE.

~~SECRET~~

FOIPA Numbered Memo 22

Page 2

Document Classification Unit (DCU)

period of time. All other requests for DCU review of material containing over 50 pages will be conducted as a "regular review."

For those requests which involve only certain "serials" needing classification review, OPCA-18 form should contain the list of the serials being requested for review as well as placing tabs (yellow "stickies") on the actual serials in the raw file. The same procedures stated above for establishing a case as a walk-up or regular review is also applied to the submission of "serials" for DCU review.

File Classifications Requiring DCU Review

Documents in the following classifications, surfaced as a result of a FOIPA request, should be processed through DCU. This classification list is not meant to exclude reviews involving other classifications. If it appears that a question of national security protection is involved, the documents should be forwarded to DCU regardless of the classification.

- 2 Neutrality Matters
- 3 Overthrow or Destruction of the Government
- 9 Nuclear Extortion
- 14 Sedition
- 61 Treason; Misprision of Treason
- 64 Foreign Liaison
- 65 Espionage
- 97 Registration Act
- 98 Sabotage
- 100 Domestic Security/Revolutionary Activities
- 102 Voorhis Act
- 105 FCI [redacted] (S) b1
- 108 FCI - Foreign Travel Control
- 109 Foreign Political Matters
- 110 Foreign Economic Matters
- 111 Foreign Social Conditions
- 112 Foreign Funds
- 113 Foreign Military and Naval Matters
- 117 Atomic Energy Act
- 121 Labor Management Relations Act - 1947
- 134 Counterintelligence Assets
- 137 Domestic Security Informants
- 138 Loyalty Matters

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b7E

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FOIPA Numbered Memo 22

Page 3

Document Classification Unit (DCU)

155	National Aeronautics and Space Act of 1958
163	Foreign Police Cooperation
170	Extremist Matters
174	Bombing Matters
176	Anti-Riot Laws*
185	Protection of Foreign Officials
199	International Terrorism
200 - 203	Foreign Counterintelligence Investigations
205	Foreign Corrupt Practices Act - 1977
212	Intelligence Community Support
215 - 229	Foreign Counterintelligence Investigations
230	Training Received - FCI
239	Training Received - Terrorism
243	Intelligence Identities Protection Act
246 - 248	Foreign Counterintelligence Investigations
256	Hostage Taking - Terrorism
253	Fraud and Related Activities-Ident Documents (FRAUD) - Terrorism
256	Hostage Taking by International Terrorists
262	Overseas Homicide/Attempted Homicide - International Terrorism
265	Acts of Terrorism in the United States - International Terrorists
266	Acts of Terrorism in the United States - Domestic Terrorists
268	Engineering Technical Matters - FCI
270	Cooperative Witnesses-Domestic Terrorism Extraterritorial International Terrorism-Cooperating Witness
271	Arms Control Treaty Matters
277	Adoptive Forfeiture Matters - Counter Terrorism
278	President's Intelligence Oversight Board
279	Biological Weapons - Anti-Terrorism
283	FCI
284	Economic Counterintelligence
285	Acts of Economic Espionage
288	Computer Investigations - Threat Analysis
290	Alien Terrorist Removal Court
291	Animal Enterprise Protection Act
292	Domestic Emergency Support Team
293	Foreign Emergency Support Team

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FOIPA Numbered Memo 22

Page 4

Document Classification Unit (DCU)

*All 176 classifications that are 25 years or older (prior to and including 1971) have been sent to the National Archives along with the index cards.

Since minimal information from the files in the following list is classifiable, these files will be assigned directly to the FOIPA Section's backlog for processing. However, prior to the PLS processing the file(s), he or she should peruse the file(s) first to determine if there is any information that may have been classified at the time the document originated or if there is information which appears to warrant classification. Should information of this type appear, the PLS will be responsible for sending the material to DCU for review.

- 40 Passport and Visa Matters
- 67 Personnel Matters - Reinvestigation of FBI Personnel
- 140 Security of Government Employees (SGE)
- 157 **Civil Unrest (SEE ATTACHMENT 2)**
- 183 RICO - Terrorism*
- 259 Security Clearance Investigations Program
- 260 Industrial Security Program
- 261 Security Officer Matters
- 263 Office of Professional Responsibility (OPR) Matters

*Not all 183 (RICO) investigations need classification review. Only those investigations dealing with terrorism, foreign government sources (those listed on the Foreign Government Classification Guide #1 [G-1]) or information provided by foreign/domestic security informants/assets should be sent for DCU review.

It is recognized that unique classification situations periodically arise which require special handling because of the unusual type of information or where short deadlines have been imposed. These situations should be brought to the attention of the DCU Unit Chief.

Classification of Notes and Addenda

Classification regulations require that any notes or addenda which are added to a communication/correspondence or to certain copies of it should be treated separately. In order to comply with these regulations, the following guidelines should be followed:

1. When classifiable national security information is set forth in a note or addendum to a communication, the note or addendum should be prepared on a separate page. This allows for independent classification marking of the note or addendum.

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FOIPA Numbered Memo 22

Page 5

Document Classification Unit (DCU)

2. Top Secret or Sensitive Compartmentalized Information (SCI) should be avoided in a note or addendum. If possible, every effort should be made to exclude all classifiable information from the note or addenda.

Classification Review of Documents Previously Examined By DCU

A classification review by DCU of previously classified documents, cross-references as well as main files, is required under any of the following circumstances:

1. The requester is unwilling to accept the prior classification.
2. A classification review was conducted prior to 10/14/95, but no release was made and Communist Party Informants are involved.
3. There has been no release of the previously classified documents and there is serious concern about the prior classification.

Notification to DCU of Prior Releases of Information

Generally, material which is already in the public domain cannot be classified. In some instances, however, material is being referred to DCU which already has been released in whole or part through another FOIPA release or civil litigation.

If a prior release of material from all or even a portion of a file has already been made, it would be of great assistance to DCU if this fact were noted on the referral memorandum. Such information might be known to the PLS either through a review of the search slip, preliminary review of the file, or knowledge of other previously processed requests for the same information or portions thereof. Do not engage yourself in a research effort to make this determination, but note it only if readily available to you.

Your cooperation in bringing this to the attention of DCU would be appreciated and should not only help in speeding up the classification process, but will assist in providing for a more uniform and consistent classification procedure.

Mandatory Classification Review

Included as **Attachment 3** are some examples of requests for mandatory classification reviews from the National Security Council (NSC). These requests have previously been placed

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FOIPA Numbered Memo 22

Page 6

Document Classification Unit (DCU)

with FOIPA referrals to be handled in the queue.

Requests for mandatory classification reviews are handled by DCU and/or the Historical and Executive Review Unit (HERU). These mandatory classifications require no action by the FOIPA Disclosure Units. The mandatory reviews are to be completed within one year; therefore, it is essential that they be appropriately routed to DCU or HERU for handling. Outlined below are certain items which distinguish a request for mandatory review from a referral made to the Bureau in connection with an FOIPA request.

--Mandatory review requests are usually made by a Presidential Library, Archives or NSC.

--Letters requesting mandatory review will cite Section 3.6 of Executive Order 12958, which is the provision for mandatory review.

--Letters requesting mandatory review will be delivered with a receipt requiring the signature of the recipient.

--Letters requesting mandatory review will have enclosed "Certification of Citizenship" of the requester.

b2

[REDACTED]

b2

[REDACTED]

Review of Special Compartmentalized Information (SCI) Material

Special security clearances are required in order to review or handle "Top Secret" files or documents which contain SCI material. If you should be notified that you do not have the appropriate clearance to review the classified material requested, one of the following PLSs should be contacted to conduct the review. It is recommended that the individual contacted to review the classified material be from the same Unit as the PLS handling the case.

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FOIPA Numbered Memo 22
Page 7
Document Classification Unit (DCU)

Disclosure Units:

[REDACTED] - Unit 1
[REDACTED] - Unit 4

[REDACTED] - Unit 3

Litigation Unit:

[REDACTED]

Help Desk:

[REDACTED]

DCU:

All Team Captains in DCU are afforded SCI clearances. However, should there be any questions concerning classification matters on a case prior to DCU review, the LT or PLS should initially contact the DCU Administrative Team Captain.

RMU:

Currently, there are no RMU employees with the SCI clearance. If a RMU employee has been advised by the SFR that they do not have the proper clearance to review file material, they should contact one of the above Disclosure PLSs.

The following documents appearing in FBI files have been reviewed under the provisions of The Freedom of Information Act (FOIA) (Title 5, United States Code, Section 552); The Privacy Act of 1974 (PA) (Title 5, United States Code, Section 552a); and/or Litigation.

FOIA/PA

Litigation

Executive Order Applied

Requester: _____

Subject: _____

Computer or Case Identification Number: _____

Title of Case: _____

*File _____ Section _____

Serials Reviewed: THIS FILE HAS BEEN DETERMINED NOT TO WARRANT REVIEW BY THE
DOCUMENT CLASSIFICATION UNIT. DATE _____

Release Location: *File _____ Section _____

FOIA/PA

Litigation

Executive Order Applied

Requester: _____

Subject: _____

Computer or Case Identification Number: _____

Title of Case: _____

*File _____ Section _____

Serials Reviewed: _____

Release Location: *File _____ Section _____

FOIA/PA

Litigation

Executive Order Applied

Requester: _____

Subject: _____

Computer or Case Identification Number: _____

Title of Case: _____

*File _____ Section _____

Serials Reviewed: _____

Release Location: *File _____ Section _____

*INDICATE IF FBIHQ OR FIELD OFFICE FILE NUMBER.

(THIS FORM IS TO BE MAINTAINED AS THE TOP SERIAL OF THE FILE, BUT NOT SERIALIZED.)

MEMO 22 - ATTACHMENT 1

4/15/94

TO: J. Kevin O'Brien
Section Chief
Freedom of Information-Privacy Acts Section (FOIPA)

FROM: [Redacted] ^{bb}
Supervisory Paralegal Specialist
Disclosure Unit 1, FOIPA Section

SUBJECT: FOIPA HANDLING OF 157 CLASSIFICATION FILES

RECOMMENDATION: That the current procedure requiring that DCU review all 157 files be modified.

APPROVED:	Director	Deputy Director	Chief of Staff
	Assistant Director	Administrative Services	Records Management
	Director	Financial Management	Information Systems & Comp. Sys.
	Deputy Director	Inspection	Training

(Handwritten initials and signatures are present over the table)

DETAILS: Reference is made to our conversation regarding the possibility of changing the procedure for handling files in the 157 classification (Civil Unrest - Disorders and Demonstrations). In particular, we discussed the FOIA request of Professor [Redacted] for records pertaining to James Meredith/Integration of the University of Mississippi. Responsive records consist of 230 volumes (approximately 32,000 pages). The request was made in February 1991. Document Classification Unit (DCU) advised that this request is approximately number 238 in their backlog and will not come up for classification review for many months. Professor [Redacted] has made numerous calls regarding the status of this request and is now becoming quite impatient.

Consultation with DCU Unit Chief [Redacted] and several team captains in both Disclosure and DCU indicated that information in 157 classification files is rarely classifiable under current guidelines. Therefore, I propose that records responsive to the above-mentioned request as well as most 157 classification files no longer require complete DCU review as is required by Section Memo No. 103. Disclosure PLSs could list the symbol numbers of all informants appearing in the records and DCU could indicate whether any of the informants are classifiable. Disclosure could then request that DCU review only the documents in which a classifiable informant appears along with any other information that Disclosure determines to be possibly classifiable such as foreign police data. This would eliminate the need for a complete review of these files, thus minimizing DCU's backlog and allowing Disclosure to respond to requests on a more timely basis.

Re: FOIPA Handling of 157 Classification Files

It is recognized that there could be exceptions, in which case Disclosure could request that an entire 157 file be reviewed by DCU prior to Disclosure processing.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

December 14, 1990

MEMORANDUM FOR EMIL P. MOSCHELLA
CHIEF, FOI/PA SECTION
FEDERAL BUREAU OF INVESTIGATION

SUBJECT: *b6* Declassification/Release Request of :
[REDACTED]

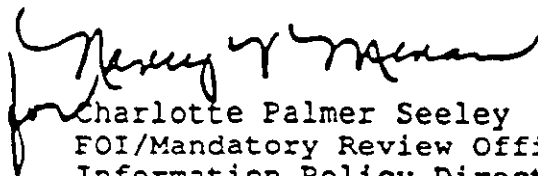
The attached document has been requested under provisions of Executive Order 12356.

Please review the document and advise the National Security Council if, in your opinion, the document may be declassified and/or released.

If you recommend the document or portions thereof should remain classified in the interest of national security or otherwise not releasable, please provide the NSC with the provisions of the appropriate sections of Executive Order 12356 on which your decision is based. If applicable, please provide downgrading recommendations as well.

We ask that you return the document along with your recommendations. Questions should be directed to Charlotte Palmer Seeley at (395-3103).

Additional comments for your information: NLE 90-124 document 9 - the bracketed portions are CIA's recommendations. Please review remaining portions for your equities.


Charlotte Palmer Seeley
FOI/Mandatory Review Officer
Information Policy Directorate

Attachments: NLE 90-124, # 9

MEMO 22 - ATTACHMENT 3

UNCLASSIFIED
WITH TOP SECRET
ATTACHMENT

2/5/91

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

SSP
CLASS _____
SRC'D _____
SER _____
REC _____

August 15, 1990

MEMORANDUM FOR EMIL P. MOSCHELLA
CHIEF, FOI/PA SECTION
FEDERAL BUREAU OF INVESTIGATION

SUBJECT: ~~Declassification/Release Request of~~
~~_____~~
b6

The attached document has been requested under provisions of the Freedom of Information Act.

Please review the document and advise the National Security Council if, in your opinion, the document may be declassified and/or released.

If you recommend the document or portions thereof should remain classified in the interest of national security or otherwise not releasable, please provide the NSC with the provisions of the appropriate sections of the Freedom of Information Act on which your decision is based. If applicable, please provide downgrading recommendations as well.

We ask that you return the document along with your recommendations. Questions should be directed to Charlotte Palmer Seeley at (395-3103).

Additional comments for your information: The Criminal Division of the Justice Department recommended that you review the enclosed document. The Departments of State, Energy, and Defense have no objection to declassify and release in full. The proposed deletions of the Criminal Division are shown in red brackets. The document is also out to CIA.

Charlotte Seeley
Charlotte Palmer Seeley
FOI/Mandatory Review Officer
Information Policy Directorate

Attachment: NND 899013-475

8-24-90
S

UNCLASSIFIED
WITH TOP SECRET
ATTACHMENT

11-1-89
215/91

August 15, 1990

MEMORANDUM FOR EMIL P. MOSCHELLA
CHIEF, FOI/PA SECTION
FEDERAL BUREAU OF INVESTIGATION

SUBJECT: ^{b6} Declassification/Release Request of
~~_____~~

The attached document has been requested under provisions of the Freedom of Information Act.

Please review the document and advise the National Security Council if, in your opinion, the document may be declassified and/or released.

If you recommend the document or portions thereof should remain classified in the interest of national security or otherwise not releasable, please provide the NSC with the provisions of the appropriate sections of the Freedom of Information Act on which your decision is based. If applicable, please provide downgrading recommendations as well.

We ask that you return the document along with your recommendations. Questions should be directed to Charlotte Palmer Seeley at (395-3103).

Additional comments for your information: The Criminal Division of the Justice Department recommended that you review the enclosed document. The Departments of State, Energy, and Defense have no objection to declassify and release in full. The proposed deletions of the Criminal Division are shown in red brackets. The document is also out to CIA.

*joint ventures of all
agencies involved. We
replied to Seeley re: the
request.*

Charlotte Seeley
Charlotte Palmer Seeley
FOI/Mandatory Review Officer
Information Policy Directorate

Attachment: NND 899013-475

UNCLASSIFIED
WITH TOP SECRET
ATTACHMENT

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Drug Enforcement Administration (DEA)
Date: March 31, 1998

**DEA Form 7 (Report of Drug Property Collected,
Purchased or Seized)**

As the FBI becomes more involved in drug investigations, FBI field offices have been utilizing DEA Form 7 (See Attachment 1) for transmitting evidence to the DEA Lab in Bureau drug cases. While it is properly a DEA form when used in a Bureau drug case, the top half of the form will be FBI information while the lower half will be the results of examination conducted by the DEA lab personnel.

bb On 7-18-90, [REDACTED], DEA, agreed that henceforth when any DEA Form 7 is located in a Bureau file in response to FOIPA requests, it should be referred to DEA for consultation.

Upon receipt, DEA will review the Form 7 and 1) return it to the FBI with appropriate notations, if any; or, 2) if any overriding factors exist, will opt to handle it as a direct response. If the latter should occur, DEA will call the PLS and advise them that DEA will handle the response to the requester.

*Using our standard referral letter (OPCA-6), check the second block "FBI documents containing information furnished by your agency." On the reverse side complete Index B with the FBI file and serial number of the document and further identify the referred document as a DEA Form 7 (See Attachment 2).

REPORT OF DRUG PROPERTY COLLECTED, PURCHASED OR SEIZED

1. HOW OBTAINED (Check) <input type="checkbox"/> Purchase <input checked="" type="checkbox"/> Seizure <input type="checkbox"/> Free Sample <input type="checkbox"/> Lab. Seizure <input type="checkbox"/> Money Flashed <input type="checkbox"/> Compliance Sample (Non-Criminal) Other (Specify)		2. FILE NO. PX 90C 186 (1B1)	3. G-DEP IDENTIFIER
5. WHERE OBTAINED (City, State/Country) Phoenix, AZ., USA		4. FILE TITLE EDAL	
6. CUSTOMS REFERRAL <input type="checkbox"/> Case No. OR <input type="checkbox"/> Seizure No. No.		7. DATE PREPARED 11/5/87	8. OFFICE SUBUNIT Sg 3

9. Exhibit No.	10. ALLEGED DRUGS	11. MARKS OR LABELS (Describe fully)	APPROX. GROSS QUANTITY		14. Purchase Cost
			12. Seized	13. Submitted	
1	MARIJUANA	2 Bags	40.01	40.01	
	" "				

15. WAS ORIGINAL CONTAINER SUBMITTED SEPARATE FROM DRUG? NO (Included above) YES (If Yes, enter exhibit no. and describe original container fully)

REMARKS:

16. SUBMITTED BY SPECIAL AGENT (Signature)

17. APPROVED BY (Signature) *Supervising Special Agent*

LABORATORY EVIDENCE RECEIPT REPORT

18. NO. PACKAGES: 1

19. RECEIVED FROM (Signature & Date): R235-855-042

20. TITLE: *Supervising Special Agent*

21. SEAL: Broken Unbroken

22. RECEIVED BY (Signature & Date): 1-14-87

23. TITLE: E.T.

LABORATORY ANALYSIS / COMPARISON REPORT

24. ANALYSIS SUMMARY AND REMARKS

Gross Wt.: 39.8 gm
 Net Wt.: 17.1 gm
 Adulterants: --
 Drug Code: 7360.000

51131

MEMO-23- ATTACHMENT 1

Fingerprint evidence forwarded to F.B.I. (copy of letter attached)

26. Exhibit No.	25. Lab. No.	27. ACTIVE DRUG INGREDIENT (Established or Common Name)	28. WEIGHT PER UNIT ANALYZED			31. TOTAL NET	32. RESERVE
			28. Strength	29. Measure	30. Unit		
1(B1)	51131	Marijuana	--	--	--	--	15.6 gm

34. TITLE: FORENSIC CHEMIST

35. DATE COMPLETED: 5-23-87

36. APPROVED BY: [Redacted]

37. TITLE: LABORATORY CHIEF

38. LAB. LOCATION: NATIONAL CITY, CA



U.S. Department of Justice

Federal Bureau of Investigation
935 Pennsylvania Ave., N.W.

Washington, D.C. 20535-0001

To:

From: Chief
Freedom of Information/Privacy Acts (FOIPA) Section
Federal Bureau of Investigation

Subject: FOI/PA Request of _____
FBI FOI/PA# _____ Re: _____

In connection with review of FBI files responsive to the above request, the following was surfaced:

- _____ unclassified document(s) which originated with your agency is/are being referred to you for direct response to the requester. We will advise the requester that your agency will correspond directly concerning this matter, and request that you furnish us a copy of your letter to the requester reflecting final determination regarding the document(s). (See index A).
- _____ FBI document(s) containing information furnished by or related to your agency. Please review this information (outlined in red) and return the document(s) to us, making any deletions you deem appropriate, and citing the exemption(s) claimed. (See index B).
- _____ classified document(s) which originated with your agency is/are being referred to you for direct response to the requester. We will advise the requester that your agency will correspond directly concerning this matter, and request that you furnish us a copy of your letter to the requester reflecting final determination regarding the document(s). Additionally, please advise us if the classification of the document(s) is changed so that we may amend our files. (See index C).
- _____ classified FBI document(s) containing information furnished by or related to your agency. Please review this information (outlined in red) and return the document(s) to us, making any deletions you deem appropriate, citing the exemption(s) claimed, and advising if the document(s) still warrant(s) classification. (See index D).
- Please note that some of the enclosed documents contain deletions made by this Bureau. The appropriate exemption appears next to the redacted information. Please advise the requester they may appeal these denials to the following address: Co-Director, Office of Information and Privacy, U.S. Department of Justice, Flag Building, Suite 570, Washington, D.C. 20530-0001.

A copy of the requester's initial letter and any other significant correspondence is enclosed for your convenience. If you have any questions concerning this referral, please contact _____ on (202) 324-_____. The FBI file number appearing on the lower right-hand corner of the enclosed document(s) as well as on the Index Listing (see reverse) should be utilized during any consultation with this Bureau concerning this referral.

Additional Remarks: _____

Enclosure(s) ()

MEMO 23 - ATTACHMENT 2 (FRONT)

(Index Listing on Reverse)

Index A:

Index B:

HQ 12-3456-78 (DEA Form 7)

Index C:

Index D:

MEMO 23 - ATTACHMENT 2 (BACK)

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Duplicate Documents, Processing of
Date: March 31, 1998

Processing of Duplicate Documents

With the increased number of FOIPA requests being made to FBIHQ and the field offices, we are frequently encountering duplicate copies of the same document to be processed by the FOIPA Section. To process and release all copies of a single document not only causes an unnecessary duplication of effort, it also provides no additional substantive information to the requester. For reference purposes, duplicate documents are described as a document "recorded" or "serialized" at different locations within FBI record(s). (Duplicate documents should not be confused with additional "copies" of documents which are routinely provided by a reporting office and maintained within the same serial.)

In processing duplicate documents, if handwritten notations or administrative markings on one document substantially alter the document or contain additional information to which the requester seeks access, only the copy which contains the consensus of pertinent information should be processed. For those documents considered as duplicates, OPCA Form 20 (Deleted Page Sheet) can be completed in order to identify that the withheld pages are being considered as duplicate to another document recorded and already processed at another location in an FBI file. The following language should be included in your disclosure letter as a further explanation to the requester:

"Numerous documents in the _____ file(s) that were processed pursuant to your request were found to be duplicate of those contained in the file(s) at _____ which have also been processed. To minimize costs to both you and the Federal Bureau of Investigation, these duplicate documents have not been considered for release unless additional information was included on the duplicate document."

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Duplication
Date: March 31, 1998

Duplication of FOIPA Related Records

When responsive files are located for FOIPA requests, whether it be FBIHQ or field office files, they are duplicated by personnel in IPU's Duplication Center. This is accomplished by completing and attaching OPCA Form 19 - Duplication Requisition Form to the file and forwarding it to the Duplication Center. The file will then be duplicated and returned to the LT/PLS. As a reminder, if the files to be duplicated are Personnel type files (i.e., 67, 263, 280, etc.), they must be transmitted in a messenger envelope.

Files to be duplicated on a "Special" basis must be hand delivered to the Duplication Center and given directly to the Supervisor who will personally keep control over the files. Either a pink "Special" tag should be affixed to the requisition form or "SPECIAL" should be written on the form in large red letters to denote that expedite duplication is requested.

When requesting only certain serials to be duplicated, the serial numbers must be listed on the requisition form in vertical order, rather than horizontal order, directly under the word "Serials."

REMINDER: Do not duplicate any files in which duplication fees could exceed \$25 until a statement of willingness to pay has been received from the requester.

Duplication of Special File Room Files

When it is necessary to have files from the Special File Room (SFR) duplicated, the same form should be completed; however, the actual duplication will be performed by personnel in the SFR. Therefore, once the form is completed and attached to the file, the file should be hand carried to the SFR for duplication. The SFR will notify the LT or PLS once the duplication is completed in order to retrieve the material.

FOIPA Numbered Memo 25

Page 2

Duplication

Duplication of Microfiche/Microfilm

b2 To have paper copies made of information that is maintained on microfilm or microfiche, contact the Micrographics Unit on extension [REDACTED] Room [REDACTED]. An administrative duplication form must be completed for personnel of that unit to duplicate the material. This form can be completed over the phone by micrographics personnel or copies of the form can be sent to the LT or PLS for completion and return to the Unit. Once the material has been duplicated, it will be sent to the LT or the PLS through the Bureau mail, unless a request had been made to be notified for it to be picked up.

Duplication of Processed Material

Where duplication fees are applicable, materials should not be duplicated until the requested amount of money has been received from the requester. This will eliminate unnecessary duplication costs to the FBI in the event the requester should abandon the fees.

Once responsive FOIPA files have been processed and fees, if applicable, have been received, the material may then be sent to the Duplication Center. At this time, the attached duplication form should be affixed to all volumes/sections in which duplication is requested. In addition to providing your name, date, extension and room number on this form, it should also indicate the number of copies requested, the subject matter, file number/section and any comments for special duplicating instructions, such as reducing the image to 98%, etc.

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Electronic Surveillance (ELSUR) Records
Date: March 31, 1998

Types of Electronic Surveillance

There are several forms of electronic surveillance. Following are a few examples: 1) a **telephone wiretap** records both sides of a conversation, 2) a **microphone** surveillance is when a small microphone is placed inconspicuously in a room to record conversations in the surrounding area, 3) a **pen register** records the telephone numbers being called by a monitored telephone, 4) a **trap and trace** is the opposite of a pen register, in that it determines the number of a telephone used to call a monitored telephone, 5) a **transmitter (body recorder)** is a device worn by a consenting individual or concealed in an item such as a purse, gym bag, attache, etc., and 6) a **consensual monitoring** means the FBI has the permission of the individual whose telephone is being monitored, or who has agreed to wear a body recorder. The **transmitter (body recorder)** may be worn by or concealed in an item carried by a consenting individual or by an FBI Special Agent.

ELSUR Searches and Reviews

b2
When a request is made for a search of the electronic surveillance indices pursuant to a FOIPA request, RMU employees will complete the ELSUR form 0-63 (See Attachment 1) and forward it to the ELSUR Unit, Room [REDACTED] for the indices to be searched. The search will be limited to only retrieving Elsur information on those individuals considered as a target of the investigation and listed as a "principal" for the electronic surveillance. **If records which may be identifiable to the subject of the request are located**, an electronic communication must be sent to the appropriate field office(s) requesting a review of the field office file(s) to determine if it is identifiable to the requester/subject matter. The field office will notify RMU of the results of the review. **If the material is not identifiable to the subject, RMU personnel will advise the requester that no responsive records were located which indicate the subject of the request has been the target of an ELSUR. If the records are identifiable**, RMU will obtain a copy of the responsive material from the field office(s) to be maintained in the case folder until the time to be processed by the Disclosure PLS.

Electronic Surveillance (ELSUR) Records

ELSUR Index Records

A search of the ELSUR index can surface three types of references: 1) a **principal** means the individual/organization is the target of the ELSUR, 2) an **overhear** indicates the conversation of a third party (other than the principal) has been recorded and 3) a **mention** indicates that a participant of the recorded conversation mentioned the name of a third party. Form 0-63 (copy attached) should be used when requesting an ELSUR search. Under "REQUEST FOR SEARCH OF ELSUR INDEX FOR THE PURPOSE OF:" check the FOIPA block and write **principals only** next to it.

ELSUR index records showing electronic coverage in foreign intelligence, counter intelligence or international terrorism investigations, should be carefully reviewed to determine whether or not the (c)(3) exclusion is appropriate before admitting the existence of the record. Where the mere existence of the electronic coverage is classified, the (c)(3) exclusion may be appropriate.

**ELSURS Conducted in Criminal, Domestic Security
and FCI Investigations**

The history of electronic surveillance at the federal level is set forth in House of Representatives Report 95-1283 which pertains to the Foreign Intelligence Surveillance Act (FISA). This six page summary, which is available in the FOIPA library, explains the development of the FBI's authority to use electronic surveillance in criminal, domestic security and foreign counterintelligence/international terrorism investigations. Each of these investigative programs has a specific date identified after which a court order is required to conduct electronic surveillance as follows:

A) ELSUR Conducted in Criminal Investigations

Prior to 6/19/68, electronic surveillance in criminal investigations was generally conducted without a court order. **Effective 6/19/68**, Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. § 2510-2520) was enacted. With the establishment of this statute, Title III not only banned warrantless electronic surveillance in criminal investigations, it specified the offenses against which electronic surveillance could be used (18 U.S.C. § 2516).

For electronic surveillance conducted in criminal investigations prior to 6/19/68 (pre-Title III), the following FOIA exemptions may be asserted depending upon the type of request being made:

FOIPA Numbered Memo 26

Page 3

Electronic Surveillance (ELSUR) Records

- 1) When a request has been made by a non-participant in the intercepted conversation, Exemption (b)(7)(C) and/or (b)(7)(D) may be asserted on information which would tend to identify an individual or source.
- 2) When a request is made by a participant in the conversation, the requester's side of the conversation should be released, however, all conversations of a third party should be withheld pursuant to Exemption (b)(7)(C) if it would tend to identify the individual. If the release of information to a participant would pose potential harm or threaten the safety of the participant's life, then, Exemption (b)(7)(F) can be considered to withhold the information.

(In processing items 1 and 2, if any of the participants in the conversation are deceased, the information must be released. The only privacy interests left to be protected are those held by living persons who are mentioned in the conversation.)

- 3) Exemption (b)(7)(D) may be asserted, in addition to (b)(7)(C), for third party requests wherein the electronic surveillance was conducted with the consent of one of the parties to the conversation. However, if the requester is the party who gave the consent, then the requester should be given access to his/her side of the conversation as discussed in item 2.
- 4) If the investigation in question or a related investigation is pending when the request is received, Exemption (b)(7)(A) is appropriate if release will interfere with enforcement proceedings. This may be the case when an organized crime investigation is involved.

For those intercepts after 6/19/68, post-Title III, Exemption (b)(3) should be invoked in addition to the exemptions discussed above.

B) ELSUR Conducted in Domestic Security/Terrorism Investigations

In general, these investigations focus on organizations and individuals ("enterprises"), other than those involved in international terrorism or which have a nexus to a foreign government, whose goals are to achieve political or social change through activities that involve force or violence.

Prior to 6/19/72, electronic surveillance in domestic security cases was generally conducted without a court order. On 6/19/72, the decision in United States v. United States District Court 407 U.S. 297, changed this procedure. This decision, commonly called the Keith Case, mandated a court order in such cases. The Attorney General Guidelines on domestic security/terrorism investigations have, since 4/5/76, mandated that non-consensual electronic

Electronic Surveillance (ELSUR) Records

surveillance must be conducted pursuant to the warrant procedures and requirements of Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (as amended). In other words, when members of the group being investigated commit, or intend to commit imminently, an offense specified in 18 U.S.C. § 2516, any non-consensual electronic surveillance conducted to investigate that offense must be conducted pursuant to a Title III court order. **Therefore, the records from such intercepts conducted on or after 6/19/72, are withheld pursuant to Exemption (b)(3).**

For intercepts prior to 6/19/72, pre-Keith intercepts, or those involving the consent of one of the parties to the conversation, apply the principles discussed above regarding pre-Title III criminal investigations.

C) ELSUR Conducted in Foreign Counterintelligence/International Terrorism Investigations

Foreign Counterintelligence (FCI) investigations are conducted to protect against espionage and other intelligence activities, sabotage, or assassinations conducted by, or on behalf of foreign powers, organizations or persons, or international terrorist activities.

International terrorism investigations are conducted for activities of the following nature:

1. Involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the U.S. or of any State; or that would be a criminal violation if committed within the jurisdiction of the U.S. or of any State;
2. Appears to be intended:
 - a) to intimidate or coerce a civilian population;
 - b) to influence the policy of a government by intimidating or coercion; or
 - c) to affect the conduct of a government by assassination or kidnaping; and
3. Occur totally outside the U.S., or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.

The Foreign Intelligence Surveillance Act (FISA), which was enacted on 10/25/78, was the first legislation governing the use of electronic surveillance in these investigative programs. **Prior to 10/25/78, pre-FISA, electronic intercepts were generally conducted without a court order. Post-FISA intercepts are generally conducted pursuant to a court order, but in rare cases are conducted without one.**

Electronic Surveillance (ELSUR) Records

Exemptions (b)(1), (b)(7)(A) and (b)(7)(C) may be applicable to records from pre-FISA intercepts. The Exemption (b)(1) and (b)(7)(C) implications are obvious, but those involving (b)(7)(A) are less so. The National Security Division, Division 5, should be consulted if necessary to determine whether the investigation in question is ongoing in another form or whether there is a related, pending investigation which may be impaired through disclosure.

Post-FISA intercepts can be protected by these same exemptions, however, Exemption (b)(3) is also available. Application of Exemption (b)(3) is relevant when the records which resulted from the intercept can no longer be classified and Exemption (b)(1) can no longer be invoked.

Consensual monitoring situations occurring prior to 10/25/78, which are not covered by the FISA, did not require a court order. The Attorney General Guidelines for FCI investigations state that FBIHQ may authorize consensual monitoring for up to 90 days, with extensions available if necessary. Although Exemption (b)(3) would not be available, the other exemptions discussed above could be applicable.

Court Orders Prohibiting Disclosure of ELSUR Material

When a request is received for records which are covered by a court order prohibiting disclosure, that information should be denied as the FBI has no discretion to release the records. There can be no "improper withholding" under these circumstances. See GTE Sylvania, Inc. v. Consumers Union, 445 U.S. 375 (1980). The court order should be cited as the basis for withholding the records.

The following topics are listed for assistance in handling ELSUR material, particularly those topics which are known to involve court orders:

**ELSUR Information Pertaining to
Martin Luther King, Jr., and The Southern Christian
Leadership Conference (SCLC)**

The United States District Court for the District of Columbia has ordered results of certain microphone and telephone surveillance of Dr. King and the SCLC turned over to the National Archives and sealed for fifty years, Lee v. Kelley, No. 76-1185, and SCLC v. Kelley, No. 76-1186 (D.D.C. Jan. 31, 1977). This order includes paraphrased information obtained through electronic coverage which is included in documents such as letters, letterhead memoranda and reports.

PLSs should be alert for documents reporting contacts between individuals and Dr. King or representatives of the SCLC. If the information reported could have originated from some

electronic coverage of Dr. King or the SCLC, consult with Supervisory PLS [REDACTED] b6

ELSUR Records in the Matter of David Dellinger et al., (Chicago Seven)

On 2/26/74, a protective order was issued by the United States District Court for the District of Columbia in the matter of David Dellinger vs. John N. Mitchell, which placed restrictions on the release and dissemination of ELSUR documents and records involved in that case. The material in question dealt specifically with ELSUR coverage of the plaintiffs, David Dellinger, Jerry C. Rubin (deceased), Lee J. Weiner, John R. Froines, Abbott H. Hoffman aka Abbie Hoffman (deceased), Thomas E. Hayden, Rennard C. Davis aka Rennie Davis, as well as the Black Panther Party. Although the order did not specially prohibit the FBI from releasing documents involved in the case, the Court's permission was sought each time such a disclosure was to be made.

On 11/28/77, this Order was modified to permit dissemination of the logs and transcripts mentioned above pursuant to FOIPA requests by any person who was overheard or mentioned in any of these electronic surveillance.

Release of Information from Wiretaps NH 605-R* and NH 687-R*

Memorandum dated 11/28/80, advised that in the civil action of Miriam Abramovitz, et al. v. James Ahern, et al., (U.S.D.C., D Conn.) Civil Action No. N77-207, an agreement was entered into by the government and the plaintiffs. In this agreement a complete copy of the logs and transcripts from NH 605-R* and NH 687-R* (wiretaps on the Black Panther Party in New Haven, Connecticut) was provided to the plaintiffs. In exchange, the plaintiffs dropped allegations of illegal activity by the Federal defendants (four Former FBI Special Agents) which arose out of the Federal wiretaps.

Many of the 165 plaintiffs in this civil action are from the New Haven area and are represented by attorney John R. Williams. In addition, a number of them have made FOIPA requests, the processing of which may involve the same ELSUR logs, transcripts or information from NH 605-R* and NH 687-R*.

In view of the release already made of the logs and transcripts, any information from these two wiretaps, including the source symbol numbers, can generally be released without excision to any individual who was a party to the conversation, a plaintiff in the civil action or known to be represented by John R. Williams. See Attachment 2 for the list of plaintiffs represented by Mr. Williams in the above-referenced civil suit.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MIRIAM ABRAHOVITZ, *Cons.*
ROBERT ABRAHOVITZ, *Cons.*
MICHAEL AVERY, *Cons.*
JOHN BANCROFT, *Cons.*
VIRGINIA BLAISDELL, *Cons.*
CATHERINE D. BOVA, *Cons.*
ANN BOYD, *Cons.*
ELISE C. BRONNE, *Cons.*
PATRICIA BUCK, *Cons.*
FRANCE CARTER, *Cons.*
JOHN H. CHAMPION, *Cons.*
KATHRYN CHILES, *Cons.*
KATHY CHILES, *Cons.*
LAURA CHILES-MARTIN, *Cons.*
HARRIET COHEN, *Cons.*
JOHN CONTI, *Cons.*
JOHN P. CRISCUOLO, *Cons.*
JAMES H. DAVIS, *Cons.*
JOHN J. DERBACHER, *Cons.*
MAUREEN DERBACHER, *Cons.*
LAVIL DICKSON, *Cons.*
CARL DINDO, *Cons.*
GEORGE EDWARDS, *Cons.*
STEVEN ELLNER, *Cons.*
LILLIAN FARMER, *Cons.*
ELIZABETH A. FARRELL, *Cons.*
ARTHUR FINN, *Cons.*
ROBERT FORSEBERG, *Cons.*
DONALD FREED, *Cons.*
ANN FROINES, *Cons.*
JOHN FROINES, *Cons.*
KILU (PATRICIA) GALLYOT, *Cons.*
CHARLES GARRY, *Cons.*
ROBERT A. GELBACH, *Cons.*
STEPHEN GLOVER, *Cons.*
GEORGIA H. GOETERS, *Cons.*
EDWARD H. GREER, *Cons.*
LOUISE HARRIS, *Cons.*
JULIA L. ILDEFONSO, *Cons.*
GEORGE JOHNSON, *Cons.*
RONALD S. JOHNSON, *Cons.*
JAMES O. JONES, *Cons.*
RENEE M. JONES, *Cons.*
MORSON J. KAPLAN, *Cons.*
PATRICIA KAPLAN, *Cons.*
ELEANOR KAUFMAN, *Cons.*
ALAN KAY, *Cons.*
MARTIN KENNER, *Cons.*
JOHN X. LAPORTA, *Cons.*
PAUL N. LAEN, *Cons.*
GREN J. LOURIE, *Cons.*

United States District Court
District of Connecticut
FILED AT
3/17/76
S. J. JONES
Deputy Clerk

CIVIL ACTION

NO. N77-207

U. S. C. J. Conn.

Case No. 11
177-207

G. SPARKS LUNNEY, Conn.
 LONNIE McLUCAS, Conn.
 JOHN C. MOLDENHAUER, Conn.
 WILLIAM MORICO, Conn.
 DAVID MORRAZZINI, Conn.
 PETER J. O'CONNELL, Conn.
 PETER MORRIS, Ill.
 LUCILLE OWENS, Conn.
 GUSSIE PHEANIOUS, Conn.
 CLARICE K. POLLACK, Conn.
 IRVIN H. POLLACK, Conn.
 PATRICIA PANFONE, Conn.
 JUDITH C. ROBISON, Conn.
 DAVID N. ROSEN, Conn.
 MARK ROSENBERG, Conn.
 BARNETT R. RUBIN, Ill.
 PHYLLIS RYAN, Conn.
 WILLIAM RYAN, Ill.
 JESSE A. SAMBERG, Conn.
 WENDY SAMBERG, Conn.
 DENNIS SILVESTRI, Conn.
 HELEN SILVESTRI, Conn.
 ROBERT SILVESTRI, Conn.
 HENRY J. TARMAN, Conn.
 DAVID TOBIS, Ill.
 MORRIS WESSEL, Conn.
 CARL WILLIAMS, Conn.
 JUDITH WRIGHT, Conn.
 MARK WANGER and WIFE
 MICHAEL ZITO, Conn.

25 Ind.
 10 Ind.
 5 Ind.
 10 Ind.
 1 St. City
 6 Ind.

Suing on behalf of themselves and all others similarly situated,

PLAINTIFFS,

- vs. -

JAMES AHERN, Conn.
 STEPHEN AHERN, Conn.
 PASQUALE CARRIERI, Conn.
 RAYMOND CONNALLY, Conn.
 WALTER CONNOR, Conn.
 VINCENT DeROSA, Conn.
 BIAGIO DILIETO, Conn.
 WILLIAM GLOSSA, Conn.
 BARTHOLOMEW F. GUIDA, Conn.
 THEODORE GUNDERSON, Conn.
 JAMES H. HEINZ, Conn.
 ARTHUR LEE, Conn.
 RICHARD C. LEE, Conn.

1 St. City
 3 Ind.
 5 Ind.
 1 City Ind.
 3 Ind.
 70 Ind. including
 25 Ind.
 30 Ind.
 12 Ind.
 3 Ind.

10

ROUTE IN ENVELOPE

TO: Records Management Division, ELSUR Index Date _____

FROM: CID LCD INTD RMD Other _____ (specify)

Priority: Expedite, will pick up;
 Routine
 Date needed: _____

REQUEST FOR SEARCH OF ELSUR INDEX FOR THE PURPOSE OF:

- Title III Application
- FISC Application
- Legal Motion (DOJ)
- FOIPA Principals only
- FBI
- DEA
- SPIN/DAPLI
- SPU
- Investigative Lead
- Other _____ (specify)

(One of the above must be checked before search will be conducted.)

Requesting/Authorizing Agent	Complete and Return to:		
Name	Name	Ext.	Room TL#

NAME; TELEPHONE #; VIN; OR ADDRESS TO BE SEARCHED	KNOWN ALIASES	SEARCH RESULTS

.file _____ Searched by _____ Date _____

ROUTE IN ENVELOPE

F O I P A

MEMO 27


M A N U A L

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Executive Secretariat Control Data Sheet
Date: March 31, 1998

Executive Secretariat Control Data Sheet

Attached is a copy of an Executive Secretariat Control Data Sheet. These control sheets are used by the Departmental Executive Secretariat to track certain incoming correspondence and replies. From time to time these sheets are retrieved during a search for records responsive to FOIPA requests.

In processing the control sheets for release, it is not necessary to refer them to the Executive Secretariat for its determination, but please keep in mind that the sheets may contain sensitive information that warrants protection in the same way as the underlying records. In many instances, the sheets simply describe the correspondence in a summary fashion and indicate the office(s) to which the correspondence is being directed. In other cases, however, they may include information that may be withheld under various FOIA exemptions (for example, to protect material that is predecisional and deliberative or that implicates personal privacy concerns.)

The Executive Secretariat is no longer using the notation, "THIS DOCUMENT MUST BE DISPOSED OF BY SHREDDING," so you do not need to be concerned about its significance on prior versions of the form. If you have any questions about processing the control sheets, please do not hesitate to call DOJ/OIP at 514-

b2

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: DOE, JOHN J. PAWTUCKET, MI
To: AG.
Date Received: 10-13-89 Date Due: NONE Control #: X9101317598
Subject & Date

10-01-89 LETTER REGARDING THE ISSUE OF IMMUNITY FOR CERTAIN
KNOWN CRIMINALS INVOLVED WITH THE MARY K. DOE TRIAL WHICH IS
SET FOR NOVEMBER 24, 1989. WRITER STATES THAT IMMUNITY
SHOULD NOT BE GRANTED BASED ON THE CHANCE THAT DOJ MAY
OBTAIN INFORMATION THAT MAY LEAD TO THE ARREST OF
CRIME KINGPIN, JOE SCARPOOLA.

N O T E ! ! T H I S I S A T E S T R E C O R D ***

Referred To:	Date:	Referred To:	Date:	
(1) CRM;POLKA	10-13-89	(5)		W/IN:
(2)		(6)		
(3)		(7)		PRTY:
(4)		(8)		1B
INTERIM BY:		DATE:		OPR:
Sig. For: NONE		Date Released:		LON

emarks

INFO CC: OAG.

(1) REPLY DIRECTLY TO THE WRITER. PROVIDE EXEC. SEC., ROOM
4400-AA, WITH ONE COPY OF REPLY.

Other Remarks:

N O T E ! ! ! ! ! THIS IS JUST A TEST RECORD DESIGNED
TO ASSIST FOIA OFFICE IDENTIFY CERTAIN FIELDS THAT MAY
EXPEDITE SEARCHING CAPABILITIES FOR COMPONENTS TASKED TO
DO SEARCHED IN SUPPORT OF FOIA AND PRIVACY ACT.
FILE:

THIS DOCUMENT MUST BE DISPOSED OF BY SHREDDING

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Exclusions ("Tip-offs")
Date: March 31, 1998

Exclusions, also known by the term "tip-offs," are special provisions to the FOIA which were designed to allow for the protection of sensitive law enforcement matters. The three provisions authorize federal law enforcement agencies to "treat the records as not subject to the requirements of the FOIA." In other words, if a case falls within the purview of an exclusion, the requester can legally be given a "no record" response even though an identifiable record exists. Thus, the use of the "no records responsive to your request" language in all no record responses.

Listed below are the three provisions that may be implemented on law enforcement records. For further details, a review of the FOIA Guide and Privacy Act Overview publication provides an in-depth discussion and requirements for utilizing an exclusion.

(c)(1) Exclusion -- Whenever a request is made which involves access to records described in subsection (b)(7)(A) and (A) the investigation or proceeding involves a possible violation of criminal law; and (B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(c)(2) Exclusion -- Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifiers are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of the FOIA unless the informant's status as an informant has been officially confirmed.

(c)(3) Exclusion -- Whenever a request is made which involves access to records maintained by the FBI pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in Exemption (b)(1), the FBI may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of the FOIA.

Procedures in Handling Possible Exclusion Records

For the most part, exclusions are rarely asserted on FBI records. In most instances, any consideration for the possible assertion of an exclusion will be initiated by the LT in RMU during the initial review of the file to determine if it is identifiable to the subject. On rare occasions, this may be determined after a case has been assigned to a Disclosure Unit.

If there is an indication by a review of the file that an exclusion might apply, immediately notify and discuss the case with your Team Captain. If the Team Captain is in agreement, then the FOIPA Exclusion Coordinator should be contacted and provided with the case folder along with the identifiable file(s). If an exclusion is appropriate, the LT or PLS will be advised by the Coordinator, who will in turn, handle all of the paperwork. If an exclusion is not necessary, the Coordinator will also advise the LT or PLS of such and routine processing of the file may be conducted.

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Exemption (b)(3)
Date: March 31, 1998

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Exemption (b)(3) should be cited to protect information which is prohibited from disclosure by statute. To qualify as a (b)(3) statute, the statute must be worded in a manner that leaves no discretion on the issue, or establish specific criteria for withholding, or refer to particular types of matters to be withheld.

I. Examples of Authorities Which are (b)(3) Statutes

Central Intelligence Agency (CIA) Personnel

Section 6 of the Central Intelligence Agency Act of 1949, requires the Director of the CIA to protect from disclosure, "the organization, functions, names, official titles, salaries and numbers of personnel" employed by the CIA from public disclosure pursuant to 50 U.S.C., § 403.

CIA Intelligence Sources and Methods

50 U.S.C. § 403-3(c)(5) requires the Director of the CIA to protect its "intelligence sources and methods."

Grand Jury Information

Federal Rules of Criminal Procedure (FRCP) Rule 6(e) generally prohibits disclosure of matters occurring before a Federal grand jury. Since a FRCP is usually promulgated by the U.S. Supreme Court, the argument has been made that such a rule cannot be used as Exemption (b)(3) authority because no statute is involved. However, since Congress did enact Rule 6(e) by statute, the courts have held that Rule 6(e) can be used as an Exemption (b)(3) statute.

The District of Columbia Circuit Court (D.C. Circuit) has limited the use of Rule 6(e) as an Exemption (b)(3) statute, at least in that circuit. In order to prevent the Government from shielding information from the public simply by presenting the information to a grand jury, the D.C. Circuit has held that Rule 6(e) only prohibits the disclosure of information concerning the "inner workings" of the grand jury. Senate of Puerto Rico v. U.S. Department of Justice, 8233 F. 2d 574, 582 (D.C. Cir. 1987). Included in the "inner workings" concept **protected by Exemption (b)(3)** are such items as grand jury transcripts or subpoenas, the identities of witnesses or jurors, the substance of testimony to the grand jury, the strategy or direction of a grand jury investigation, and the deliberations or questions of the jurors.

Records falling into such categories as grand jury transcripts and subpoenas are easy to recognize, but it is another matter to determine whether a record reveals the strategy or direction of a grand jury investigation. It can be especially difficult for someone not familiar with the investigation, with the background knowledge possessed by the subject concerning the matter under investigation. In Senate of Puerto Rico, for instance, the D.C. Circuit held that a release of all nonexempt records in an investigative file would not reveal the "inner workings" of the grand jury if the grand jury material was not labeled as such. Under those circumstances, the court reasoned the requester would be unable to even determine which records had been submitted to the grand jury. This overlooks the fact that a sophisticated requester can determine which records went to the grand jury if he has enough knowledge and experience to know which records could only be obtained with a grand jury subpoena. That, in turn, could reveal the direction of the grand jury investigation.

Compounding the problem is the fact that most of the other circuit courts have not decided this issue. Furthermore, at the time a FOIPA request is initially processed, one cannot be certain in which circuit a disgruntled requester will eventually file suit. Without that information, one cannot determine which rule of law to apply.

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Exemption (b)(3)

In light of these problems, the following processing procedure will be followed. At the initial processing stage, Exemption (b)(3) shall be applied to all properly stamped grand jury material. If it is obvious that records bearing the grand jury stamp were not actually submitted to the grand jury, that material should be reviewed for all other applicable FOIA exemptions which may be invoked. However, this procedure should be discussed with the Unit Chief prior to disclosure of any material.

Intelligence Sources and Methods of the FBI

50 U.S.C., § 403-3(c)(5) authorizes not only the CIA, but other intelligence gathering agencies of the Federal Government, including the FBI, to protect their intelligence sources and methods. Often there is an overlap between the Exemption (b)(1) and Exemption (b)(3) protection of intelligence sources and methods. Citing these two exemptions in conjunction with one another is appropriate; however, either can be cited independently of the other. The Exemption (b)(3) protection has an equal force to the Exemption (b)(1) protection. Therefore, should Exemption (b)(1) be downgraded, Exemption (b)(3) could still be applied in situations where release of the information would jeopardize the FBI's intelligence sources and methods.

Foreign intelligence and counterintelligence investigations are vital aspects of the FBI's law enforcement mission. When it engages in these activities, the FBI utilizes national security intelligence sources and methods and relies not only on the Executive Order, but also on Exemption (b)(3), 50 U.S.C. 403-3(c)(5) to protect these intelligence sources and methods from disclosure under the FOIA.

With respect to intelligence sources in particular, the Supreme Court has held that the broadest possible protection is necessary in order for intelligence agencies to carry out their mission and to protect the intelligence process. The Court recognized that intelligence sources are diverse and are not limited to covert or secret agents but may include such open and innocuous sources as books, magazines, newspapers, and the citizens who travel abroad. As to all intelligence sources, the court held that they must be provided "an assurance of confidentiality that is as absolute as possible."

Internal Revenue Code

26 U.S.C. Section 6103 of the Internal Revenue Code protects tax records obtained from the Department of the Treasury. If tax records were obtained from a source other than the Department of the Treasury, then Exemptions (b)(6) and (b)(7)(C) should be considered in third party requests. See FOIA Update, Volume IX, No. 2, page 5.

**Juvenile Delinquency Act and Juvenile Justice
Delinquency Prevention Act (JJDP)**

18 U.S.C. § 5038, which is known as the Juvenile Delinquency Act, protects records of juvenile delinquency proceedings.

The attached memorandum of 11/17/87, from the Office of Information and Privacy (OIP), clarifies instructions regarding JJDP documents. (See Attachment 1)

In summary, OIP suggests that although the Juvenile Justice and Delinquency Prevention Act (JJDP) qualifies as an Exemption (b)(3) statute, it should not be invoked to deny the juvenile access to his/her own file. Similarly, information pertaining to other adult subjects unrelated to the juvenile and reasonably segregable cannot be withheld. OIP further suggests that to ensure the privacy interests of juvenile offenders, Exemption (b)(7)(C) in conjunction with Exemption (b)(3) should be used to protect records showing a juvenile's arrest regardless of whether the juvenile was subsequently released or formally charged.

OIP also notes that the JJDP authorizes release of the final disposition to a victim or immediate members of a deceased victim's family. Should the court's sentence or court's disposition appear in the records (not the AUSA's opinion concerning prosecution), it can be disclosed to the victim or deceased victim's family upon satisfactory proof of identity.

Furthermore, the JJDP should not be confused with the Federal Youth Corrections Act which is not an Exemption (b)(3) statute. Thus, the PLS must be certain under which statute the subject was prosecuted before it can be determined if Exemption (b)(3) applies.

National Driver Register

23 U.S.C., Section 206 (c) protects from third party requesters information obtained by the Secretary of Transportation for the National Driver Register concerning drivers who have committed serious traffic offenses.

National Drivers Records Act

On 2/3/88, National Highway Safety Administration, Department of Transportation, advised that the National Drivers Records Act is a (b)(3) statute, and any information furnished to the FBI from this system of records is exempt from THIRD PARTY access under (b)(3). Information from this system is releasable to a FIRST PARTY requester.

National Security Agency

Public Law 86-36, Section 6(a) protects the organization of the National Security Agency, its function and activities, and the names, titles, salaries, and number of its employees.

Pen Registers/Trap and Trace Devices

Pen registers and trap and trace devices are opposite sides of the same coin. While a pen register determines a telephone number being called by the monitored telephone, a trap and trace device determines the number of a telephone being used to call the monitored telephone.

Effective 1/18/87, 18 U.S.C., § 3123 mandated that a court order be obtained prior to installing or using a pen register or trap and trace device, unless the user of the telephone consents to the device. Pursuant to 18 U.S.C. Section 3123(d), these court orders are sealed unless otherwise ordered by the court. If the file does not indicate the court order is unsealed, assume it is still sealed and deny pursuant to Exemption (b)(3). Furthermore, the telephone company responsible for the line is not to disclose either the existence of the device or the investigation unless otherwise ordered by the court. **Therefore, Exemption (b)(3) of the FOIA protects from disclosure the application order, the court order, the telephone number and the identity of the individual on which it was placed.** Exemption (b)(7)(C) will still apply to protect the subscribers names and identifying information.

Prior to 1/18/87, the date 18 U.S.C. § 3123 was established, it was DOJ policy to obtain a court order before using a pen register. However, those court orders were issued pursuant to Federal Rules of Criminal Procedure 57. Since no statute was involved, **Exemption (b)(3) cannot be used to protect information concerning pen registers not covered by 18.U.S.C. Section 3123.** In those situations and taking into account the implications of the Landano decision, Exemption (b)(7)(D) will neither protect information obtained via a pen register prior to 1/18/87, nor will Exemption (b)(7)(D) protect the involvement of the telephone company regarding installation of the device.

The same dates and procedures for invoking Exemption (b)(3) for the use of the trap and trace devices should be followed as stated for the pen registers.

For the time period not covered by Exemption (b)(3), the use of a pen register or a trap and trace device may be released. Exemption (b)(7)(E) will not protect the use of the trap and trace devices or the pen registers as investigative tools because their general principles of operation have been widely publicized. Exemption (b)(7)(E) will apply for the technical or mechanical details regarding these devices.

Pre-sentence Reports

18 U.S.C. § 4208(c) and Rule 32(c)((3)(A) of the Federal Rules of Criminal Procedure exempt those portions of a pre-sentence report pertaining to a probation officer's sentencing recommendations, diagnostic opinions which would seriously disrupt a rehabilitation program if disclosed, information obtained upon a promise of confidentiality, and information which might result in harm to any person if disclosed.

Title III, Wiretap Intercepts

18 U.S.C., Section 2518 (8) governs the disclosure of information from Title III wiretap intercepts. This statute does not cover all wiretap intercepts. (See **Electronic Surveillance Records, Memo 26**, for a detailed discussion of the applicable exemptions for wiretaps.)

Visas and Permits; Issuance or Refusal of

8 U.S.C., § 1202(f) protects records pertaining to the issuance or refusal of visas and permits to enter the United States. Generally, all Visa/Permit matters are referred to the Department of State for handling.

II. Examples of Authorities Which Are Not (b)(3) Statutes:

1) **Executive Orders and Federal Regulations** do not qualify because they are not statutes.

2) **Federal Rules of Procedure** promulgated by the Supreme Court generally do not qualify unless they are modified and specifically enacted into law by Congress, thus becoming "statutes." See Fund for Constitutional Government v. National Archives and Records Service, 656 F. 2d 856 (D.C. Cir. 1981). [See prior discussions of **Rule 6(e)** and **Rule 32 of the Federal Rules of Criminal Procedure**, which were specifically enacted into law by Congress.]

3) **5 U.S.C., Section 551 of the Administrative Procedure Act** does not qualify because it merely defines terms. (This section, which defines the term "Federal Agency," apparently has been erroneously used to exempt documents prepared by the Judicial and Legislative Branches.)

4) The **Privacy Act** is not an Exemption (b)(3) statute because Congress explicitly provided so in Public Law 98-477.

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Exemption (b)(3)

5) 28 U.S.C., Section 534 does not qualify because it does not expressly prohibit the disclosure of "rap sheets." See Reporters Committee for Freedom of the Press v. Department of Justice, 816 F. 2d 730, at 736 n.9 (D.C. Cir. 1987). Note, however, that Exemptions (b)(6) and (b)(7)(C) may be used to protect third party requests for rap sheets of living subjects.

6) The Copyright Act of 1976, 17 U.S.C., Section 101-810, does not qualify because it specifically permits public inspection of copyrighted documents. Note, however, that application of Exemption (b)(4) to copyrighted documents may be appropriate. For an overview of this issue, see FOIA Update, Fall 1983, at 3-5, "Copyrighted Materials and the FOIA."

7) The Federal Youth Corrections Act (FYCA) which began as 18 U.S.C. § 5005, is not an Exemption (b)(3) statute. Thus, a PLS must be certain under which statute the subject was processed, the previously mentioned Juvenile Justice Delinquency Prevention Act or the FYCA, before making a determination on whether Exemption (b)(3) applies or not. Furthermore, if the requester's conviction was set aside under Section 5021 of the FYCA, one must determine whether the court issued an order for the record to be sealed. If conviction records have been ordered sealed, they should not be released pursuant to an FOIA or PA request. The PLS should advise the requester that records are sealed from disclosure pursuant to FYCA Court Order by citing the court case number and the date of the order (i.e., #84-726-CR-RYSKAMP, dated September 4, 1987).



U.S. Department of Justice
Office of Legal Policy
Office of Information and Privacy

Washington, D.C. 20530

November 17, 1987

MEMORANDUM

TO: Emil P. Moschella
Chief, FOI/PA Section
Records Management Division
Federal Bureau of Investigation

FROM: *mk* Richard L. Huff
Co-Director
Office of Information and Privacy

SUBJECT: FOIA Requests Relating to
Juvenile Delinquency Proceedings

I wish to suggest a clarification of FBI FOI/PA memorandum No. 708, dated December 28, 1983, regarding 18 U.S.C. §5038, a provision of the Juvenile Justice and Delinquency Prevention Act. That memorandum authorizes use of Exemption 3 to withhold juvenile records "where the juvenile was charged formally." It has been generally construed to authorize a blanket withholding of all FBI files in which a juvenile is a captioned subject and, by some teams, to include withholding of such files from the juvenile himself.

As most recently revised, 18 U.S.C. §5038(a), in pertinent part, states that "[t]hroughout and upon completion of the juvenile delinquency proceeding, the record shall be safeguarded from disclosure to unauthorized persons. The records shall be released to the extent necessary to meet [six enumerated] circumstances."¹ Although we regard this statute as qualifying as an Exemption 3 statute it is our view that the juvenile cannot be considered to be an "unauthorized person" within the meaning

¹ Of the six circumstances enumerated, five pertain to inquiries from agencies which are either government entities or acting on behalf of the government such as a court, a law enforcement agency, an agency considering the juvenile for employment in a sensitive position or a treatment agency or facility to which the juvenile has been committed by the court. Presumably such inquiries would be received through channels other than the FOIA. The effect on FOIA processing of the remaining provision, §5038(a)(6), is discussed below.

of the statutory language and that Exemption 3 cannot be invoked to deny the juvenile access to his own file. Additionally, while the entire record of the juvenile court proceeding is protected, an entire FBI file cannot be exempted simply because a juvenile appears as one of several captioned subjects. Information pertaining to other adult subjects which is unrelated to the juvenile and reasonably segregable from information pertaining to the juvenile cannot be withheld under the Juvenile Justice and Delinquency Prevention Act.

It is not absolutely clear whether a mere arrest involving a juvenile constitutes a juvenile delinquency proceeding triggering Exemption 3 protection. If not, this would produce the anomalous result of a juvenile who is arrested and subsequently released receiving less protection than a juvenile who is formally charged. To ensure maximum protection for juveniles, in light of the express congressional concern for the privacy interests of juvenile offenders, Exemption 7(C) should be invoked in conjunction with Exemption 3 in such circumstances.

Finally, I note that §5038(a)(6) authorizes disclosure of juvenile records in response to "inquiries from any victim of such juvenile delinquency, or if the victim is deceased from the immediate family of such victim, related to the final disposition of such juvenile by the court in accordance with section 5037." Section 5037 pertains to sentencing of juveniles. Consequently, in the unusual instance in which a requester satisfactorily identifies himself as a victim or immediate member of a deceased victim's family, the sentence, should it appear in the file, can be disclosed. All other information pertaining to the juvenile must be withheld, however, even from the victim or the victim's survivors.

F O I P A

M A N U A L

MEMO 30

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Exemption (b)(7)(A)
Date: March 31, 1998

When reviewing a responsive file(s) pursuant to a FOIPA request, an important factor to initially determine is whether the investigation is "pending" or "closed." If this cannot be determined by a review of the documents contained in the file(s), this information may be obtained through the Automated Case Support system located in the FBI Network. In some instances, this information may not be recorded in the ACS and it may be necessary to contact the field office which is the Office of Origin of the investigation in order to obtain the status.

Generally when a responsive file(s) involves an ongoing investigation, Exemption (b)(7)(A) is cited to withhold the material from disclosure. This includes even the amount of material compiled during the investigation. Therefore, if (b)(7)(A) is cited, **the existing number of pages should not be revealed to the requester.**

On the other hand, it may be determined that certain portions of a pending investigation may be processed for release, but only after discussions and coordination with the substantive HQ Division or the field office Case Agent wherein a decision was made that release will not interfere with enforcement proceedings. Contact and coordination must always be conducted when dealing with pending investigations and the proposed release made available for review by either the Case Agent or the substantive HQ Division prior to disclosing any material to the requester.

Further, even after an investigation is closed the (b)(7)(A) exemption may be applicable if disclosure could be expected to interfere with a related, pending enforcement proceeding. This not only applies to other pending federal cases, but may be applicable to the possibility of jeopardizing pending state or local criminal proceedings. In these instances, it will be necessary to obtain a solid justification for asserting the exemption in this case, and therefore, should be coordinated with the Case Agent and possible contact with the state/local authorities.

In most cases, the (b)(7)(A) exemption is sufficient to guard against any impairment of law enforcement investigations or proceedings through the FOIA. However, FOIPA employees should be alert for situations in which the (c)(1) Exclusion could be asserted in lieu of Exemption (b)(7)(A) in order to protect even the existence of the investigation. Another consideration that should be kept in mind is the possible assertion of exemption (b)(7)(B) which protects records or information compiled for law enforcement purposes, the disclosure of which would deprive a person of a right to a fair trial or an impartial adjudication. (See the DOJ FOIA Guide and Privacy Act Overview publication for an in-depth discussion of these provisions.)

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Exemption (b)(7)(D)
Date: March 31, 1998

During the course of FBI investigations, numerous sources are contacted to obtain information. These sources may be individuals, institutions, foreign state or local law enforcement agencies, etc. All sources of information are not confidential sources. Therefore, some sources of information are not protectable under Exemption (b)(7)(D). The standard for identifying confidential sources was established by the Supreme Court in the civil lawsuit U.S. Department of Justice v. Landano, (113. Ct. 2014, May 24, 1993).

Implied Confidentiality

The Supreme Court made it clear that not all sources of information are entitled to a "presumption" of confidentiality. Instead, the Court ruled that implied confidentiality must be determined on a case-by-case basis. Therefore, the PLS must be able to articulate that the source had an expectation that he/she was providing information in confidence.

Factors that figure prominently in determining implied confidentiality under the Landano standard are:

- 1) **nature of the crime** - investigations involving violent crimes, drug related, organized crime, terrorism, etc.
- 2) **source's relationship to the crime** - source's relationship to the crime is such that there would be fear of reprisal if cooperation were known (e.g., physical harm, harassment, legal action, etc.).

Once implied confidentiality has been established, the identity and the information provided by the source is technically and legally exempt from release under Exemption (b)(7)(D). However, a further review of the information provided by the source must be conducted pursuant to Attorney General Janet Reno's policy of discretionary release (hereafter referred to as the Reno policy). The Reno policy requires consideration of a discretionary release of **any** information which is technically and legally exempt with an eye towards "foreseeable harm." That is, **(b)(7)(D) information which would not tend to identify the source and there is no "foreseeable harm" in releasing the information could be subject to discretionary release.**

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Exemption (b)(7)(D)

In most instances, it will no longer be appropriate to protect the source of information under Exemption (b)(7)(D) in the following situations when it is an exchange of "routine information":

1) **Police Departments (PD)** negative record checks, arrest records

(Exception: Exemption (b)(7)(D) may be applied to actual PD records which contain information from their investigation or intelligence reports.

2) **State and local agencies** (marriage records, court documents, Department of Motor Vehicles, Board of Elections, etc.)

3) **Credit Bureau reports**

(Exception: [REDACTED] which are protected under expressed confidentiality.)

4) **Commercial Institutions** (schools or college registrars, utility companies {telephone, electric, gas companies}, insurance companies, etc.)

If any of the above information indicates that the material may not be released to the public or otherwise used without the production of a subpoena duces tecum, then Exemption (b)(7)(D) should be utilized to protect the identity of the source and, if necessary, the information since this statement is paramount to an expressed assurance of confidentiality.

Exemption (b)(7)(C) should continue to be applied to protect information, the release of which would be an unwarranted invasion of privacy, i.e., the name of the individual who provided the information and information pertaining to third parties.

Expressed Confidentiality

The Landano ruling did not affect instances where an expressed assurance of confidentiality was granted to the source. The identity of and the information provided by these sources may be protected by the first and second clauses of Exemption (b)(7)(D), respectively. However, the Reno policy should be applied to the source's information and discretionary releases made where there is no "foreseeable harm" to the confidential source. **The following are examples of sources granted an expressed assurance of confidentiality:**

1) **T-symbols and permanent symbol source numbers** - assert exemptions (b)(2) and (b)(7)(D) for human sources. For non-human sources (i.e., techs, mikes, telephones, etc.) assert only exemption (b)(2), unless doing so will identify human sources. (**See, Mosaic Theory, infra.**)

2) **Paid informants**

- 3) Potential Security Informant (PSI) and Potential Criminal Informant (PCI)
- 4) Specifically stated "Request Identity," "Protect Identity by Request (PIBR)," "Confidentiality Requested," etc.
- 5) Foreign Agencies/Authorities (Refer to the G-1 Guide)

Informant File Numbers

It is also important to protect the file number of an informant case as well as any other material which would identify the informant. The informant file designations are shown below:

134 - Security Informant
137 - Criminal Informant
170 - Extremist Informant
270 - Cooperative Witness

FOIA exemptions (b)(7)(D) and (b)(2) are appropriate to protect these file numbers.

Mosaic Theory

Once it has been established that Exemption (b)(7)(D) is being utilized for informant information, the PLS should be aware of the "mosaic theory," which involves the analysis of apparently innocuous bits of information to identify sensitive sources, methods or investigative direction. The PLS should become familiar with the overall investigation and any related files to be processed. He/she should be aware of the informant information and its reappearance later in the same investigation or any related files abbreviated or written in paraphrased form. If this information is singular in nature or would tend to identify the source, even though the normal identifiers are not indicated (i.e., the source's name, symbol number, etc.), then the information may be exempt pursuant to Exemption (b)(7)(D) under the mosaic theory.

Foreign Agencies and Authorities

In many instances, foreign police departments or foreign authorities are classified; however, several are not. The PLS should refer to the G-1 Classification Guide to identify foreign agencies/authorities (listed in alphabetical order by countries) cooperating with the FBI and whether confidentiality has been requested. In those cases where a foreign agency/authority is not classified, it is the responsibility of the PLS to insure the level of protection requested by the

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foreign agency/authority is honored (i.e., some may request only their identity be protected, while others do not mind that their cooperation is made public and they may or may not request their information be protected. Others may request that neither their cooperation nor their information be made public). If the foreign agency/authority is not listed on the G-1 Guide and there is no indication on the document of whether confidentiality was requested, the PLS should review the material to determine if there was implied confidentiality and process accordingly.

Police Departments/Sheriff Offices Requesting Confidentiality

In processing FBI records, the following police departments and sheriff offices have requested confidentiality for their identity and information provided:

- 1) [REDACTED]
- 670 2) [REDACTED]
- 3) [REDACTED]

For a further discussion and an in-depth review of exemption (b)(7)(D), please refer to the Freedom of Information Act Guide and Privacy Act Overview publication provided by the Department of Justice.

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Exemption (b)(7)(E)
Date: March 31, 1998

With the Freedom of Information Reform Act of 1986, Exemption (b)(7)(E) was strengthened to allow for protection of all law enforcement information which **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.

In applying the first clause of the exemption, a technique or procedure need not be new or even sophisticated to qualify for protection -- however, it should be generally unknown to the public and be of such character that revelation would impair its future effectiveness. On the other hand, a technique or procedure may be protected if it is known to the public, but the circumstances of its usefulness may not be widely known and release of the information would risk circumvention of the law.

The second clause of the exemption protects guidelines (e.g., guidelines for response to terrorist attacks or a final contingency plan in the event of an attack on the U.S.) prepared for law enforcement investigations and prosecutions if release could reasonably be expected to give anyone with that particular knowledge the ability to circumvent the law.

Therefore, the mere fact that a "technique was utilized" in an investigation is insufficient for asserting Exemption (b)(7)(E), even though it falls within the scope of the exemption. A PLS must review each technique or procedure on its own merit and determine if there is any "foreseeable harm" in the disclosure of the information. In other words, could the disclosure of a particular technique, procedure or guideline lessen the effectiveness, assist in circumvention or compromise its integrity? If there is a question as to whether information could be protected by Exemption (b)(7)(E), it should be discussed with the Team Captain or Unit Chief. Also, contacting the Case Agent of the investigation or the substantive Division for assistance is recommended when contemplating whether to protect this type of information.