

FEDERAL BUREAU OF INVESTIGATION

Precedence: IMMEDIATE

Date: 10/29/2003

To: All Field Offices

Attn: ADIC;
SAC;
CDC
CI/CT Supervisors
AD Pistole,
DADs;
Section Chiefs
AD Szady;
DADs;
Section Chiefs

Counterterrorism

Counterintelligence

b2 -1

b6 -1

b7C -1

From: General Counsel

National Security Law Unit, Room [redacted]

Contact: [redacted]

Approved By: Caproni Valerie E [initials] b6 -1

[redacted] b7C -1

Drafted By: [redacted] pik

b6 -1

b7C -1

Case # 66B HQ-21421187

Synopsis: Provides guidance on the preparation, approval, and service of Business Record Orders, implementing 15 U.S.C. §1861

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through national security letters. In 1998, FISA was amended to authorize an application to the FISC to procure certain limited types of business records, namely, those of a common carrier,

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requires that the request pertain to an "authorized investigation," not an inquiry. However, DOJ policy may be revised in the near future to allow the use of a FISC business records order in a preliminary investigation. If a new policy is adopted concerning the availability of a FISC business records order, this guidance will be appropriately amended. In the meantime, agents are advised that they can only obtain a FISC ~~business records order in a full field investigation~~

The business records request is not limited to the records of the target of a full investigation. The request must simply be sought for a full investigation. Thus, if the business records relating to one person are relevant to the full investigation of another person, those records can be obtained by a FISC order despite the fact that there is no open investigation of the person to whom the subject of the business records pertain.

One further caveat needs to be noted. While the statute, on its face, does not limit the nature of the business records we can seek, there is a legal question as to whether tax records and educational records, which are the subject of separate statutes, are obtainable under the business record provision of the law. Thus, please submit such requests knowing that court orders may not be obtained as readily as with other types of requests.¹ Further, in light of the constitutional implications of requests for records from libraries, please note that such requests will be subject to strict scrutiny to assure that they fully comply with the Constitution and all applicable statutes.

2) Process of Obtaining Business Records

The first step in the process of obtaining business records is to complete the Business Records Form, attached herein

¹As may be apparent, certain bank records and toll billing records are obtainable through NSLs so those records should not be sought by business records requests, although records from financial institutions and telecommunications companies that are not within the parameters of NSLs may be sought. Credit reports, ~~on the other hand, are completely outside the scope of the~~

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to this EC. The form requests information required under the law

A. General Information

The form requires that the party requesting the
agency records identify the target of the full investigation

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The Business Records Form must be approved by the SSA,

The Business Record Form should be transmitted to headquarters via a cover EC to NSLB requesting that it prepare the application and proposed FISC order and present the package to the FISC. A copy of the Business Record Form should also be sent to the substantive headquarters unit and to the FISA unit.

NSLB will review the business records request and, assuming it meets the requirements of the law, will prepare an application and proposed order² to be transmitted to the FISC. We expect that such an application and proposed order can be prepared within a few days of NSLB's receipt of the business records request form.

Approval authority for the application is housed at

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Once the application and proposed order have been prepared, they will be presented to the FISC by an attorney either from OGC or from OIPR. Unless there is reason to do otherwise, the application and proposed order will be presented

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LEAD(s) :

Set Lead 1: (Adm)

ALL RECEIVING OFFICES

Distribute to all supervisory personnel involved in the investigation of counterintelligence and counterterrorism cases.

ALL INFORMATION CONTAINED HEREIN

IS UNCLASSIFIED DATE 06-04-2004 BY 65179

dmh/bce/amw