

FACT SHEET
**ATTORNEY GENERAL'S GUIDELINES:
DETECTING AND PREVENTING TERRORIST ATTACKS**

Understanding the Problem:

**Past Investigative Guidelines Have Hampered the FBI
In Conducting Investigations Capable of Preventing Terrorist Attacks**

Problem #1: Emphasis on Prosecuting Past Crimes Instead of Preventing Future Crime

The previous guidelines emphasized investigation and prosecution of past crimes. They generally barred the FBI from taking the initiative to detect and prevent future crimes, unless it learned of possible criminal activity from external sources. As a result, the FBI was largely confined to a reactive role.

- **General Internet Searches Could Not Be Conducted, Unless Tied to a Specific Investigation.** In the past, there was no clear basis for conducting online research for counterterrorism purposes-even of publicly available information-except when investigating a specific case. For example, FBI agents could not conduct online searches to identify websites in which bomb-making instructions or plans for cyberterrorism are openly traded and disseminated.
- **The FBI Had No Clear Authority To Use Commercial Data Services Any Business in America Could Use.** Under previous guidelines, the FBI could not use commercial data mining services-entities that collect and analyze information on various topics, such as threats to computer systems-unless in connection with a particular investigation. In other words, the FBI was sharply limited in its ability to use services that private businesses regularly hire to assess threats against them.
- **Information Collected in the Earliest Investigative Stages Could Only Be Used to Investigate Specific Crimes, Not Groups Suspected of Terrorism.** Under the old Guidelines, preliminary inquiries-where agents gather information before enough evidence has been uncovered to merit an outright investigation-could be used only to determine whether there was enough evidence to justify investigating an *individual crime*. They could not be used to determine whether to open a broader investigation of *groups involved in terrorism* (i.e., "terrorism enterprise investigations").
- **Investigations of Criminal Groups Were Impeded by Limits on Scope, Duration, and Red Tape.** The previous guidelines impeded the effective use of criminal intelligence investigations (i.e., investigations of criminal enterprises) by imposing limits

on the scope of such investigations, short authorization periods, and burdensome approval and renewal requirements.

- **No Clear Authority to Visit Public Places that Are Open to All Americans.** Under the old guidelines, FBI field agents were inhibited from visiting public places, which are open to all other citizens. Agents avoided them not because they were barred by the Constitution, or any federal statute, but because of the lack of clear authority under administrative guidelines issued decades ago.

Solution #1: Detect and Neutralize Terrorists Before They Attack

The new guidelines reflect the Attorney General's mission for the Justice Department's war on terror: to neutralize terrorists before they are able to strike, not simply to investigate past crimes. The revised guidelines create new information- and intelligence-gathering authorities to detect terrorist plots, and strengthen existing provisions to promote effective intervention to foil terrorists' plans.

- **Enhancing Information Gathering.** The new guidelines strengthen the FBI's intelligence-gathering capabilities by expressly stating that agents may engage in online research, even when not linked to an individual criminal investigation. They also authorize the FBI to use commercial data mining services to detect and prevent terrorist attacks, independent of particular criminal investigations.
- **Allowing FBI Field Agents to Use Information Collected in the Earliest Stages To Investigate Groups Suspected of Terrorism.** The FBI will be able to use preliminary inquiries to determine whether to launch investigations of groups involved in terrorism (i.e., "terrorism enterprise investigations").
- **Expanding the Scope and Duration of Investigations, and Easing Red Tape for FBI Field Agents.** The guidelines will expand the scope of criminal intelligence investigations, lengthen their authorization periods, and ease the approval and renewal requirements. This flexibility enhances the FBI's terrorism-preventing function and helps the agents in the field.
- **Authorizing the FBI to Have Normal Public Access to Public Places.** The new guidelines clarify that FBI field agents may enter any public place that is open to other citizens, unless they are prohibited from doing so by the Constitution or federal statute, for the specific purpose of detecting or preventing terrorist activities. The guidelines do not, and cannot, nullify any existing Constitutional or statutory duty to obtain judicial approval as required to conduct their surveillance or investigations.

Problem #2: FBI Headquarters Was Responsible for Decision-Making, But Lacked the Field Information Needed to Make Sound Decisions

Under the old guidelines, decision-making authority was centralized at FBI headquarters, while field offices were largely responsible for intelligence analysis. This reversed the proper order: what was centralized (decision-making) should have been devolved, and what was devolved (analysis) should have been centralized.

- **Previous Guidelines Placed Roadblocks in Front of Agents' Investigations.** Before the revisions, FBI field agents were hampered by burdensome rules requiring them to secure headquarters' approval before launching counterterrorism investigative activities. As a result, field agents lost significant investigative opportunities as they waited for headquarters to consider their requests over a period of weeks, or even months.
- **FBI Headquarters Lacked the Intelligence and Analysis It Needed.** The guidelines contained no clear authority to engage in counterterrorism information gathering and analysis, apart from investigations in particular criminal cases. FBI headquarters thus lacked the ability to analyze the information necessary to make informed investigative decisions.

Solution #2: Field Offices Are Authorized to Make More Decisions, and FBI Headquarters Will Analyze Information

The revised guidelines enhance FBI headquarters' ability to analyze critical intelligence information, and enable field offices to make more independent investigative decisions. The revised guidelines centralize what should be centralized (analysis), and devolve what should be devolved (decision-making).

- **Strengthening FBI Headquarters' Intelligence-Gathering and Analysis Capabilities.** The revised guidelines allow the FBI to operate counterterrorism information systems, and to collect and retain information from all lawful sources, including publicly available sources, for that purpose. They also expressly state that all such activities must be based on a valid law enforcement purpose, and must be consistent with applicable statutes and regulations. The guidelines prohibit the FBI from using this authority to keep files on citizens on the basis of their constitutionally protected activities.
- **Increasing Decision-Making Authority in the Field.** Special Agents in Charge at FBI field offices may now approve and renew terrorism enterprise investigations. (Under the old guidelines only by the Director or an Assistant Director at FBI headquarters could approve such investigations.) The revisions also allow a Special Agent in Charge to authorize for up to a year preliminary inquiries, which are used to gather information about a crime before enough evidence is discovered to justify a full investigation. (The old guidelines only authorized 90-day preliminary inquiries, and required the approval of FBI headquarters for 30-day extensions.)

Problem #3: Agents Did Not Use Lawful Investigative Methods When Investigating Some Suspected Terrorists

The old guidelines lacked clear direction to use lawful, authorized methods to prevent terrorism. As a result, FBI agents have declined to use available investigative techniques when investigating crimes committed by affiliates of some political and religious organizations.

- **The Lack of Clear Authority Frustrated the Sheik Rahman Investigation.** In 1993, the FBI received intelligence information about terrorist activities planned by Sheik Abdel Rahman—who later would be convicted of plotting to bomb landmarks in New York City, including the World Trade Center in 1993. Because of ambiguity in the then-current guidelines, the FBI did not call Rahman before a grand jury, question him, or conduct surveillance of his offices or the religious buildings where he met with his co-conspirators.

Solution #3: Investigate Suspected Terrorists on a Neutral Basis

The revised guidelines make clear that investigations of suspected terrorists with ties to religious and political organizations will proceed according to the principle of neutrality. As President Bush has noted, our enemy is not any one faith or creed, but “a radical network of terrorists.”

- **Lawful Techniques Can Be Used in All Investigations of Suspected Terrorists.** The new guidelines simply clarify that agents who are investigating suspected terrorists, even if they have ties to religious and political groups, could use the same investigative techniques they would use when investigating any other type of organization. At no time will religious or political entities be singled out for special scrutiny, but neither will terrorists with ties to such groups be granted effective immunity from lawful investigations.
- **Investigations Can Only Take Place When There Is Evidence of Criminal Activity.** Under the revised guidelines, agents can investigate suspected terrorists with ties to religious or political groups only when they are acting on the basis of information indicating a possibility of actual criminal activity. All investigative activities must have a legitimate law-enforcement purpose; these new tools do not provide the FBI with the unlimited authority to conduct investigations of any group.
- **Preserving Constitutional and Statutory Limitations.** The work of the FBI remains subject to all applicable constitutional and statutory limitations. The guidelines do not, and cannot, authorize the FBI to do anything prohibited by the Constitution or federal law. Instead, they impose restrictions on FBI investigative activities that supplement other legal limits. The guidelines expressly state that: “All requirements for the use of such methods under the Constitution, applicable statutes, and Department regulations or

policies must, of course, be observed.” [General Investigations Guidelines, Introduction, § C]

- **Protecting Constitutional Rights.** The guidelines stress that the FBI may not use investigative activities as a pretext for suppressing suspects’ constitutional rights. As the guidelines expressly state, “It is important that such investigations not be based solely on activities protected by the First Amendment or on the lawful exercise of any other rights secured by the Constitution or laws of the United States.” (General Investigations Guidelines, May 29, 2002)

Maintaining Limitations on Undercover Operations:

The revised guidelines maintain, and in some respects strengthen, the strict and extensive requirements necessary to justify an undercover investigation that involves infiltration of suspected terrorist groups.

Field Agents Continue to Have Extensive Certification Requirements. When applying to conduct such an undercover operation, FBI agents must, among other things, provide headquarters with:

1. A certification that the operation will be conducted with minimal intrusion;
2. A statement as to why the undercover operation is necessary;
3. A description of the procedures that will be used to minimize the acquisition of information that is not relevant to the investigation; and
4. An explanation of how any potential constitutional concerns and any other legal concerns have been addressed.

To secure approval for such an undercover operation, FBI agents must also obtain:

1. A letter of concurrence from the appropriate federal prosecutor;
2. Review of the proposed operation by the Undercover Review Committee (composed of FBI and Criminal Division personnel);
3. Approval of the operation by the FBI Director, Deputy Director, or a designated Executive Assistant Director; and
4. Authorization of the undercover operation for a limited period, not to exceed six months.

(General Investigations Guidelines, Part III.B(1)(a), (4); Undercover Operations Guidelines, Part IV.A-B, .C(2)(1), .D, .E(1), .F-G.)