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FEDERAL BUREAU OF INVESTIGATION

Precedence: PRIORITY

Date: 04/05/2001

To: All Field Offices

Attn: ADIC;  
SAC  
CDC  
FCI/IT Supervisors  
Attn: AD Watson  
Attn: AD Gallagher  
Attn: AD Alba  
Attn: GC Parkinson

Counterterrorism  
National Security  
Investigative Services  
General Counsel

From: Office of the General Counsel  
National Security Law Unit, Room 7975  
Contact: UC Michael J. Woods, 202-324-3951

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Drafted By: Woods Michael J.:mjw *[Signature]*

Case ID #: (U) 66F-HQ-A1247863

Title: (U) FOREIGN INTELLIGENCE SURVEILLANCE ACT  
PROCEDURES TO ENSURE ACCURACY

Synopsis: (U) Enacts Bureau-wide procedures to ensure the accuracy of factual submissions to the FISA Court.

(U) Classified By: 39KAF/NSLE/OGC  
Reason: 1.5(c)  
Declassify On: ~~FOUO~~ *DECLASSIFIED BY 60291 BCE 6/6/02*

Enclosures: (U) FISA Verification Form

Details: *(U)* In recent years, applications for electronic surveillance or physical search authority submitted to the Foreign Intelligence Surveillance Court (FISC) have evolved into increasingly complex documents. The heart of these applications is the declaration, signed by a supervisory special agent at FBIHQ, which sets out the factual basis supporting probable cause

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~~SECRET~~

To: All Field Offices From: Office of the General Counsel  
 Re: (U) 66F-HQ-A1247863, 04/05/2001

for the requested authority and which conveys to the FISC any other facts relevant to the Court's findings. In particular, the declaration recites the details of any connection between the proposed FISA subject and any ongoing or contemplated criminal investigation/prosecution. This information grounds the Court's finding of probable cause for the requested authority, and allows the Court to confirm that collection of foreign intelligence information remains the FBI's primary purpose.

~~(U)~~ The information currently required for a FISA declaration, in many cases, is extensive, and often includes descriptions of operations, criminal investigations, or prosecutions well outside the personal, or even programmatic, knowledge of the Headquarters supervisor who will serve as the declarant. The declarant, therefore, relies on the accuracy of the information submitted by the field office; and OIPR, the Attorney General, and the Court rely on the declarant for a complete and accurate recitation of the relevant facts. It is imperative that the facts contained in FISA declarations are accurate. The goal of the procedures set out below is to ensure accuracy with regard to three specific areas: (1) the specific facts supporting probable cause for the authority; (2) the existence and nature of any related criminal investigations or prosecutions involving the subject of the FISA; and (3) the existence and nature of any prior or ongoing asset relationship between the subject and the FBI.

~~(U)~~ Effective immediately, the following procedures are to be observed in all FBI applications to the FISA Court (including both initiation and renewal applications). These procedures are not intended to alter the existing "pilot project" arrangements in place at WFO and NY. Existing "pilot project" documentation should be adjusted, if necessary, to cover the requirements of these procedures.

Procedures (U)

1. ~~(U)~~ Upon each request for the initiation or renewal of FISA authority, the field office requesting the authority shall conduct the following records searches:
  - a. A search for the FISA target in the ACS system. ~~(S)~~ (U)

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To: All Field Offices From: Office of the General Counsel  
 Re: (U) 66F-HQ-A1247863, 04/05/2001

- i. The purpose of the ACS search is to discover whether the FISA target is also the subject of a documented FEI criminal investigation, past or present. Note, if the FISA target is a group, the field must consult with headquarters to identify which individuals of that group must be vetted to determine whether they are or were the subject of a criminal investigation. ~~(U)~~
  - ii. The ACS search should include a search on the target's name, spelling variants of the name, and any other available information (e.g., Social Security number, INS number, etc.) that logically would produce a correct identification of ACS records regarding the target. ~~(U)~~
  - iii. The requirement of conducting an ACS search will not apply to cases in which the target is an establishment or a person that, by virtue of their diplomatic status, is immune from criminal prosecution. ~~(U)~~
- b. A search for asset and informant files of that field office (to include 134, 137, and 270 files). ~~(U)~~
- i. The purpose of the asset/informant search is to discover whether or not the target had any current or prior relationship of this type with the FBI. Note that this is a check for the existence of files, any actual review of the files must be coordinated with the case agent and squad supervisor responsible for the relevant files. ~~(U)~~
- c. The field office will document the results of these searches, and transmit this documentation to the headquarters supervisor responsible for the FISA application. ~~(U)~~

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~~SECRET~~

To: All Field Offices From: Office of the General Counsel  
Re: (U) 66F-HQ-A1247863, 04/05/2001

- i. The purpose of transmitting this information to the headquarters supervisor is to provide that supervisor, who will be the declarant on the FISA, with reliable information on these topics to support his/her sworn declaration. ~~(U)~~
  - (1) To that end, the field office should take steps to ensure that the search results are updated if a significant amount of time (more than 120 days) has passed between the initial searches and the preparation of the FISA package. ~~(U)~~
  - (2) If the field office is aware of information relevant to these topics through means other than the required searches, this information should also be forwarded to the headquarters supervisor. ~~(U)~~
- ii. The results of the searches, including the name of the person who conducted the searches and the date(s) of the searches should be documented. The attached "FISA Verification Form" or an equivalent document will be sufficient to record standard reviews and records checks that produce negative results. More substantive communications, such as that produced by records checks with positive results, should be communicated by EC. The case agent and squad supervisor should review and approve whatever communication is used to transmit this information to Headquarters. The form, or other communications, also can be transmitted to the headquarters supervisor by e-mail or secure fax. ~~(U)~~

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~~SECRET~~

To: All Field Offices From: Office of the General Counsel  
Re: (U) 66F-RQ-A1247863, 04/05/2001

- iii. If the results of the search are anything other than negative, the field office should communicate all relevant information to the headquarters supervisor, including the file numbers of any related criminal investigations or number identifying the target's asset/informant status. If the target is, or was, an asset of the field office, or if there is a criminal investigation related to the target in that same field office, it will be the field office's responsibility to forward a full description of the asset relationship/related criminal case to the headquarters supervisor (as noted above, this communication should be coordinated with the squad responsible for the asset/informant). Such descriptions of criminal investigations should not include Grand Jury (Rule 6(e)) information. Any uncertainty as to whether information in the description constitutes Grand Jury information should be addressed by the field office in consultation with the relevant AUSA. ~~(U)~~
- iv. This information should be transmitted to the headquarters supervisor along with the request for FISA initiation or renewal. For field offices that send FISA renewal requests directly to OIPR, the search results must also be transmitted to the headquarters supervisor along with the headquarters notice of renewal. As noted above, field offices with direct OIPR contact should ensure that descriptions of criminal investigations do not include Grand Jury information. ~~(U)~~

~~SECRET~~

~~SECRET~~

To: All Field Offices From: Office of the General Counsel  
 Re: (U) 66F-HQ-A1247863, 04/05/2001

2. ~~(U)~~ The headquarters supervisor, upon receiving a request for renewal/initiation of FISA authority, shall acquire the following information:
- a. The supervisor shall contact the Asset and Informant Unit, Investigative Services Division, and request a check of the target's name for asset/informant status Bureau-wide. ~~(U)~~
- i. If the results of this check are negative, the supervisor shall document the search. ~~(U)~~
- ii. If the results are positive, it shall be the responsibility of the supervisor to contact the relevant field office(s) and obtain a sufficient summary of the target's asset/informant status. ~~(U)~~
- b. The supervisor, based on the results of the field office's records search, shall contact the squad supervisors responsible for any criminal investigations related to the target. The supervisor shall gather information on the extent to which the target is involved in the investigation, the current status of the investigation, the involvement of prosecutors in the investigation, any relevant court proceedings. The supervisor shall summarize this information and communicate it promptly to OICR. If it has been determined that the FISA target is, or has been an informant or asset of the FBI, a brief description of the relationship will need to be provided to OICR. However, no such description shall be passed to OICR without full coordination between the headquarters supervisor, the Asset and Informant Unit, and all relevant components (field office(s), CID) involved in the handling of the asset or informant. The supervisor shall follow up on requests from

~~SECRET~~

~~SECRET~~

To: All Field Offices From: Office of the General Counsel  
 Re: (U) 66F-HQ-A1247863, 04/05/2001

OIFR for additional or updated information on any related criminal proceedings. ~~(U)~~

3.

~~(U)~~ Upon receipt of the draft FISA application from OIFR, the headquarters supervisor shall take the following steps:

- a. The headquarters supervisor shall ensure that the entire Declaration, and any other components of the application containing factual information (such as supplemental exhibits, transcripts, etc.), are transmitted to the case agent in the field office as soon as possible. ~~(U)~~
  - i. The transmittal may be by secure fax, by Groupwise e-mail (if the documents are available in electronic form and are classified at no higher than the "Secret" level), or by other secure means. ~~(U)~~
  - ii. In field offices that receive draft FISA applications directly from OIFR, the headquarters supervisor will not be responsible for transmittal as described in step 3(a). ~~(U)~~
  - iii. This step may be revised pending full implementation of the Office of General Counsel FISA Unit (OGCFU). When the OGCFU infrastructure (including secure electronic connectivity) is in place, OGCFU may directly oversee transmittal of draft packages to the field, thus relieving the headquarters supervisor of responsibility for this step. ~~(U)~~
- b. The headquarters supervisor shall, upon receiving his/her copy of the draft FISA application, review the application and determine whether any field offices, other than the originating field office, need to review the declaration to ensure factual

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~~SECRET~~

To: All Field Offices From: Office of the General Counsel  
 Re: (U) 66F-HQ-A1247863, 04/05/2001

accuracy. The most common situation giving rise to this need will be declarations that contain descriptions of related criminal investigations or prosecutions in other field offices. The headquarters supervisor will then ensure that those field offices receive a copy of the appropriate portions of the draft declaration (or other appropriate parts of the FISA application). ~~(U)~~

- i. In some cases, where the description of the related criminal investigation is brief and self-contained, it may only be necessary to transmit a small portion of the declaration that specifically addresses the criminal investigation and any 'wall' procedures governing the passage of FISA information to criminal investigators. In other cases, the supervisor may need to transmit a larger block of the declaration to provide the necessary context. In making this determination, supervisors should bear in mind the security of the information contained in the declaration, the need to know of the recipients, and the possibility of dissemination to prosecutors. ~~(U)~~
- ii. The supervisor should document all such transmittals on the FISA verification form and should retain copies of documents associated with the transmittals (e.g., faxes, e-mails) in the headquarters file. The documentation should specify precisely which portions of the declaration were provided for review to each field office (e.g., entire declaration, pages 1-10, etc.). ~~(U)~~

4. ~~(U)~~ Upon receipt of a draft FISA declaration (or portion thereof) for review, the case agent in the field office shall do the following:

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To: All Field Offices From: Office of the General Counsel  
 Re: (U) 66F-HQ-A1247863, 04/05/2001

- a. Promptly review the declaration for factual accuracy, make necessary edits, and communicate any revisions to the headquarters supervisor (or to OIPR, in field offices with direct communication to OIPR authorized). ~~(U)~~
- b. The case agent may need to involve others in the review. For example, when the declaration contains a description of a criminal investigation in that field office, the case agent should contact the case agent of the criminal investigation and allow the criminal case agent to review the relevant portions of the declaration. (Note: in some instances, it will be the criminal case agent who receives the portion of the FISA; i.e., in field offices conducting a related criminal investigation). ~~(U)~~
- c. When the declaration or portion of a declaration to be reviewed describes a criminal prosecution or other activities conducted by the Department of Justice or an individual United States Attorney's Office, the case agent for the criminal investigation shall arrange for the relevant Assistant United States Attorney or Department of Justice prosecutor to review that portion of the declaration (including the description of any "wall" procedures). The AUSA or prosecutor may revise the text to ensure that it contains an accurate and up-to-date description of the criminal proceedings. The AUSA or prosecutor should then sign the appropriate block in the FISA verification form (or provide an equivalent document). ~~(U)~~
- d. The field office case agent(s), and the relevant squad supervisor(s) will document their review on the FISA verification form and will transmit that form (or equivalent

~~SECRET~~

~~SECRET~~

To: All Field Offices From: Office of the General Counsel  
 Re: (U) 66F-HQ-A1247863, 04/05/2001

description of their review) to the headquarters supervisor. ~~(U)~~

- e. In disseminating portions of the declaration to criminal investigators and/or prosecutors for this review, the field office must not disseminate any information derived from the actual FISA coverage, as such information remains subject to the "wall" procedures described in the FISA. ~~(U)~~
5. ~~(U)~~ Prior to submitting the final FISA application package for the Director's certification, the headquarters supervisor will do the following.
- a. Collate all responses from field reviews and records checks and ensure that the procedures described above have been performed and documented. Copies of the FISA Verification Form(s) or other documentation should then be attached to the FISA package before it is submitted for certification. ~~(U)~~
- b. In reviewing the documentation, the headquarters supervisor should evaluate whether or not certain reviews or records checks need to be updated given the passage of time between the review/records check and the production of the final version of the FISA package. ~~(U)~~
- c. A copy of all records check and verification documentation should accompany the final version of the FISA package and be available to the declarant and the OIPR attorney during the actual Court session. ~~(U)~~
6. ~~(U)~~ The headquarters supervisor shall not sign, nor shall his or her supervisors approve, any FISA application for which these procedures have not been completed or in which there is information that the supervisor cannot verify either through his or her personal knowledge, through the means described in these procedures, or through some other reliable means.

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~~SECRET~~

To: All Field Offices From: Office of the General Counsel  
Re: (U) 66F-HQ-A1247863, 04/05/2001

In such cases, either the unverified information must be removed from the declaration prior to signature, or the FISA application will be held until the necessary verification procedures are complete.

7. ~~(U)~~ In emergency situations, the Assistant Director, NSD and the Assistant Director, CTD, personally may waive specific requirements imposed by these procedures in individual FISA applications, provided that this waiver is documented in the case file and is communicated immediately to OIPR.

(U) In approximately 180 days, these procedures will be submitted for incorporation into the National Foreign Intelligence Program Manual (NFIPM). During that time, headquarters divisions and field offices should closely monitor the implementation and operation of these procedures. Suggestions for changes or refinements in the procedures should be submitted to Headquarters within that time. A copy of all such feedback should be forwarded to the Unit Chief, National Security Law Unit, OGC, who will be collating all such responses.

(U) Recipients should arrange for appropriate training of affected components on the new procedures and FISA matters generally. Requests for training should be directed to NSD or CTD; legal training will be available from the NSLU, OGC.

~~SECRET~~

~~SECRET~~

To: All Field Offices From: Office of the General Counsel  
Re: (U) 66F-HQ-A1247863, 04/05/2001

Enclosure:

**DRAFT FISA VERIFICATION FORM**

FISA Target Name: \_\_\_\_\_

**Records Check:**

ACS: By: \_\_\_\_\_  
(print name/title) (initials) (date)

Asset Files: By: \_\_\_\_\_  
(field) (print name/title) (initials) (date)

Asset and Informant Unit By: \_\_\_\_\_  
(FBIHQ) (print name/title) (initials) (date)

**Review of Draft FISA Application:**

**FBIHQ Supervisor:**

Draft FISA Package Received: \_\_\_\_\_  
(date)

**Field Office Review:**

\_\_\_\_\_  
(office) (case agent) (date) (supervisor/date)

Reviewed Entire Declaration/Pages \_\_\_\_\_ to \_\_\_\_\_ of Draft

~~SECRET~~

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To: All Field Offices From: Office of the General Counsel  
Re: (U) 66F-HQ-A1247863, 04/05/2001

**Additional Review (if applicable)**

Criminal Case Description, "Wall" Procedures Reviewed by:

\_\_\_\_\_  
(office) (case agent) (date) (supervisor/date)

Reviewed Entire Declaration/Pages \_\_\_\_\_ to \_\_\_\_\_ of Draft

U.S. Attorney's Office/Department of Justice Review:

\_\_\_\_\_  
(name/title/office) (date)

Reviewed pages \_\_\_\_\_ to \_\_\_\_\_ of Draft Declaration

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273

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To: All Field Offices From: Office of the General Counsel  
Re: (U) 66F-HQ-A1247863, 04/05/2001

LEAD (s):

Set Lead 1:

ALL RECEIVING OFFICES

(U) Distribute to all FCI or IT supervisory personnel and any other personnel involved, or potentially involved, in the use of Foreign Intelligence Surveillance Act (FISA) authorities.

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14

TOTAL P.14