

November 28, 2022

Via FOIA STAR

Director, Office of Information Policy (OIP)
United States Department of Justice
441 G Street, NW, 6th Floor
Washington, DC 20530

RE: Freedom of Information Act Appeal – FOIAPA Request No. 1556873-000

To Whom It May Concern:

On behalf of the Project for Privacy and Surveillance Accountability, Inc. (“PPSA”), I write to appeal the Federal Bureau of Investigation’s (“FBI”) response to the above-captioned Freedom of Information Act (“FOIA”) request (the “Request”).¹

The Request seeks two categories of records:

1. All agency records including but not limited to reports, rules, regulations, memoranda, policies, communications, or training materials mentioning the level of security clearance necessary to view or otherwise access decisions, orders, or opinions issued by FISC or FISCR.
2. All agency records including but not limited to reports, rules, regulations, memoranda, policies, communications, or training materials listing or otherwise compiling information about the job titles and number of individuals authorized to view or otherwise access decisions, orders, or opinions issued by FISC or FISCR.

As demonstrated below, the FBI’s response to the Request was wholly inadequate, and the FBI should be directed to conduct a search for responsive records and to release all such non-exempt records immediately.

On August 30, 2022, the FBI issued its response to this Request, essentially refusing to search for responsive records.² But rather than forthrightly refusing to conduct a search, the FBI relied on the *appearance* of a search. Indeed, the FBI stated that it had identified and was “releasing documents from previous requests regarding your subject” “[i]n an effort to provide you with responsive records as expeditiously as possible.” While the FBI’s

¹ See Ltr. from G. Schaerr to FBI FOIA Officer, June 28, 2022 (Attachment A). This FOIA request contained four subparts, to which the FBI assigned separate request numbers. This appeal relates to subparts 3 and 4 of that request.

² See Ltr. from FBI to G. Schaerr, Aug. 30, 2022 (Attachment B).

expeditious response may seem laudatory, its insufficiency becomes clear upon a closer inspection.

Indeed, the FBI did not expeditiously release documents while also conducting a search for *all* responsive records. Rather, the FBI stated that it considered the “expeditious[]” release of the earlier documents to “fulfill[]” the Request. Moreover, those “documents” actually consisted only of a *single* heavily redacted document.³ By no stretch of the imagination is this single document the only responsive record in the FBI’s possession.

Thus, as demonstrated below, the FBI’s response falls far short of satisfying its obligations under FOIA. Discontinuing a search after finding a single, previously released record is evidence of a search that was not reasonably calculated to uncover all responsive documents. That is made clear by the FBI’s statement that PPSA could also request an “additional search for records.”⁴ That is not PPSA’s job; PPSA already submitted a request for *all* responsive records, and it need not request such a response again. FOIA, as shown below, already requires the FBI to conduct a search for all responsive records, and it cannot satisfy FOIA until it does so.

Moreover, even if this were the only responsive document in the FBI’s possession, the unexplained extensive redactions cannot be justified. Accordingly, the Request should be returned to the FBI with instructions to conduct the searches FOIA requires, and to release additional non-exempt information or explain why that is not possible.

I. The FBI failed to conduct a reasonable search for responsive records.

As shown above, the FBI largely admits that it failed to conduct a reasonable search for responsive records. That is reason enough to return the request to the FBI with instructions that it comply fully with its statutory obligations. And, given the delay that the FBI’s deficient response has caused, the FBI should be ordered to complete that process immediately.

As the D.C. Circuit explains, FOIA requires agencies to conduct a search “reasonably calculated to uncover *all* relevant documents.” *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999) (emphasis added). The word “all” cannot be ignored. Indeed, as the D.C. Circuit further explains, “the adequacy of a search is determined not by the fruits of the search, but by the appropriateness of methods.” *Hodge v. F.B.I.*, 703 F.3d 575, 579 (D.C. Cir. 2013) (cleaned up). Conducting half of a search (or less) is clearly an insufficient method to “uncover all relevant documents.” Yet, that is all the FBI did here.

³ See Foreign Intelligence Surveillance Act and Standard Minimization Procedures Policy Guide (Attachment C).

⁴ Attachment B.

Indeed, the FBI concedes that it stopped searching for responsive records after locating the single previously released document.⁵ In doing so, the FBI did not state that it made *any* other efforts to comply with FOIA. For instance, the FBI didn't conclude that additional searches would be burdensome. The FBI also didn't conclude that additional searches failed to identify any more records. Nor did the FBI state that the Request failed to describe the requested records with sufficient detail. Rather, the FBI simply hoped that releasing a single record would be enough, and that PPSA would not ask it to comply with its statutory duty.

But the FBI cannot circumvent FOIA with such ease. Rather, it is well established that FOIA requires "a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). Merely identifying and producing a single potentially responsive record does not relieve the FBI of its duty to search for any *other* records. Rather, each relevant subpart of PPSA's Request sought "[a]ll agency records" that identify criteria for accessing FISC or FISCER decisions.

Moreover, even with respect to the released record, the FBI failed to explain the context in which it previously produced that record. For instance, the FBI does not explain whether it released the record in response to a FOIA request that sought records similar to those PPSA requested. Nor does the FBI explain whether, in response to *that request*, it conducted a search for additional records and did not locate any such records. That information is highly relevant to assessing the reasonableness of the FBI's reliance on the single previously produced document here.

So, as one would expect, the FBI's perfunctory search failed to identify *all* responsive records. Especially in light of the D.C. Circuit's admonition that agencies must "construe a FOIA request liberally," *Nation Mag., Washington Bureau v. U.S. Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995), ignoring the request for *all* responsive records fails to satisfy FOIA. And the FBI's response further failed to comply with the Request's instructions that "the remaining records [should] be produced on a rolling basis."⁶ This instruction put the FBI on notice that PPSA expected the FBI to search for and continue producing records until it completed its response to the Request. Were there any doubt about the scope of the Request, the inclusion of the word "all" should have put such doubt to rest, and informed the FBI that releasing a single document without searching for other records would not fulfill the Request.

⁵ Attachment A.

⁶ *Id.*

Accordingly, the FBI clearly failed to comply with its FOIA obligations by arbitrarily considering its partial response to “fulfill” the Request. The FBI should therefore be directed to complete its processing of the Request immediately.

II. The FBI also failed to comply with its obligation to release all non-exempt, reasonably segregable records or portions of records.

The FBI’s response fails for the additional reason that the released record is redacted beyond all recognition. The FBI has the burden of demonstrating that its redactions and withholdings are proper. *See Pub. Emps. for Env’t Resp. v. Off. of Sci. & Tech. Pol’y*, 825 F. Supp. 2d 104, 109 (D.D.C. 2011). That is why, in litigation, the “agency must submit a ‘*Vaughn* index and/or accompanying affidavits or declarations’ that specifically explains why certain documents were redacted or withheld.” *Id.* at 107. To be sure, the FBI is not required to provide a full *Vaughn* index during the administrative process. *Edmond v. U.S. Atty.*, 959 F. Supp. 1, 5 (D.D.C. 1997). But it is equally true, as the D.C. Circuit explains, that “the burden which the FOIA specifically places on the Government to show that the information withheld is exempt from disclosure cannot be satisfied by the sweeping and conclusory citation of an exemption,” as is the case for large parts of the document that the FBI released to PPSA. *Mead Data Cent. v. U.S. Dep’t of Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977).

For instance, the FBI withheld forty pages virtually in full without any explanation beyond “b7E.”⁷ But it is almost certain that those pages contain non-exempt material. However, PPSA is at a clear disadvantage in attempting to show that the redactions include non-exempt material, as PPSA does not have access to the unredacted information, and the FBI has failed to provide any further explanation for its broad withholdings. The FBI is essentially “holding a grab bag and saying, ‘I’ll give you this if you can tell me what’s in it!’” James T. O’Reilly, 1 Fed. Info. Discl. § 4:30 & n.16 (quoting Blanchard, *A History of the Federal Records Law*, University of Missouri Freedom of Information Center Rep. No. 189 (1967)). FOIA clearly rejects this approach by placing the burden on agencies to explain their withholdings.

Accordingly, given the FBI’s broad withholdings, which almost certainly include non-exempt material, the FBI should be required to either release additional non-exempt material or “provide a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.” *Mead*, 566 F.2d at 251. Otherwise, PPSA will be required to obtain such an explanation through the litigation process.

⁷ Attachment C at 13–53.

CONCLUSION

It may be that the FBI has no further responsive records, or that all such records are subject to a FOIA exemption. But the FBI cannot satisfy its statutory obligations under FOIA by conducting a perfunctory search that ignores the clear contents of the Request. Additionally, the FBI cannot rely on broad redactions that withhold non-exempt material. Accordingly, the Request should be returned to the FBI with directions to conduct a thorough search for responsive records, and to either release additional non-exempt material or provide a more adequate explanation for the redactions.

Thank you for your prompt attention to this important matter.

Sincerely,

Gene C. Schaerr
PPSA, Inc.
General Counsel

EXHIBIT A

June 28, 2022

FOIA/PA Mail Referral Unit
Department of Justice
Room 115
LOC Building
Washington, DC 20530-0001
MRUFOIA.Requests@usdoj.gov

Dear FOIA Officer:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, regarding opinions and appellate decisions by the U.S. Foreign Intelligence Surveillance Court (FISC) and U.S. Foreign Intelligence Surveillance Court of Review (FISCR). This request is filed on behalf of the Project for Privacy and Surveillance Accountability, Inc. ("PPSA").

As an organization concerned with government surveillance accountability, PPSA is concerned with the secrecy surrounding FISC and FISCR decisions.

Accordingly, PPSA seeks:

1. **All decisions, orders, or opinions issued by FISC or FISCR since October 1, 1978.**
2. **To the extent not responsive to Item 1 above, all agency records listing or otherwise compiling information about any decisions, orders, or opinions issued by FISC or FISCR since October 1, 1978.**
3. **All agency records including but not limited to reports, rules, regulations, memoranda, policies, communications, or training materials mentioning the level of security clearance necessary to view or otherwise access decisions, orders, or opinions issued by FISC or FISCR.**
4. **All agency records including but not limited to reports, rules, regulations, memoranda, policies, communications, or training materials listing or otherwise compiling information about the job titles and number of individuals authorized to view or otherwise access decisions, orders, or opinions issued by FISC or FISCR.**

Scope of Request:

For purposes of Items 3 and 4 of this request, the date range for responsive materials encompasses those either created, altered, sent, or received between January 1, 2015 and June 28, 2022. For all purposes of this request: (I) the terms “agency” and “records” shall be construed in relation to the definitions codified in 5 U.S.C. § 552(f); and (II) this request is directed specifically at the following units and/or divisions within the Department of Justice:

Drug Enforcement Administration
Federal Bureau of Investigation
National Security Division
Office of Legal Policy
Office of Privacy and Civil Liberties

Rather than physical production of any responsive records, we ask that you please provide each record in electronic form. If a portion of responsive records may be produced more readily than the remainder, we request that those records be produced first and that the remaining records be produced on a rolling basis. Further, we recognize the possibility that some responsive records may be exempt. **To the extent possible, if redaction under 5 U.S.C. § 552(b) can render a responsive but exempt record nonexempt, please produce any such record in redacted form.** We believe that redaction should foreclose any need to issue a Glomar response, as anonymized and redacted production would neither (1) reveal intelligence sources or methods nor (2) disclose any agency interest (or lack thereof) in any particular individual.

We are prepared to pay up to \$2000 for the material in question. Please contact me if the fees associated with this request exceed that figure, or if you have any other questions about this request.

Thank you in advance for your speedy attention and assistance.

Sincerely,

Gene C. Schaerr
PPSA, Inc.
General Counsel

EXHIBIT B



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

August 30, 2022

MR. GENE C. SCHAEER
PROJECT FOR PRIVACY AND SURVEILLANCE ACCOUNTABILITY
SUITE 450
1101 CONNECTICUT AVENUE NORTHWEST
WASHINGTON, DC 20036

FOIPA Request No.: 1556873-000
Subject: U.S. Foreign Intelligence
Surveillance Court/U.S. Foreign Intelligence
Surveillance Court of Review
(All Reports, Rules, Regulations,
Memoranda, Policies, Communications, or
Training Materials Mentioning Criteria to
Access Decisions, Orders, and Opinions
January 1, 2015 to June 28, 2022)

Dear Mr. Schaerr:

The FBI has completed its search for records subject to the Freedom of Information Act (FOIA) that are responsive to your request. The enclosed 79 pages of records were determined to be responsive to your subject and were previously processed and released. Please see the selected paragraphs below for relevant information specific to your request as well as the enclosed FBI FOIPA Addendum for standard responses applicable to all requests.

- ☒ In an effort to provide you with responsive records as expeditiously as possible, we are releasing documents from previous requests regarding your subject. We consider your request fulfilled. Since we relied on previous results, additional records potentially responsive to your subject may exist. If this release of previously processed material does not satisfy your request, you may request an additional search for records. Submit your request by mail to **Initial Processing Operations Unit, 200 Constitution Drive, Winchester, VA 22602, or by fax to (540) 868-4997**. Please cite the FOIPA Request Number in your correspondence.
- ☐ Please be advised that additional records responsive to your subject exist. If this release of previously processed material does not satisfy your request, you must advise us that you want the additional records processed. Please submit your response within thirty (30) days by mail to **Initial Processing Operations Unit, 200 Constitution Drive, Winchester, VA 22602, or by fax to (540) 868-4997**. Please cite the FOIPA Request Number in your correspondence. **If we do not receive your decision within thirty (30) days of the date of this notification, your request will be closed.**
- ☐ One or more of the enclosed records were transferred to the National Archives and Records Administration (NARA). Although we retained a version of the records previously processed pursuant to the FOIA, the original records are no longer in our possession.

If this release of the previously processed material does not satisfy your request, you may file a FOIPA request with NARA at the following address:

National Archives and Records Administration
Special Access and FOIA
8601 Adelphi Road, Room 5500
College Park, MD 20740-6001

- ☐ Records potentially responsive to your request were transferred to the National Archives and Records Administration (NARA), and they were not previously processed pursuant to the FOIA. You may file a request with NARA using the address above.
- ☐ One or more of the enclosed records were destroyed. Although we retained a version of the records previously processed pursuant to the FOIA, the original records are no longer in our possession. Record retention and disposal is carried out under supervision of the National Archives and Records Administration (NARA), Title 44, United States Code, Section 3301 as implemented by Title 36, Code of Federal Regulations, Part 1228; Title 44, United States Code, Section 3310 as implemented by Title 36, Code of Federal Regulations, Part 1229.10.
- ☐ Records potentially responsive to your request were destroyed. Since this material could not be reviewed, it is not known if it was responsive to your request. Record retention and disposal is carried out under supervision of the National Archives and Records Administration (NARA) according to Title 44 United States Code Section 3301, Title 36 Code of Federal Regulations (CFR) Chapter 12 Sub-chapter B Part 1228, and 36 CFR 1229.10.
- ☐ Documents or information referred to other Government agencies were not included in this release.

Please refer to the enclosed FBI FOIPA Addendum for additional standard responses applicable to your request. **"Part 1"** of the Addendum includes standard responses that apply to all requests. **"Part 2"** includes additional standard responses that apply to all requests for records about yourself or any third party individuals. **"Part 3"** includes general information about FBI records that you may find useful. Also enclosed is our Explanation of Exemptions.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request Number listed above has been assigned to your request. Please use this number in all correspondence concerning your request.

Please be advised that if you are seeking a new search for records, you may wish to narrow the scope of your request based on material that you have already received, e.g., timeframe or locality. Additionally, be advised that "unusual circumstances" may apply. See 5 U.S.C. § 552 (a)(6)(B)(iii). These "unusual circumstances" will delay our ability to make a determination on your request within 20 days. See 5 U.S.C. § 552 (a)(6)(B). Additionally, the payment of pertinent fees may apply to your request. See 5 U.S.C. § 552 (a)(4)(A)(viii). The application of "unusual circumstances" is not a determination of how the FBI will respond to your substantive request.

If you are not satisfied with the Federal Bureau of Investigation's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within ninety (90) days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so it may be easily identified.

You may seek dispute resolution services by emailing the FBI's FOIA Public Liaison at foipaquestions@fbi.gov. The subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so it may be easily identified. You may also contact the Office of Government Information Services (OGIS). The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

A handwritten signature in black ink, appearing to read "M. G. Seidel".

Michael G. Seidel
Section Chief
Record/Information Dissemination Section
Information Management Division

Enclosure(s)

FBI FOIPA Addendum

As referenced in our letter responding to your Freedom of Information/Privacy Acts (FOIPA) request, the FBI FOIPA Addendum provides information applicable to your request. Part 1 of the Addendum includes standard responses that apply to all requests. Part 2 includes standard responses that apply to requests for records about individuals to the extent your request seeks the listed information. Part 3 includes general information about FBI records, searches, and programs.

Part 1: The standard responses below apply to all requests:

- (i) **5 U.S.C. § 552(c).** Congress excluded three categories of law enforcement and national security records from the requirements of the FOIPA [5 U.S.C. § 552(c)]. FBI responses are limited to those records subject to the requirements of the FOIPA. Additional information about the FBI and the FOIPA can be found on the www.fbi.gov/foia website.
- (ii) **Intelligence Records.** To the extent your request seeks records of intelligence sources, methods, or activities, the FBI can neither confirm nor deny the existence of records pursuant to FOIA exemptions (b)(1), (b)(3), and as applicable to requests for records about individuals, PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(1), (b)(3), and (j)(2)]. The mere acknowledgment of the existence or nonexistence of such records is itself a classified fact protected by FOIA exemption (b)(1) and/or would reveal intelligence sources, methods, or activities protected by exemption (b)(3) [50 USC § 3024(i)(1)]. This is a standard response and should not be read to indicate that any such records do or do not exist.

Part 2: The standard responses below apply to all requests for records on individuals:

- (i) **Requests for Records about any Individual—Watch Lists.** The FBI can neither confirm nor deny the existence of any individual's name on a watch list pursuant to FOIA exemption (b)(7)(E) and PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(7)(E), (j)(2)]. This is a standard response and should not be read to indicate that watch list records do or do not exist.
- (ii) **Requests for Records about any Individual—Witness Security Program Records.** The FBI can neither confirm nor deny the existence of records which could identify any participant in the Witness Security Program pursuant to FOIA exemption (b)(3) and PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(3), 18 U.S.C. 3521, and (j)(2)]. This is a standard response and should not be read to indicate that such records do or do not exist.
- (iii) **Requests for Confidential Informant Records.** The FBI can neither confirm nor deny the existence of confidential informant records pursuant to FOIA exemptions (b)(7)(D), (b)(7)(E), and (b)(7)(F) [5 U.S.C. §§ 552 (b)(7)(D), (b)(7)(E), and (b)(7)(F)] and Privacy Act exemption (j)(2) [5 U.S.C. § 552a (j)(2)]. The mere acknowledgment of the existence or nonexistence of such records would reveal confidential informant identities and information, expose law enforcement techniques, and endanger the life or physical safety of individuals. This is a standard response and should not be read to indicate that such records do or do not exist.

Part 3: General Information:

- (i) **Record Searches and Standard Search Policy.** The Record/Information Dissemination Section (RIDS) searches for reasonably described records by searching systems, such as the Central Records System (CRS), or locations where responsive records would reasonably be found. The CRS is an extensive system of records consisting of applicant, investigative, intelligence, personnel, administrative, and general files compiled by the FBI per its law enforcement, intelligence, and administrative functions. The CRS spans the entire FBI organization, comprising records of FBI Headquarters, FBI Field Offices, and FBI Legal Attaché Offices (Legats) worldwide; Electronic Surveillance (ELSUR) records are included in the CRS. The standard search policy is a search for main entity records in the CRS. Unless specifically requested, a standard search does not include a search for reference entity records, administrative records of previous FOIPA requests, or civil litigation files.
 - a. *Main Entity Records* – created for individuals or non-individuals who are the subjects or the focus of an investigation
 - b. *Reference Entity Records*- created for individuals or non-individuals who are associated with a case but are not known subjects or the focus of an investigation
- (ii) **FBI Records.** Founded in 1908, the FBI carries out a dual law enforcement and national security mission. As part of this dual mission, the FBI creates and maintains records on various subjects; however, the FBI does not maintain records on every person, subject, or entity.
- (iii) **Foreseeable Harm Standard.** As amended in 2016, the Freedom of Information Act provides that a federal agency may withhold responsive records only if: (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the nine exemptions that FOIA enumerates, or (2) disclosure is prohibited by law (5 United States Code, Section 552(a)(8)(A)(i)). The FBI considers this foreseeable harm standard in the processing of its requests.
- (iv) **Requests for Criminal History Records or Rap Sheets.** The Criminal Justice Information Services (CJIS) Division provides Identity History Summary Checks – often referred to as a criminal history record or rap sheet. These criminal history records are not the same as material in an investigative “FBI file.” An Identity History Summary Check is a listing of information taken from fingerprint cards and documents submitted to the FBI in connection with arrests, federal employment, naturalization, or military service. For a fee, individuals can request a copy of their Identity History Summary Check. Forms and directions can be accessed at www.fbi.gov/about-us/cjis/identity-history-summary-checks. Additionally, requests can be submitted electronically at www.edo.cjis.gov. For additional information, please contact CJIS directly at (304) 625-5590.

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) 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, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

EXHIBIT C

FEDERAL BUREAU OF INVESTIGATION
FOI/PA
DELETED PAGE INFORMATION SHEET
FOI/PA# 1392348-0

Total Deleted Page(s) = 82

Page 13 ~ b1; b3; b7E;
Page 26 ~ b1; b3; b7E;
Page 28 ~ b1; b3; b7E;
Page 30 ~ b1; b3; b7E;
Page 33 ~ b1; b3; b7E;
Page 35 ~ b1; b3; b7E;
Page 36 ~ b1; b3; b7E;
Page 37 ~ b1; b3; b7E;
Page 39 ~ b1; b3; b7E;
Page 43 ~ b1; b3; b7E;
Page 46 ~ b1; b3; b7E;
Page 47 ~ b1; b3; b7E;
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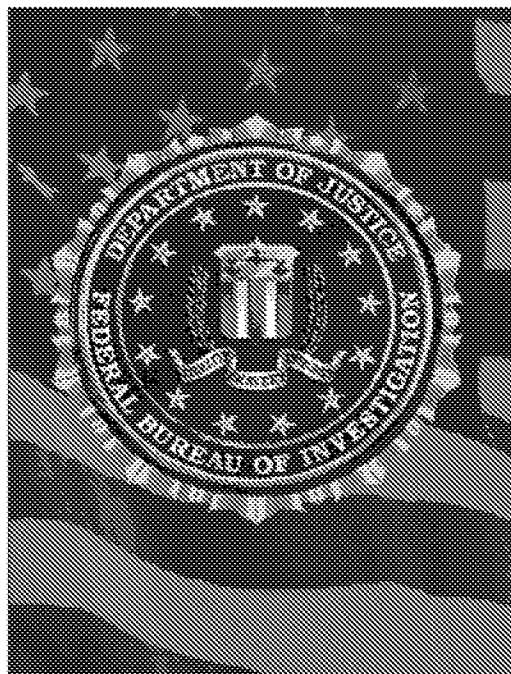
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(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
Standard Minimization Procedures Policy Guide

(U//~~FOUO~~) Foreign Intelligence Surveillance Act and Standard Minimization Procedures Policy Guide



(U) Federal Bureau of Investigation

(U) Office of the General Counsel

(U) 0828PG

(U) August 11, 2016

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(U) General Information

- (U) Questions or comments pertaining to this policy guide can be directed to:
- (U) Federal Bureau of Investigation Headquarters, Office of the General Counsel, National Security and Cyber Law Branch
- (U) Division point of contact: National Security Law Policy and Legislative Review Unit

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- (U) See Section 2 of this policy guide for a full listing of all supersessions.

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(U) DIOG Provision

- (U) No policy may contradict, alter, or otherwise modify the standards of the DIOG. Requests for DIOG modifications can be made to the Internal Policy Office, pursuant to DIOG subsection 3.2.2 paragraphs (A), (B), (C), and (D).

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1. (U) Introduction

1.1. (U) Scope and Purpose

(U//~~FOUO~~) This policy guide (PG) applies to all information, communications, material, or property that the Federal Bureau of Investigation (FBI) acquires pursuant to the Foreign Intelligence Surveillance Act (FISA) (hereafter collectively referred to as "FISA-acquired information"). As used in this PG, the term "FISA-acquired information" includes all information obtained pursuant to Titles I, III, V, and VII of FISA. [REDACTED] b1 b3 b7E

(S//NF) [REDACTED]

¹ (U) Section 702 certifications, including the applicable minimization procedures, are renewed on an annual basis. The term "SMP-702," therefore, refers to the most current set of procedures. When appropriate, this PG will be updated to ensure consistency with the most current set of procedures.

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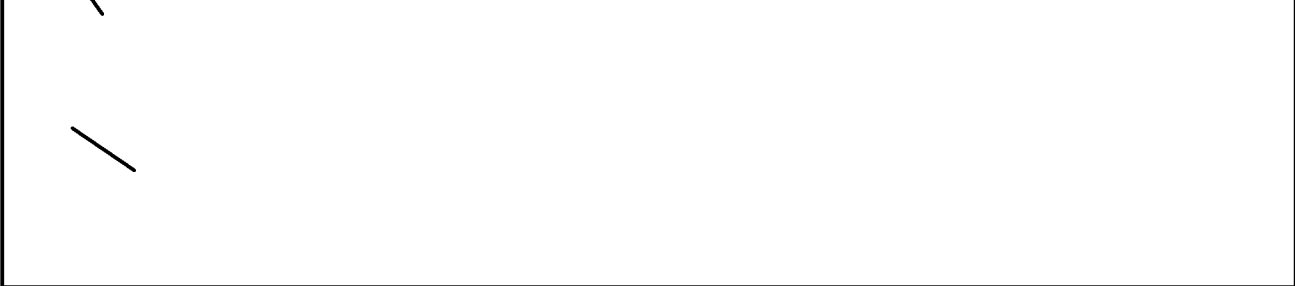
2. (U) Superseded Policies

(U//~~FOUO~~) The following policies have been superseded by the *Foreign Intelligence Surveillance Act and Standard Minimization Procedures Policy Guide*:

- (U) Policy Directive (PD) 0137D, *Standard Minimization Procedures Implementation Policy*
- (U//~~FOUO~~) PD 0370D, *Handling and Destruction of Unintentionally Acquired FISA Information*
- (U) PD 0394D, *Foreign Intelligence Surveillance Act (FISA) Accuracy*
- (U//~~FOUO~~) PD 0442D, *Procedures for Coordinating Implementation of Surveillance of U.S. Persons Overseas with the National Security Agency* (which superseded Policy Notice [PN] 0121N, *Interim Policy Providing Procedures for Coordinating Implementation of Surveillance of U.S. Persons Overseas with the National Security Agency [NSA]*)
- (U//~~FOUO~~) PD 0709D, *Retention of Foreign Intelligence Surveillance Act (FISA) Materials following Physical Search*
- (U//~~FOUO~~) PD 0722D, *Legal Requirements for Raw Information Acquired Pursuant to Title I or III of the Foreign Intelligence Surveillance Act (FISA)* [redacted] b1
- (U//~~FOUO~~) PN 0674N, *Interim Procedures for the Handling of Unminimized FISA Section 702 Information Outside of Identified Electronic Data and Storage Systems Ad Hoc Database Export* b3 b7E
- (S//~~FOUO~~) [redacted]
- (U) *Business Record Standard Minimization Procedures Policy Notice and Policy Guide*, 0642PG
- (U) *Foreign Intelligence Surveillance Act (FISA) Accuracy*, 0394PG
- (U) *Foreign Intelligence Surveillance Act Accuracy Policy Guide*, 0394PG (which superseded Electronic Communication [EC] 66F-HQ-A1247863 serial 30, "Foreign Intelligence Surveillance Act, Procedures to Ensure Accuracy" (April 5, 2001); EC 66F-HQ-C1384970 serial 3228, "Accuracy in FISA Packages – Data and Electronic Communications Review by Investigative Technology Division" (September 8, 2003); and EC 66F-HQ-C1384970 serial 11796, "Accuracy in FISA Packages – Electronic and Data Communications Review" (July 15, 2004))
- (U) *Foreign Intelligence Surveillance Act Overcollection Policy Guide*, 0370PG (which superseded subsection 4.7.2. of the *Guidance on Intelligence Oversight Board (IOB) Matters Policy Guide*, 0188PG)
- (U) *Standard Minimization Procedures Policy Guide*, 0137PG

3. (U) Roles and Responsibilities

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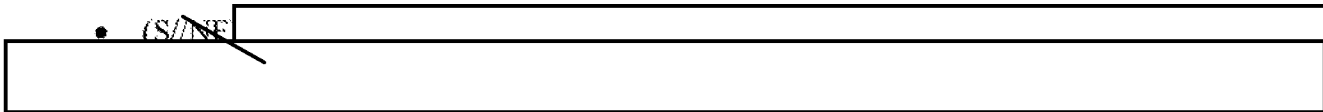
3.1. (U//~~FOUO~~) Authorized Users

(S//~~NF~~)



- (U//~~FOUO~~) Receive the legal training required in Section 4 of this PG and keep documentation of their completion of required courses.
- (U//~~FOUO~~) Comply with the SMPs with respect to FISA-acquired information.
- (U//~~FOUO~~) Comply with all policies and procedures within this PG.

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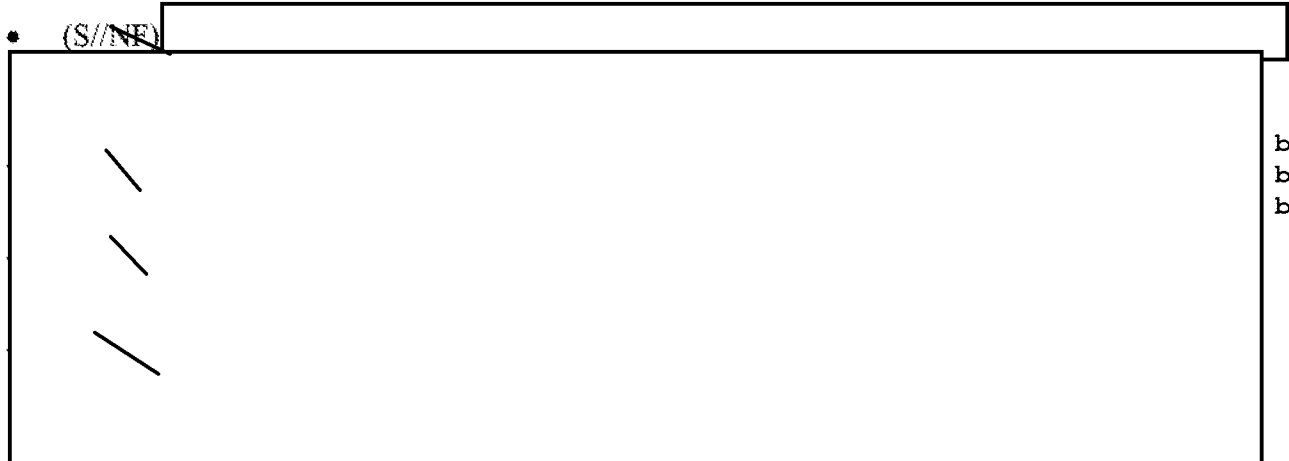
3.2. (U//~~FOUO~~) Primary Case Coordinators/Case Managers

(S//~~NF~~)



- (U//~~FOUO~~) Receive the legal training required in Section 4 of this PG.
- (U//~~FOUO~~) Comply with the SMPs with respect to FISA-acquired information.

• (S//~~NF~~)



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(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
Standard Minimization Procedures Policy Guide

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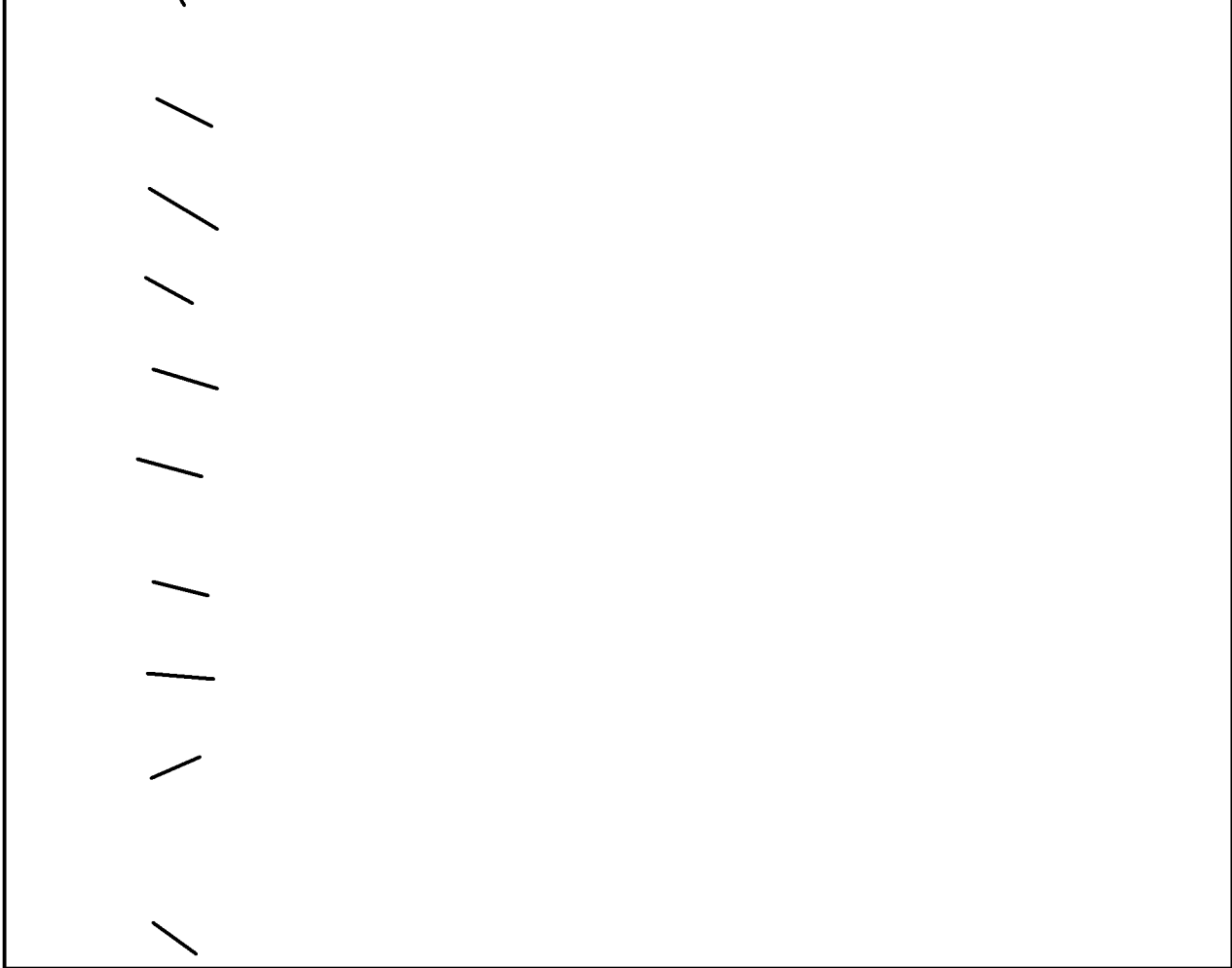
- (U//~~FOUO~~) Destroy, with proper authority and documentation, any FISA overcollection existing at the field office (FO) within of discovery and coordinate with FBI Headquarters (FBIHQ) component and/or NSD OI to destroy any material in FBIHQ and/or NSD OI custody.

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(U//~~FOUO~~) In addition to the above responsibilities, a primary case agent/primary case coordinator/case manager must comply with all other applicable responsibilities and procedures articulated in this PG. For more information and a detailed description of the roles and responsibilities of primary case agents/primary case coordinators/case managers, see subsection 5.1 and subsection 7.1.1 of this PG.

3.3. (U//~~FOUO~~) Additional Case Coordinators, Linguist Case Coordinators, Designees, and Responsible Parties

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(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
Standard Minimization Procedures Policy Guide

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- (U//~~FOUO~~) Complying with all other applicable responsibilities and procedures articulated in this PG.

(U//~~FOUO~~) For additional information, see subsection 5.1.2.

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(U//~~FOUO~~) For additional information, see subsection 5.1.3.

3.4. (U//~~FOUO~~) Field Office Supervisory Special Agents

(U//~~FOUO~~) FO SSAs must oversee FO squads that have responsibility for FISAs, and must:

1. (U//~~FOUO~~) Obtain legal training, as required in Section 4 of this PG.
2. (U//~~FOUO~~) Ensure that all personnel under their supervision who work on national security matters, assist with the preparation of FISA applications, or handle FISA-acquired information also receive training, in accordance with Section 4.
3. (U//~~FOUO~~) Read and become familiar with SMPs and FISA accuracy procedures and promote compliance on their squads.
4. (U//~~FOUO~~) Read and become familiar with this PG and promote compliance on their squads. Of particular importance, FO SSAs are reminded to:

(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
Standard Minimization Procedures Policy Guide

- (S//~~NF~~) [REDACTED] (S)
- [REDACTED]
- [REDACTED]
- [REDACTED]

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3.5. (U//~~FOUO~~) Chief Division Counsel

(U//~~FOUO~~) CDCs are legal counsel for FOs. Use of this term throughout this PG includes associate division counsel (ADC) as well. A CDC is responsible for ensuring familiarity and compliance with this PG and must:

- (U//~~FOUO~~) Obtain legal training, as required in Section 4 of this PG.
- (U//~~FOUO~~) Provide legal training on the SMP and accuracy procedures using the most recent FISA training materials.

- (S//~~NF~~) [REDACTED] (S)
- [REDACTED]
- [REDACTED]
- (U//~~FOUO~~) Consult with NSCLB and DOJ, as appropriate, in the event of a suspected overcollection and provide guidance, as necessary, to resolve the issue.
- (U//~~FOUO~~) Conduct accuracy reviews on an annual basis in accordance with GC procedures and report all potentially material misstatements or omissions as specified in this PG.
- (U//~~FOUO~~) Participate with NSCLB and NSD OI attorneys in accuracy reviews during scheduled FISA minimization reviews of FOs.
- (U//~~FOUO~~) Comply with any other responsibilities for CDCs included in this PG.

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3.6. (U//~~FOUO~~) Section Chief

(U//~~FOUO~~) SCs are responsible for ensuring familiarity and compliance with this PG. In addition, operational SCs are responsible for being familiar with all applicable responsibilities listed in this PG.

3.7. (U//~~FOUO~~) Assistant Special Agent in Charge (ASAC)

(U//~~FOUO~~) ASACs are responsible for ensuring familiarity and compliance with this PG.

3.8. (U//~~FOUO~~) FBI Headquarters (FBIHQ) Operational Units

(U//~~FOUO~~) SSAs, special agents (SA), intelligence analysts (IA), detailees, and task force members who are assigned to FBIHQ units handling FISA material must:

(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
Standard Minimization Procedures Policy Guide

- (U//~~FOUO~~) Obtain legal training, as required in Section 4 of this PG.
- (U//~~FOUO~~) Ensure that all personnel under their supervision who work on national security matters and assist with the preparation of FISA applications or who handle FISA-acquired information also obtain training, in accordance with Section 4 of this PG.
- (U//~~FOUO~~) Read and become familiar with SMPs and promote compliance in their units.
- (U//~~FOUO~~) Read and become familiar with this PG and promote compliance in their units.
- (U//~~FOUO~~) Resolve disputes over markings or disseminations of FISA-acquired information expeditiously, consistent with program management responsibilities.

• (S//NF) [REDACTED]
[REDACTED]

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3.9. (U//~~FOUO~~) FBIHQ Unit Chiefs

(U) FBIHQ UCs must:

- (U//~~FOUO~~) Obtain legal training, as required in Section 4 of this PG.
- (U//~~FOUO~~) Ensure that all personnel under their supervision who work on national security matters and assist with the preparation of FISA applications or who handle FISA-acquired information also obtain training, in accordance with Section 4 of this PG.
- (U//~~FOUO~~) Read and become familiar with the SMPs and FISA accuracy procedures and promote compliance in their units.
- (U//~~FOUO~~) Read and become familiar with this PG and promote compliance in their units.

• (S//NF) [REDACTED]
[REDACTED]

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3.10. (U//~~FOUO~~) National Security and Cyber Law Branch (NSCLB)

(U) NSCLB must:

- (U//~~FOUO~~) Obtain legal training on the SMPs and this PG.
- (U//~~FOUO~~) Provide legal training on the SMPs and accuracy procedures, upon request or during scheduled FO visits, and update such training, as necessary.

• (S//NF) [REDACTED]
[REDACTED]

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- (U//~~FOUO~~) Coordinate with FBI National Security Branch (NSB), Criminal Cyber Response, and Services Branch (CCRSB), and NSD OI to develop and maintain a process to monitor compliance with the SMPs and periodically audit activities and procedures required by this PG.

(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
Standard Minimization Procedures Policy Guide

- (U//~~FOUO~~) Identify and analyze potential risks of SMP-related noncompliance, in coordination with NSB, and determine whether changes or updates are needed to this PG or to systems that contain FISA-acquired information in order to minimize the potential risk of SMP-related noncompliance, after considering the impact these changes would have on FBI operations.
- (U//~~FOUO~~) Maintain this PG, in consultation with NSB and CCRSB, to ensure that it is consistent with the SMPs and with the FBI's operational needs. Incorporate any changes required to reflect new direction from the FISC or other legal authorities immediately. For all other changes, consider and, when appropriate, incorporate the suggested changes to this PG twice yearly.
- (S//~~NF~~) [REDACTED]
- (U//~~FOUO~~) Submit, on a quarterly basis, the NSB report of the accounting of the number of foreign disseminations of FISA-acquired information concerning United States persons (USPERs) to the AG through the NSD OI. b1 b3 b7E
- (U//~~FOUO~~) Review FISA accuracy forms for completeness, concurrently with the legal review of FISA applications.
- (U//~~FOUO~~) Participate with NSD OI attorneys in accuracy reviews during scheduled FISA minimization reviews of FOs.

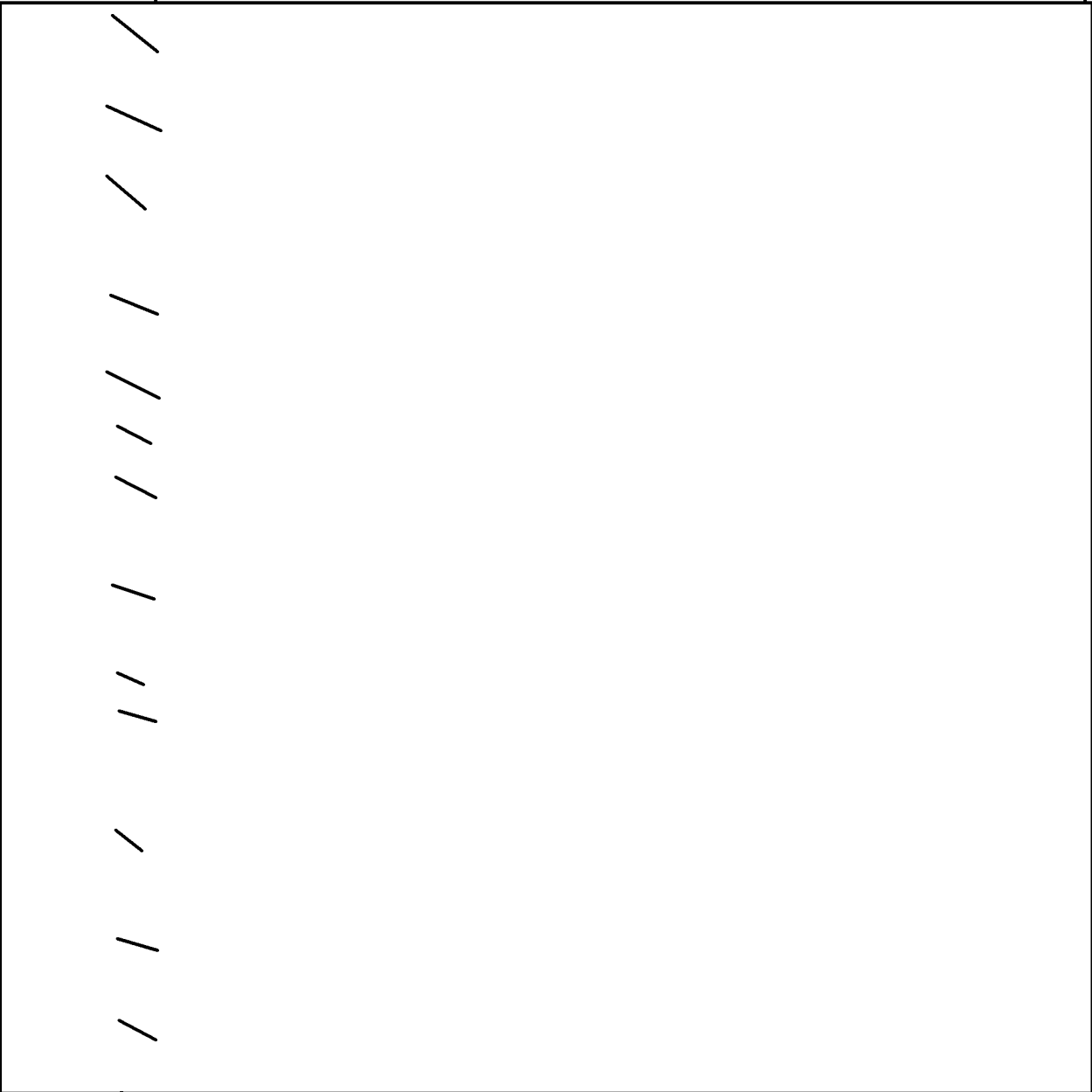
- (S//~~NF~~) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

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3.11. (S//~~NF~~) [REDACTED]

[REDACTED]

• (S//NF)



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3.12. (U//FOUO) Systems Administrators

(S//NF)



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(U//FOUO) Foreign Intelligence Surveillance Act and
Standard Minimization Procedures Policy Guide

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1. (S//NF) [REDACTED]

2. [REDACTED]

3. [REDACTED]

4. [REDACTED]

5. [REDACTED]

6. [REDACTED]

7. [REDACTED]

8. (U//FOUO) Ensure that [REDACTED] has access to all FISA 702-acquired information in [REDACTED]
(except for specific case classifications authorized for prohibited access).

9. (S//NF) [REDACTED]

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3.13. (U//FOUO) [REDACTED]

(S//NF) [REDACTED]

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(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
Standard Minimization Procedures Policy Guide

4. (U) Training

(U//~~FOUO~~) All FBI personnel, including contractors, task force officers (TFOs), and others operating under FBI supervision and control, must complete training as follows:

- (U//~~FOUO~~) **FISA Applications:** FO and/or FBIHQ personnel whose work involves national security matters must complete FISA accuracy training prior to drafting or assisting with the preparation of FISA applications. Training may be provided by CDCs or NSCLB, or through Virtual Academy (VA).
- (U//~~FOUO~~) **Raw FISA Data:** All personnel must be trained on the FISA SMP ELSUR/PHYS, including the 2016 update to the SMP ELSUR/PHYS, and take the [REDACTED] Section 702 Retention 2011 course in VA, prior to being given access to, handling, or using raw, unminimized FISA-acquired information in any way.
- (U//~~FOUO~~) [REDACTED]

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(U//~~FOUO~~) The most current FISA training materials are available on the NSCLB Intranet site and must be used by CDCs and NSCLB for live training. An FO is exempt from live training by the CDC if training was conducted by NSCLB or the NSD OI during an FO review within the last two years.

(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
Standard Minimization Procedures Policy Guide

5. (S//~~NF~~) [REDACTED]

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5.1. (U//~~FOUO~~) Case Manager Roles: Case Coordinators, Case Managers, and Designees

(S//~~NF~~) [REDACTED]

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(U//~~FOUO~~) At the renewal and closing of a FISA order (including the decision not to renew), primary case coordinators must complete any required documentation with respect to the use of certain [REDACTED] (see the [NSCLB Intranet site](#) for guidance).

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5.1.1. (U//~~FOUO~~) Primary Case Coordinator/Case Manager

(S//~~NF~~) [REDACTED]

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(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
Standard Minimization Procedures Policy Guide

[Redacted]

(S//~~NF~~) [Redacted]

[Redacted]

5.1.1.1. (S//~~NF~~) [Redacted]

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(S//~~NF~~) [Redacted]

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5.1.1.2. (S//~~NF~~) [Redacted]

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5.1.1.3. [Redacted]

[Redacted]

(U//~~FOUO~~) The primary case coordinator is also responsible for fulfilling all additional case coordinator roles set forth in subsection 5.1.2.

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(U//FOUO) Foreign Intelligence Surveillance Act and
Standard Minimization Procedures Policy Guide

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5.2. (U//FOUO) Definition of Raw FISA-Acquired Information

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¹ (U) The FISA statute, 50 U.S.C. § 1801(e), defines FII as:

“(1) information that relates to, and if concerning a United States person is necessary to, the ability of the United States to protect against—

(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

(B) sabotage, international terrorism, or the international proliferation of weapons of mass destruction by a foreign power or an agent of a foreign power; or

(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or

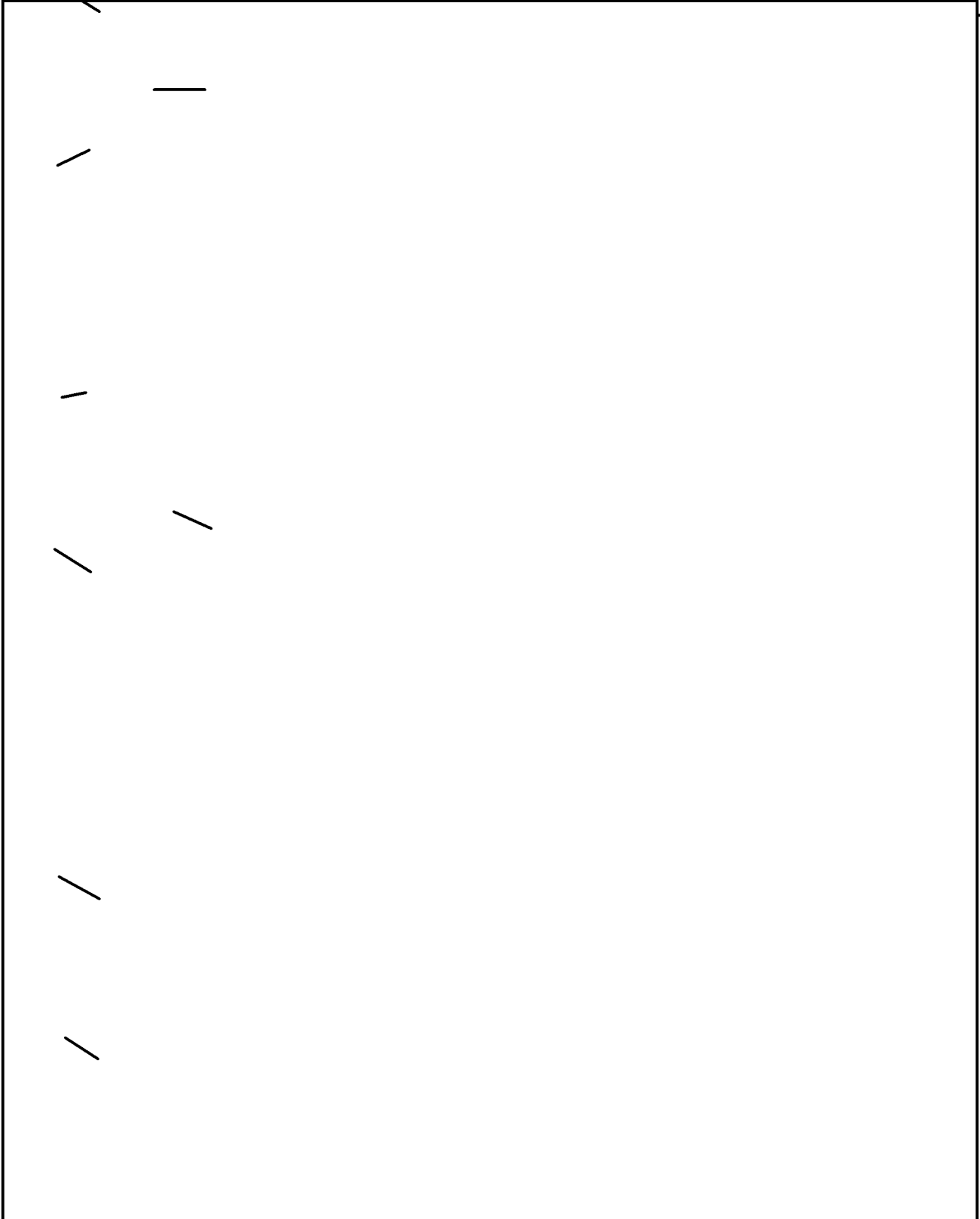
(2) information with respect to a foreign power or foreign territory that relates to, and if concerning a United States person is necessary to—

(A) the national defense or the security of the United States; or

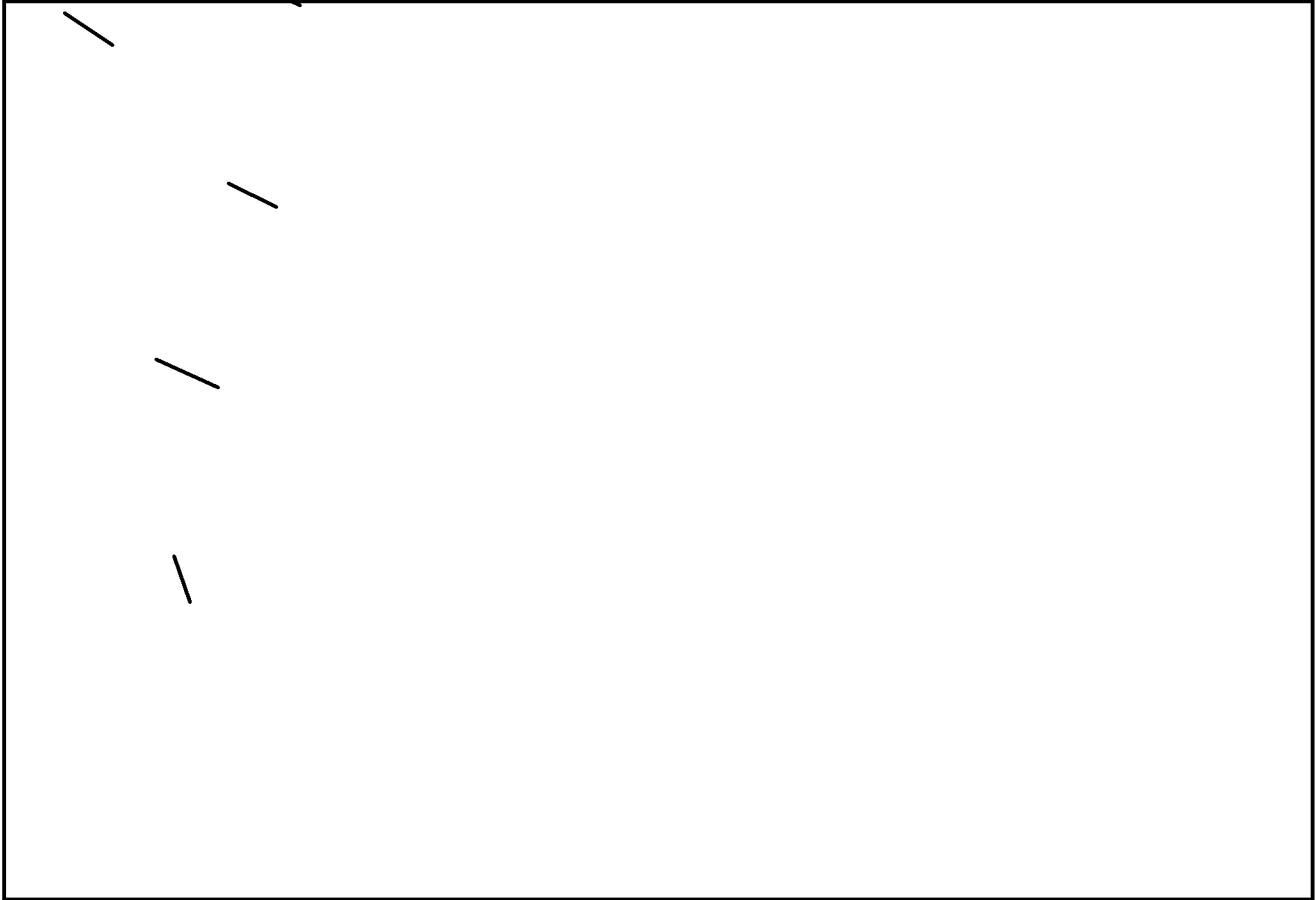
(B) the conduct of the foreign affairs of the United States.”

5.4. ~~(U//FOUO)~~ Systems and Storage Areas

~~(S//NF)~~

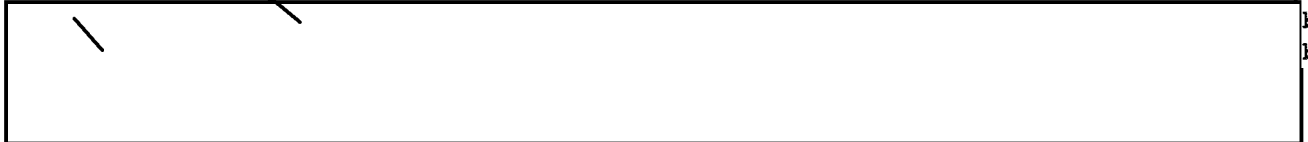


5.4.1.4. (S//NF)



(U//FOUO) Users may contact NSCLB with any questions

5.4.1.6. (S//NF)



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5.4.2. (U//FOUO) Other "Approved" FBI Systems

(S//NF)

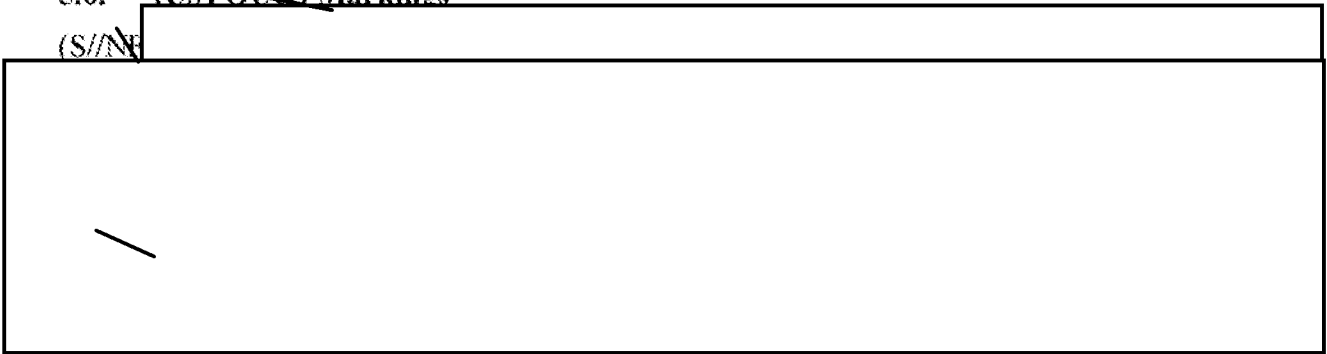


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(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
Standard Minimization Procedures Policy Guide

5.6. (U//~~FOUO~~) Markings

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5.6.1. (U//~~FOUO~~) Definition of Marking

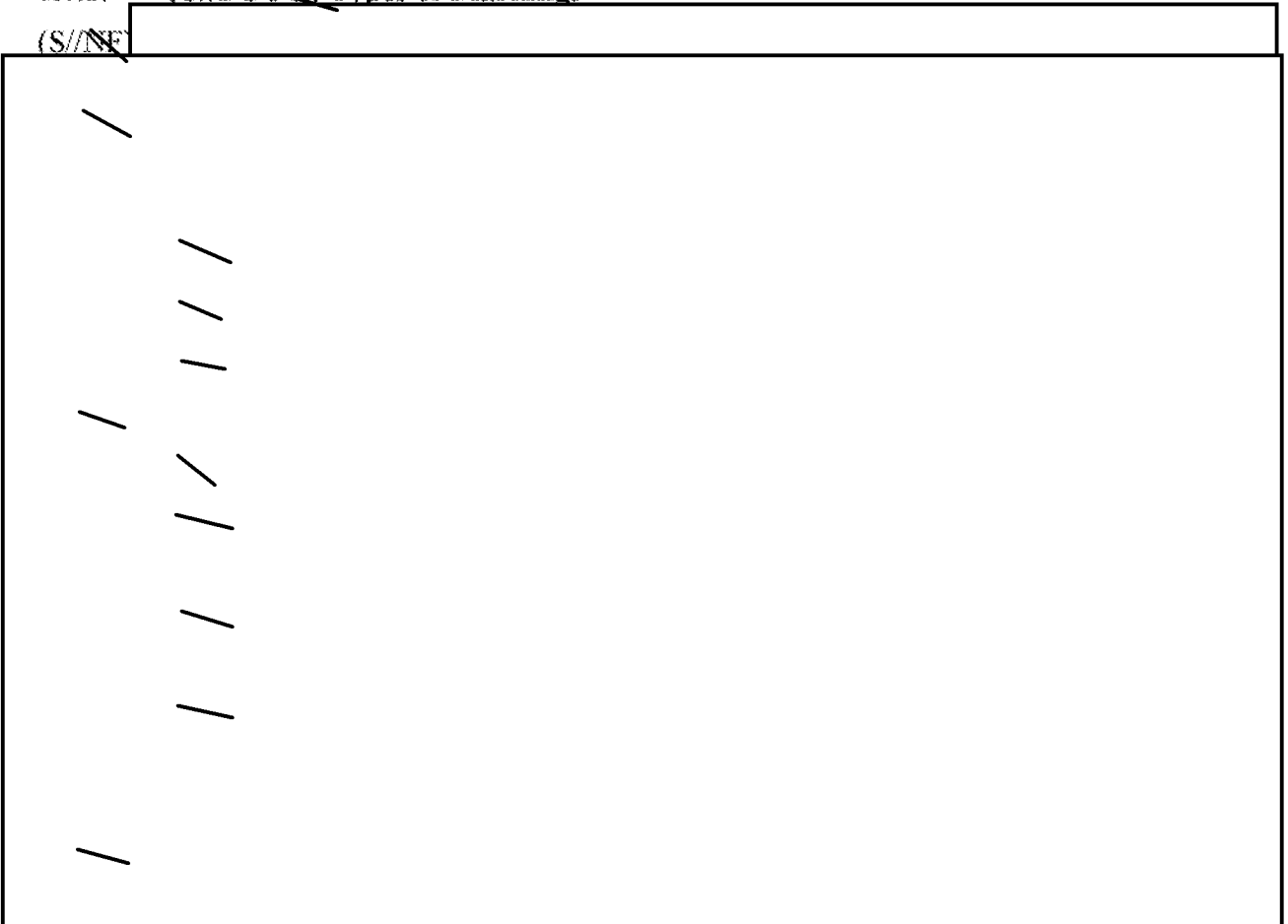
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5.6.2. (U//~~FOUO~~) Types of Markings

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Standard Minimization Procedures Policy Guide

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5.6.3. (U//~~FOUO~~) Workflow Markings

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(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
Standard Minimization Procedures Policy Guide

5.6.4. (S//NF)

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5.7. (U//~~FOUO~~) Marking Policy

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5.7.1. (U//~~FOUO~~) Case Coordinators and the Application of Minimization Markings

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(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
Standard Minimization Procedures Policy Guide

5.7.4. (S//~~NF~~)

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5.8. (U//~~FOUO~~) Systems and Storage Areas to Which Marking Policy is Applicable

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5.9. (U//~~FOUO~~) Dissemination Policy

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(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
Standard Minimization Procedures Policy Guide

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5.9.2. (U//~~FOUO~~) Definition of Dissemination for the Purposes of the Standard
Minimization Procedures

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(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
Standard Minimization Procedures Policy Guide

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5.9.3.6. (U//~~FOUO~~) FISA Caveat

¹² As a reminder, a dissemination includes serializing/uploading information into another FBI system to which there is broad access (e.g., Sentinel).

(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
Standard Minimization Procedures Policy Guide

(U//~~FOUO~~) According to the FISA, "No information acquired pursuant to [FISA] shall be disclosed for law enforcement purposes unless such disclosure is accompanied by a statement that such information, or any information derived there from, may only be used in a criminal proceeding with the advance authorization of the Attorney General" (50 U.S.C. §§ 1806 (b), 1825(c), 1845(b)). The caveat requirement applies to both USPER and non-USPER information.

(U//~~FOUO~~) Accordingly, any dissemination that contains FISA-acquired or FISA-derived information must include a prominently placed statement that, at a minimum, provides that the information may not be used in a criminal proceeding without the advance authorization of the AG. For approved caveats, please see the NSCLB Intranet site.

5.9.3.7. (S//NF) 

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(U//~~FOUO~~) For policies and procedures governing the dissemination of FISA information to foreign governments, consult the Foreign Dissemination of Classified Information Policy Guide, 0783PG.

5.9.3.8. (S//NF) 

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(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
Standard Minimization Procedures Policy Guide

5.9.3.14. (S//~~NF~~)

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(U//~~FOUO~~) If a disk of raw FISA-acquired information is provided to a prosecutor, the disk must be marked clearly with a FISA caveat.

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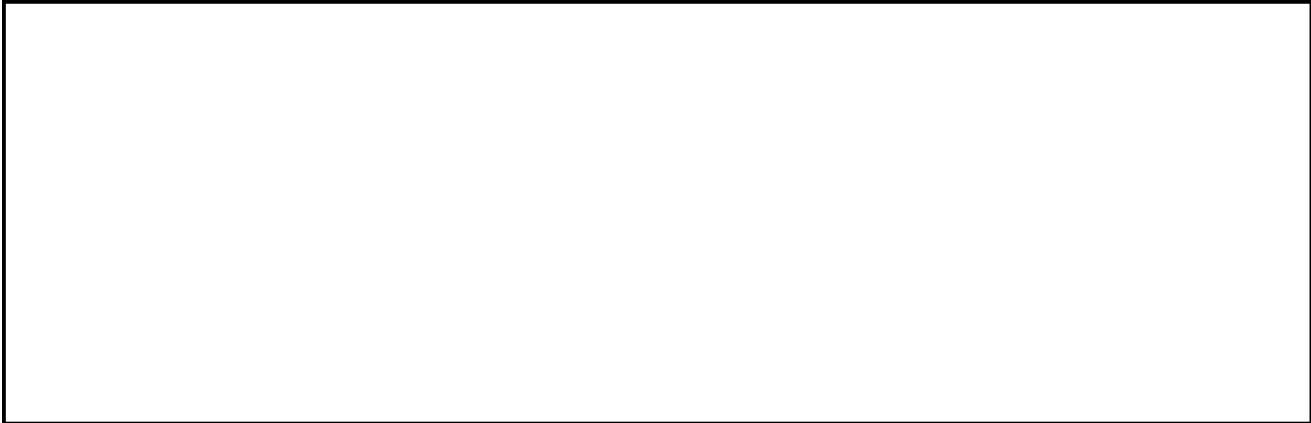
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(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
Standard Minimization Procedures Policy Guide



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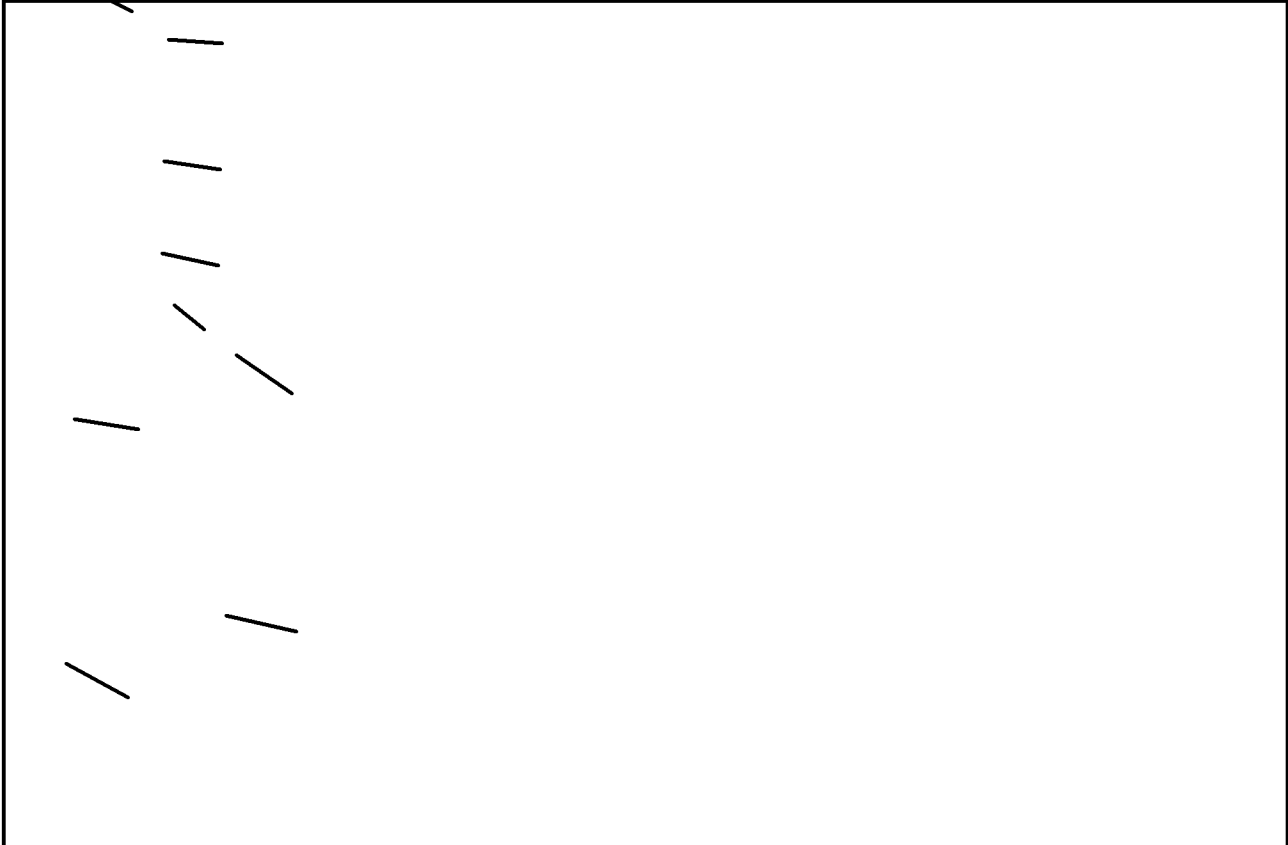
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5.11. (U//~~FOUO~~) Retention Policy

5.11.1.1. (U//~~FOUO~~) Access

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(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
Standard Minimization Procedures Policy Guide

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5.11.1.4. (S//NF)

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5.11.1.7. (U) Information Retained in Connection With Litigation Matters

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(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
Standard Minimization Procedures Policy Guide

(U) When ELSUR/PHYS or FISA 702-acquired information is reasonably believed to be necessary for or potentially discoverable in litigation matters, the FBI may temporarily retain the information that would otherwise have to be destroyed under the SMP retention requirements.

[REDACTED]

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[REDACTED] When a decision is made to retain products for litigation purposes, the systems must identify the specific information to be retained and must ensure that the information is only made accessible to personnel connected to the particular litigation matter. NSCLB and the Litigation Branch will document the litigation for which the information is retained [REDACTED]

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[REDACTED]

[REDACTED]

5.11.1.8. (S//NF)

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(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
Standard Minimization Procedures Policy Guide

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5.12. (U//~~FOUO~~) Logs and Indices Eliminated

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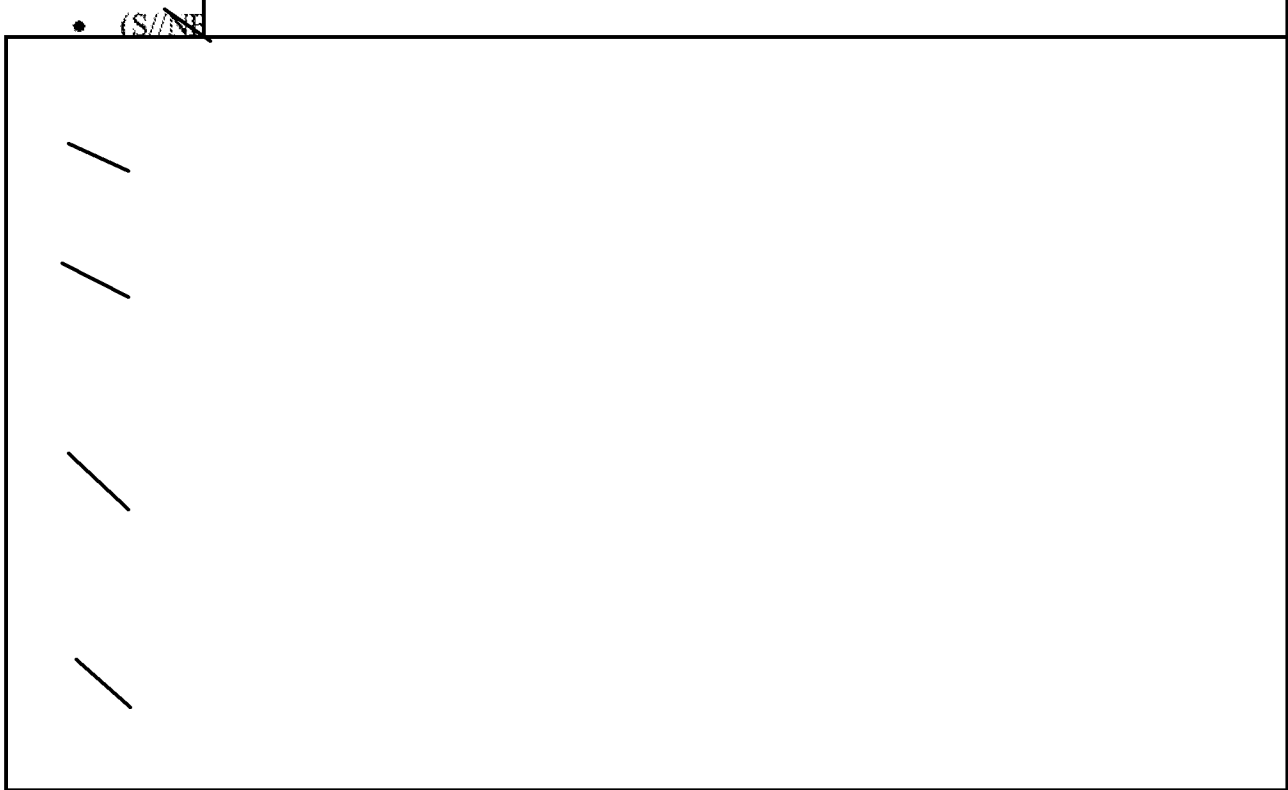
(U) Per the SMPs, the FBI may disclose FISA-acquired information, including raw FISA-acquired information, and information derived therefrom to federal prosecutors and others working at their direction for all lawful foreign intelligence and law enforcement purposes. Any disclosure of FISA-acquired digital evidence must comply with the Digital Evidence Policy Guide, 0830PG.

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(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
Standard Minimization Procedures Policy Guide

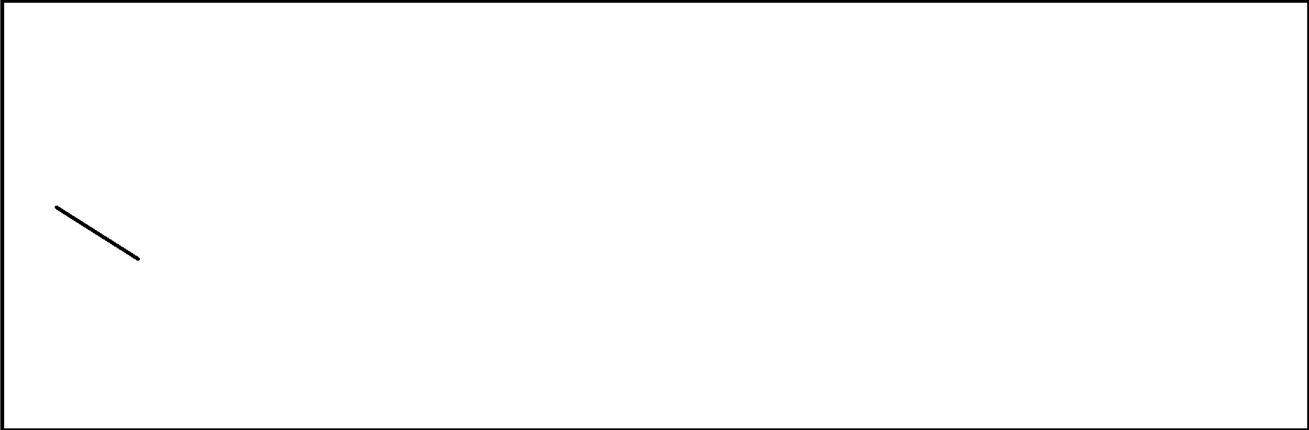
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5.13.2. (U//~~FOUO~~) Emergency Access for Federal Prosecutors

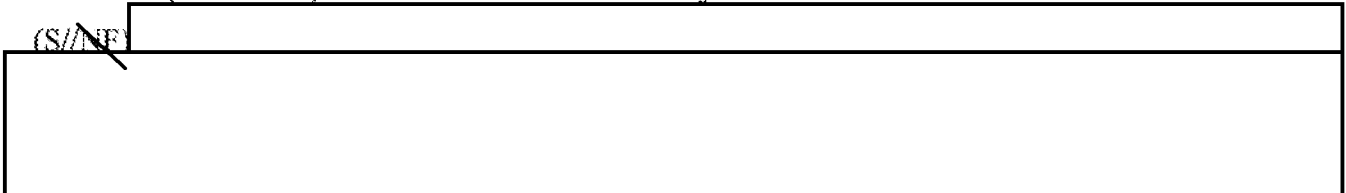
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5.13.3. (U//~~FOUO~~) Access for National Security Division Personnel

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(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
Standard Minimization Procedures Policy Guide

5.14. (S//~~NF~~)

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5.14.1. (U//~~FOUO~~) Definitions and Background

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(U//FOUO) Foreign Intelligence Surveillance Act and
Standard Minimization Procedures Policy Guide

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- (U//FOUO) For agents or analysts, contact the primary case coordinator's SSA.
- (U//FOUO) For linguists, contact the assistant SC, Language Services Section (LSS), [REDACTED]
- (U//FOUO) For attorneys, contact the UC for [REDACTED] NSCLB, [REDACTED]

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5.14.3. (U//FOUO) Step Two: Database Access

(S//NF)

¹⁸ (U//FOUO) The required training is addressed in the [REDACTED]

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b7E**5.15. (U//~~FOUO~~) Downloading, Handling, and Storing FISA Intercept Media for Use as Original Evidence**

(U//~~FOUO~~) ELSUR conducted pursuant to FISA may be used in judicial or administrative proceedings in certain circumstances. This includes FISA-acquired information obtained in counterterrorism investigations. The below procedures ensure that FISA-acquired information that has been downloaded from an FBI collection system to archival removable (portable) media for the purpose of a judicial or administrative proceeding meets the standards for admissibility in such a judicial or administrative proceeding.

(U//~~FOUO~~) FISA-acquired intercepts that are downloaded from an FBI collection system to such media must be treated as original evidence and must be submitted to, and maintained in, the ELSUR evidence control room (EECR) to ensure integrity and authenticity. FISA-acquired intercepts that remain on an FBI collection system or an online storage system continue to be subject to controlled access and will be maintained in a manner that ensures integrity and authenticity.

(U//~~FOUO~~) All FBI personnel (including task force personnel) who handle, access, and/or process FISA-acquired intercepts that have been downloaded from FBI collection systems to archival-removable media must ensure that these downloaded intercepts are processed, maintained, and stored in a manner that protects the integrity, authenticity, and appropriate classification of the original intercepts. This entails properly labeling and marking the classification of the media, which includes a FISA caveat or banner; establishing a chain of custody by using the FD-504 "Chain of Custody – ELSUR Evidence Medium Storage

(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
Standard Minimization Procedures Policy Guide

Envelope”; creating an FD-1087 “Evidence Log” in Sentinel; and entering the media into ELSUR storage by placing the media in the EECR and marking it as “FISA.”

(U) If an EOT receives a FISA-acquired intercept download request, the EOT must download the requested recording from the FBI collection system maintained in the FO to archival removable media, unless the ASAC designates another individual from the FO to assume this responsibility. The EOT or ASAC designee must:

- (U) Mark/label archival removable media and include the proper classification and a FISA marking.
- (U) Establish an FD-504 “Chain of Custody – ELSUR Evidence Medium Storage Envelope” by filling out the “Accepted Custody” section (enter “Data Download”) and fill out the “Released Custody” section of the form and include the proper classification and a FISA marking.
- (U) Create the FD-1087 “Evidence Log” in Sentinel.
- (U) Place the media in the FD-504 “Chain of Custody – ELSUR Evidence Medium Storage Envelope,” and submit it to the EECR.
- (U) Notify, if necessary, the case agent and Central Monitoring Plant (CMP) manager that there is an interception, collection, recording, or download-related issue or concern.
- (U) Send the media to the office of origin (OO) by an approved courier when the requesting agent is located in an FO that is not the OO.
- (U) Coordinate with case agents and dispose of downloaded FISA media when the FISA media meets the disposition requirements set forth in the destruction form, FD-987, “Federal Bureau of Investigation Disposition of Foreign Intelligence ACT (FISA) ELSUR Media.”

(U//~~FOUO~~) The case agent must:

- (U//~~FOUO~~) Document, in an uploaded/serialized record in the case file, any known technical, recordation, download, duplication, and/or review-related issue or concern and notify the CMP manager by e-mail if there is a concern about lost collection.
- (U//~~FOUO~~) Ensure that all FISA-acquired intercept collections downloaded to archival removable media are processed and treated as original ELSUR evidence.
- (U//~~FOUO~~) Ensure that for each court order where such FISA-acquired intercept evidence is downloaded, the media is properly classified, has a FISA marking, and has been submitted to the EOT for storage in the EECR.
- (U//~~FOUO~~) Document, in the case file, the reason for the downloaded FISA-acquired intercept recordings and duplicates, their dissemination, and their disposition.

5.16. (S//NF)

5.16.1. (U) Scope

(U) This policy applies to service of all types of FISA orders (i.e., emergency, physical search, ELSUR, PR/TT, or business records orders).

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(U//FOUO) Foreign Intelligence Surveillance Act and
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[Redacted]

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5.16.2.7. (U//LES) Destruction of FISA Orders and Other Related Materials

(S//NF)

[Redacted]

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5.16.3. (U) Specific Procedures for Serving FISA Orders

(U//FOUO) Service of FISA orders can generally be broken down into two categories: (1) service on an ECSP (i.e., telephone companies or ISPs) with whom the FBI has an established relationship and (2) service on all other parties, including landlords, hotels, businesses, and smaller communications companies that do not regularly receive service of FISA orders. Different procedures apply, depending on the type of recipient.

5.16.3.1. (U//LES) Service on Electronic Communications Service Providers With Whom the FBI Has an Established Relationship

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(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
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(U//~~FOUO~~) The NSCLB Intranet site contains a standard letter that may be provided to the



(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
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6. (S//~~NI~~)

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6.1. (U//~~FOUO~~) Ad Hoc (Temporary) Systems

6.1.1. (U//~~FOUO~~) Overview

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6.1.1.1. (U) Definition

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6.1.1.2. (U) Requirements for and Limitations on Use

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²⁵ (U) See subsections 3.2., 3.10., and 5.1. for an introduction to this concept.

[REDACTED]

(U//~~FOUO~~) Note that the rules regarding access by prosecutors to ad hoc systems are the same as for access to [REDACTED]. See subsection 5.13.1.

6.1.1.3. (U) Additional Requirements

(U//~~FOUO~~) A nonexhaustive list of FBI systems, including ad hoc systems, can be found on the NSCLB Intranet site.

(S//~~NF~~) [REDACTED]

[REDACTED]

(U) For additional guidance on requirements and best practices, refer to the NSCLB Intranet site.

6.1.2. (U) Analysis and Queries of Raw FISA-Acquired Information

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(U) Users who are authorized to have access to raw FISA-acquired information in an ad hoc system may analyze the data to find, extract, review, translate, and assess whether the information reasonably appears to meet the minimization standard. Any queries of datasets that contain raw FISA-acquired information in an ad hoc system must be designed to find and extract FII or evidence of a crime.

(S//~~NF~~) [REDACTED]

[REDACTED]

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(U//FOUO) Foreign Intelligence Surveillance Act and
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6.1.3. (U) Dissemination, Disclosure, and Compliance

(U) Ad hoc systems are subject to the dissemination, disclosure, and compliance provisions governing [redacted] such as those contained in subsection 5.8, and subsection 5.10. (See also Sections IV and V of the SMP-ELSUR/PHYS.)

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6.1.4. (U) Retention of FISA-Acquired Information

(U) The FBI may retain raw FISA-acquired information concerning unconsenting USPERs in an ad hoc system in order to determine whether the information reasonably appears to meet the minimization standard, as follows:

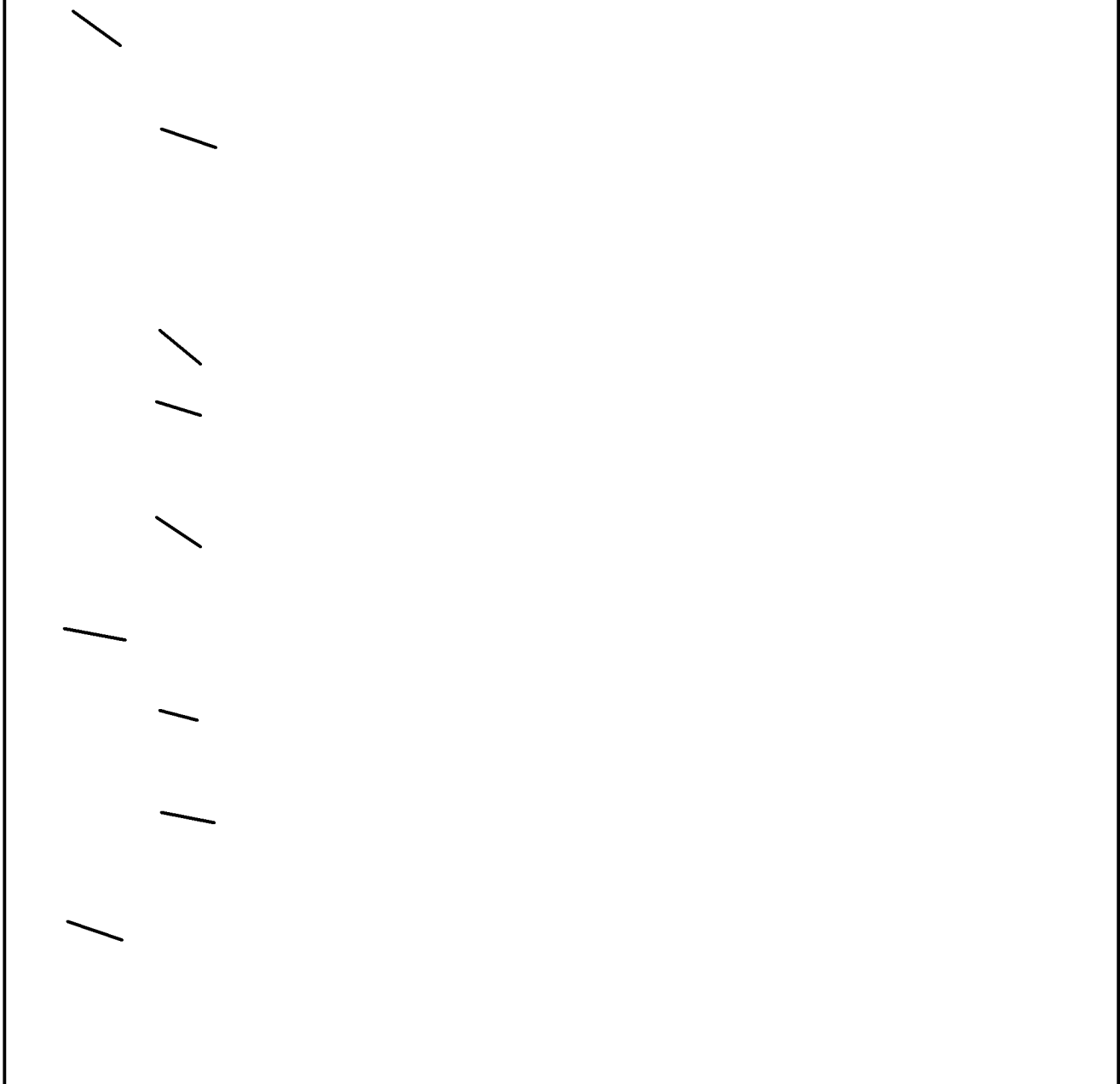
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6.1.5. (S//NF)



(U) FBI personnel must consult as appropriate with CDCs, OGC, or NSD to determine whether a communication is privileged.

6.2. (S//NF)

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7. (U//~~FOUO~~) FISA 702: Special Considerations

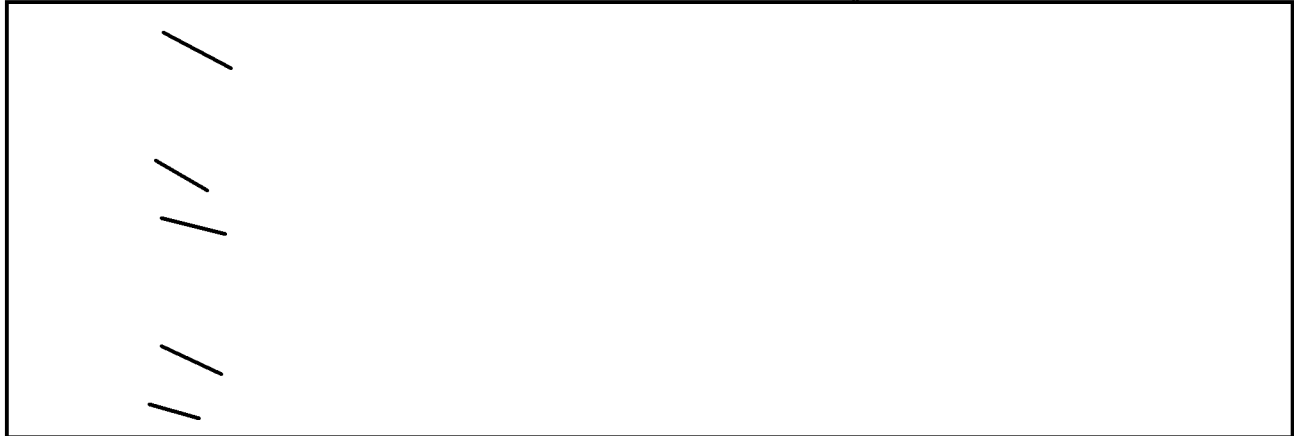
7.1. (U) Introduction

(U) The FISA Amendments Act of 2008 created a new legal framework for the acquisition of foreign intelligence by targeting non-USPERs located outside the United States without an individualized court order. These procedures are detailed in 50 U.S.C. § 1881a and are commonly referred to as "Section 702." As is the case with other provisions of FISA, a significant purpose of the Section 702 targeting must be to obtain FII.

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(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
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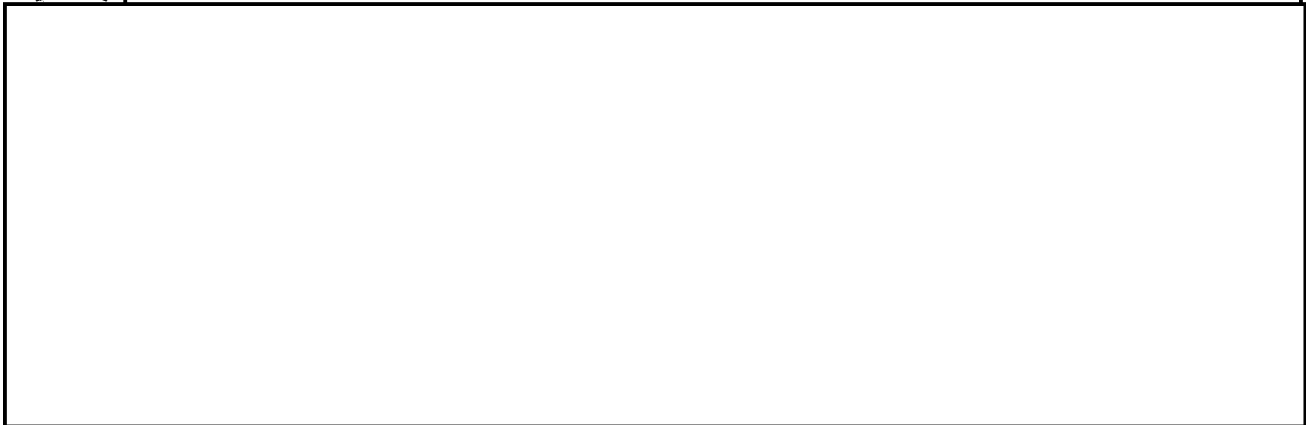


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7.2. (U) Presidential Policy Directive 28

~~(S//NF)~~ [Redacted]

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7.3. (U) Legal Standard to Request FISA 702 Coverage

(U) ~~(S//NF)~~ [Redacted]

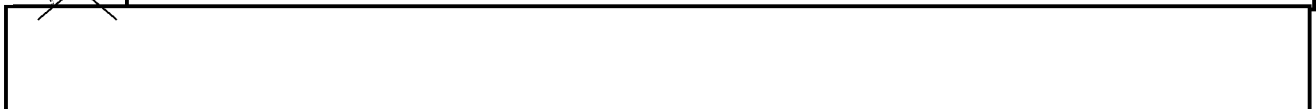
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7.3.1. (U//~~FOUO~~) Foreignness Determination

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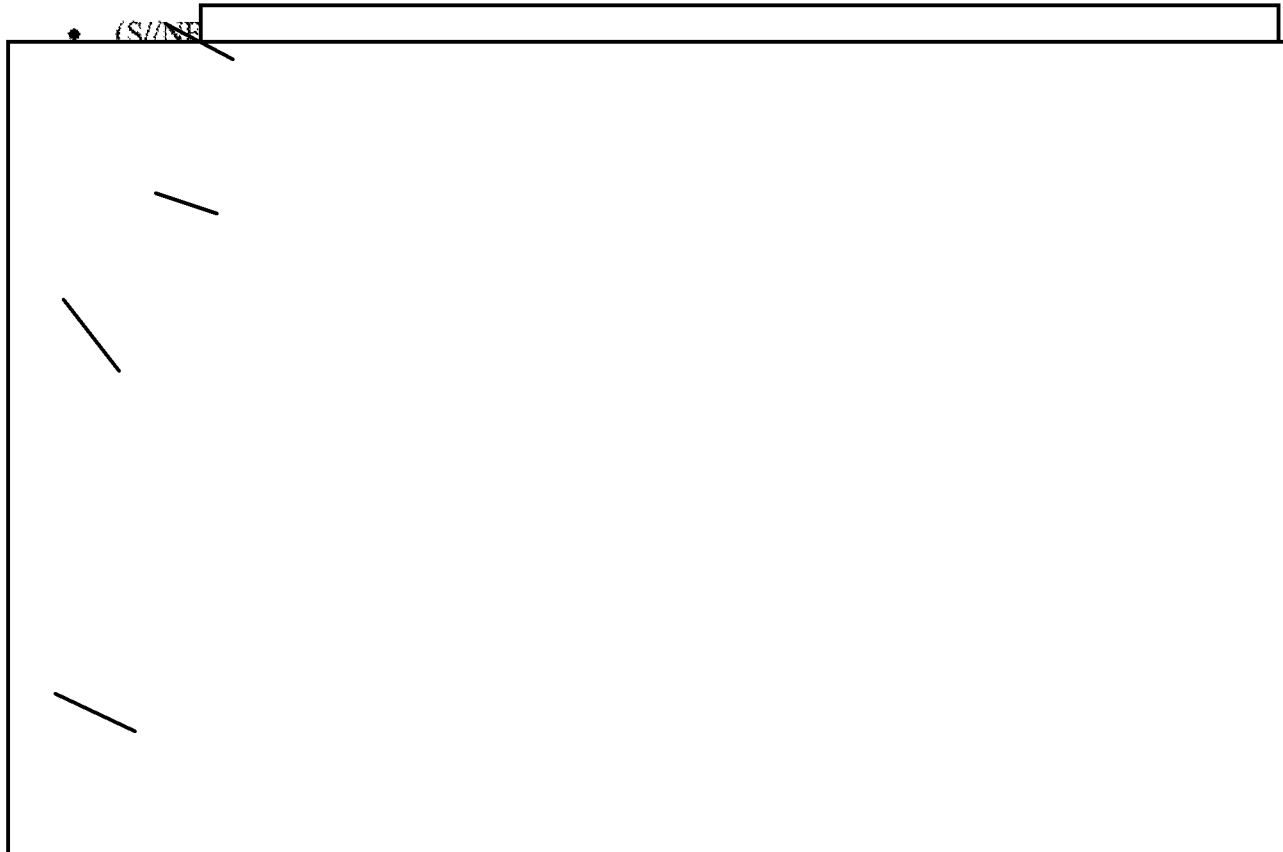


²⁹ (U) The FISA statute, 50 U.S.C. § 1801(i), defines the term "U.S. person" as:

- (U) A U.S. citizen.
- (U) An alien lawfully admitted for permanent residence ("permanent resident" or "green card holder").
- (U) An unincorporated association a substantial number of members of which are U.S. citizens or permanent residents.
- (U) A U.S. corporation.

(U) The term "U.S. Person" does not include U.S. corporations or associations that are "foreign powers," as defined in 50 U.S.C. § 1801(a)(1)-(3) (i.e., those that are foreign governments or components, factions of a foreign nation that are not substantially composed of U.S. persons, or entities that are openly acknowledged by a foreign government to be directed and controlled by such foreign governments).

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7.3.2. (U//~~FOUO~~) Certifications



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7.3.3. (U//~~FOUO~~) Prohibitions

7.3.3.1. (U//~~FOUO~~) Reverse Targeting

(U//~~FOUO~~) "Reverse targeting" is defined as targeting a non-USPER who is reasonably believed to be located outside of the United States with the true purpose of acquiring communications of either (1) an USPER or (2) any individual reasonably believed to be located inside of the United States with whom the non-USPER is in contact. The FISA statute, 50 U.S.C. § 1881(a)(b)(2), and *The Attorney General's Guidelines for the Acquisition of Foreign Intelligence Surveillance*

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(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
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Information Pursuant to the Foreign Intelligence Surveillance Act of 1978 (as amended)
expressly prohibit reverse targeting.

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7.4.1. (U//~~FOUO~~) Required Database Access

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(U//~~FOUO~~) FBI personnel seeking access to

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In addition, these personnel must complete the OGC-provided training on the changes made to the in May 2016.

(U//~~FOUO~~) All users, including supervisors and legal reviewers, also must successfully complete the prior to gaining access to. Additionally, these users must complete refresher training every two years.

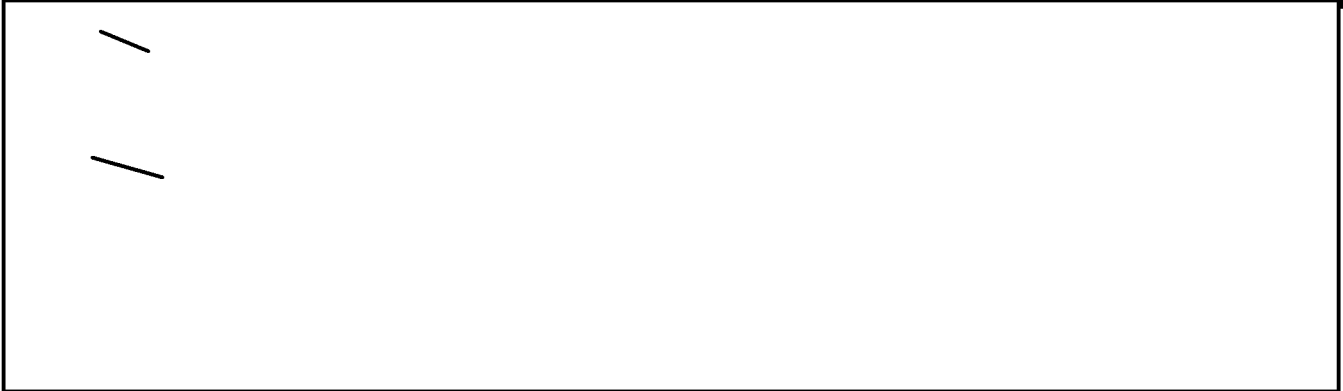
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(U//~~FOUO~~) After completing the required course(s), a user must submit a System Access Request (SAR) via the Enterprise Process Automation System (EPAS). EPAS will route the request to which will create a account for the user.

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(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
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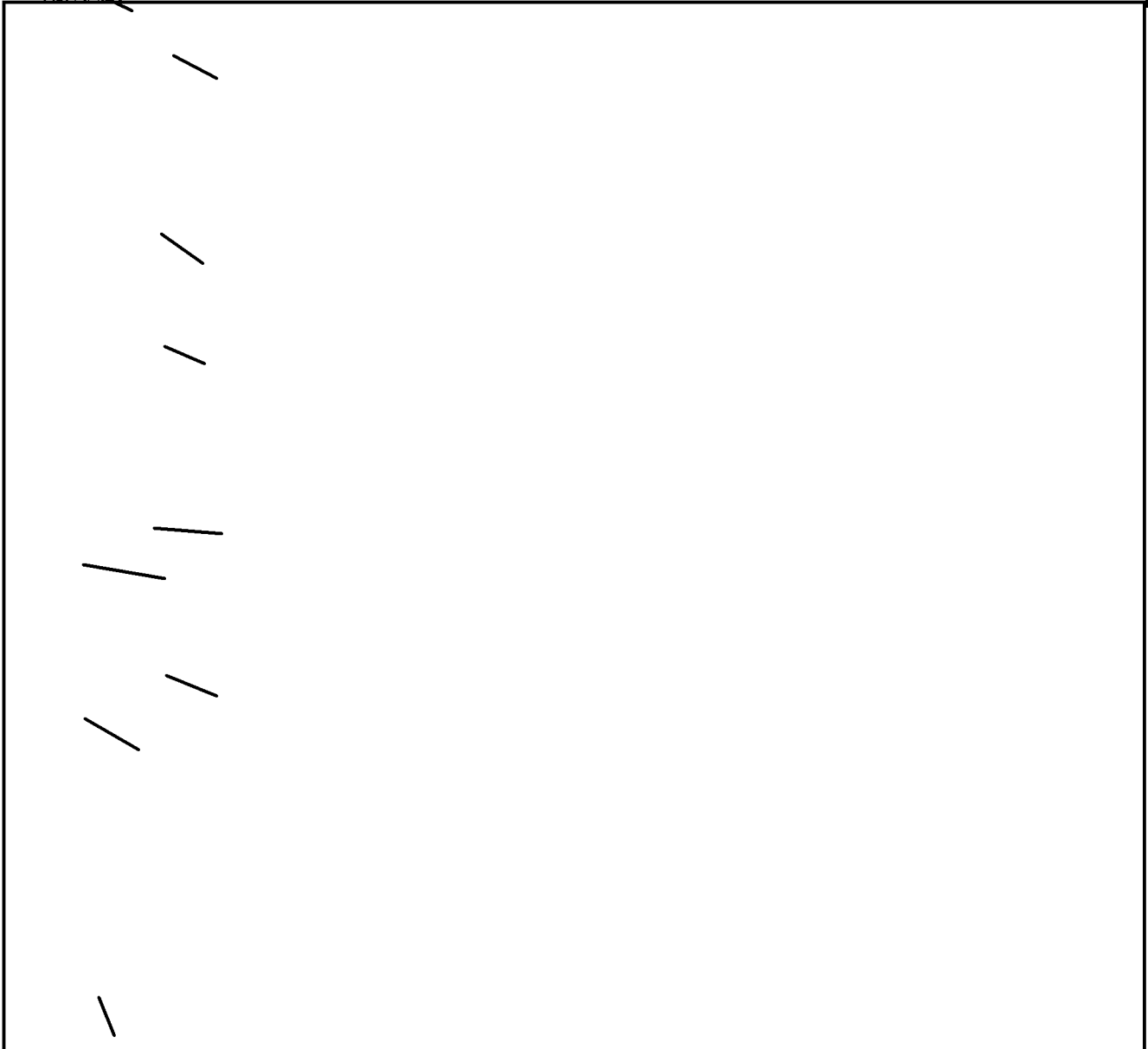
7.4.2. (S//~~NF~~)



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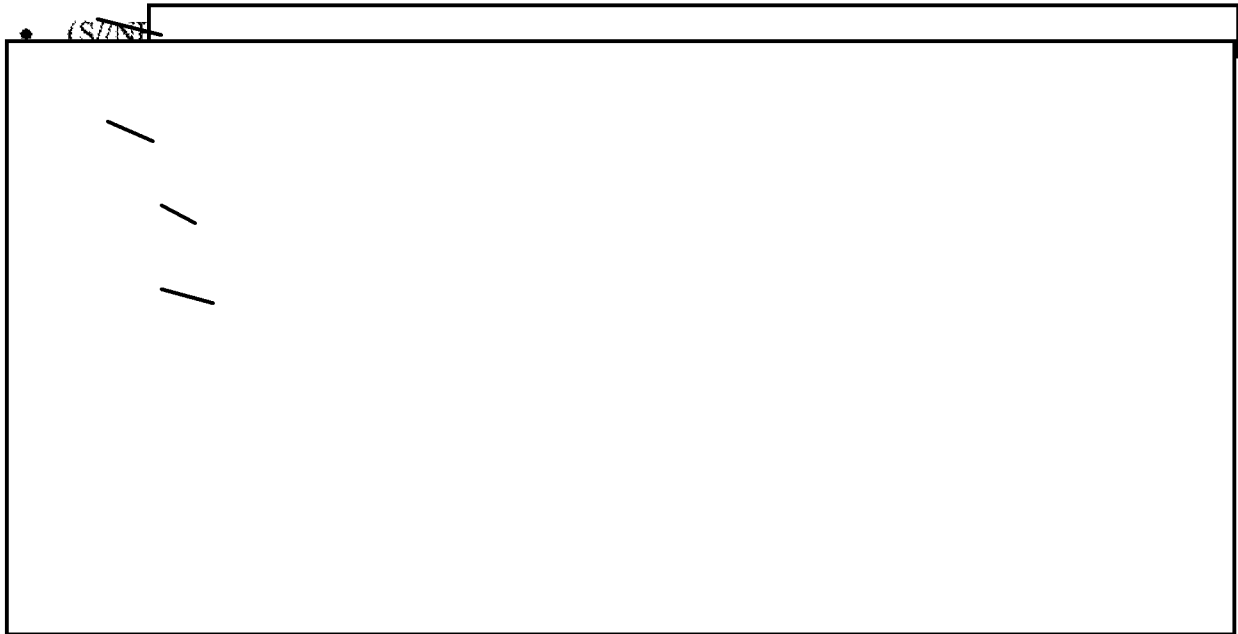
7.4.3. (U//~~FOUO~~) Required Subfiles

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7.11.3. (U) “Roamer” Provision Exception

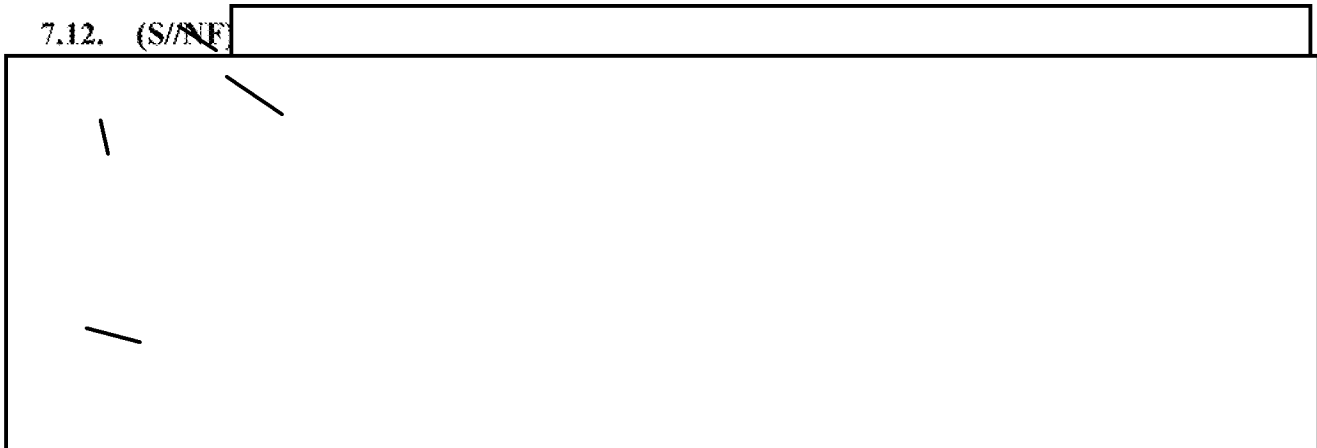
(U) Notwithstanding the other provisions of this section, pursuant to the U.S.A. Freedom Act (50 U.S.C. § 1805(f)), the director or head of another IC element may approve the continued targeting of a non-USPER previously believed to be located outside the United States for up to 72 hours from the time that the non-USPER is reasonably believed to be located inside the United States, provided that the director or head:

- (U) Reasonably determines that a lapse in the targeting of the non-USPER poses a threat of death or serious bodily harm to any person.
- (U) Notifies the AG of the intent to continue targeting.
- (U) Requests, as soon as practicable, the employment of emergency ELSUR or physical search as described in 50 U.S.C. § 1805(f).

(U) Any information obtained pursuant to this authority must comply with the minimization requirements contained in 50 U.S.C. § 1805(f). Any case manager, responsible party, or designee seeking to continue collection under this provision must immediately notify and consult with NSCLB.

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7.12. (S//NF)



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7.13.4. (U//~~FOUO~~) FISA Caveat and Special Markings for FISA 702 Material

(U//~~FOUO~~) Any document or other media containing FISA 702-acquired information must include the standard FISA caveat, as set forth in subsection 7.13.8.

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(U//~~FOUO~~) For policies and procedures governing the dissemination of FISA information to foreign governments, consult the *Foreign Dissemination of Classified Information Policy Guide*, 07B3PG.

7.13.9. (S//NF)

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8. (U) Electronic Surveillance: Special Considerations

8.1. (S//~~NF~~)

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8.2. (S//~~NF~~)

8.2.1. (U//~~FOUO~~) Scope

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9. (U//~~FOUO~~) Business Records: Special Considerations

9.1. (S//NF)

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9.3. (U//~~FOUO~~) Review for Overproduction

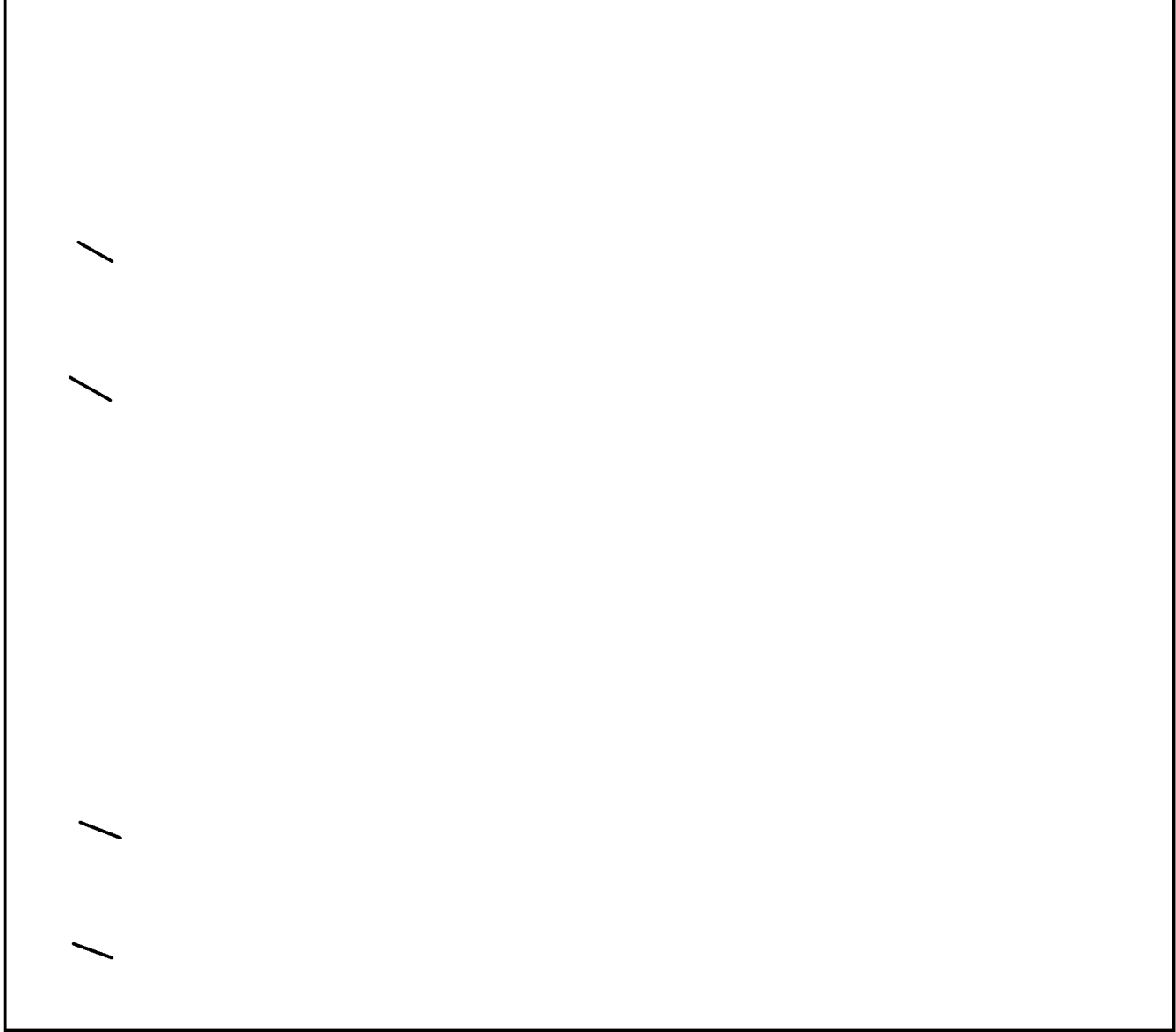
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9.4. (U//~~FOUO~~) Marking and Storage of FISA Business Records Returns

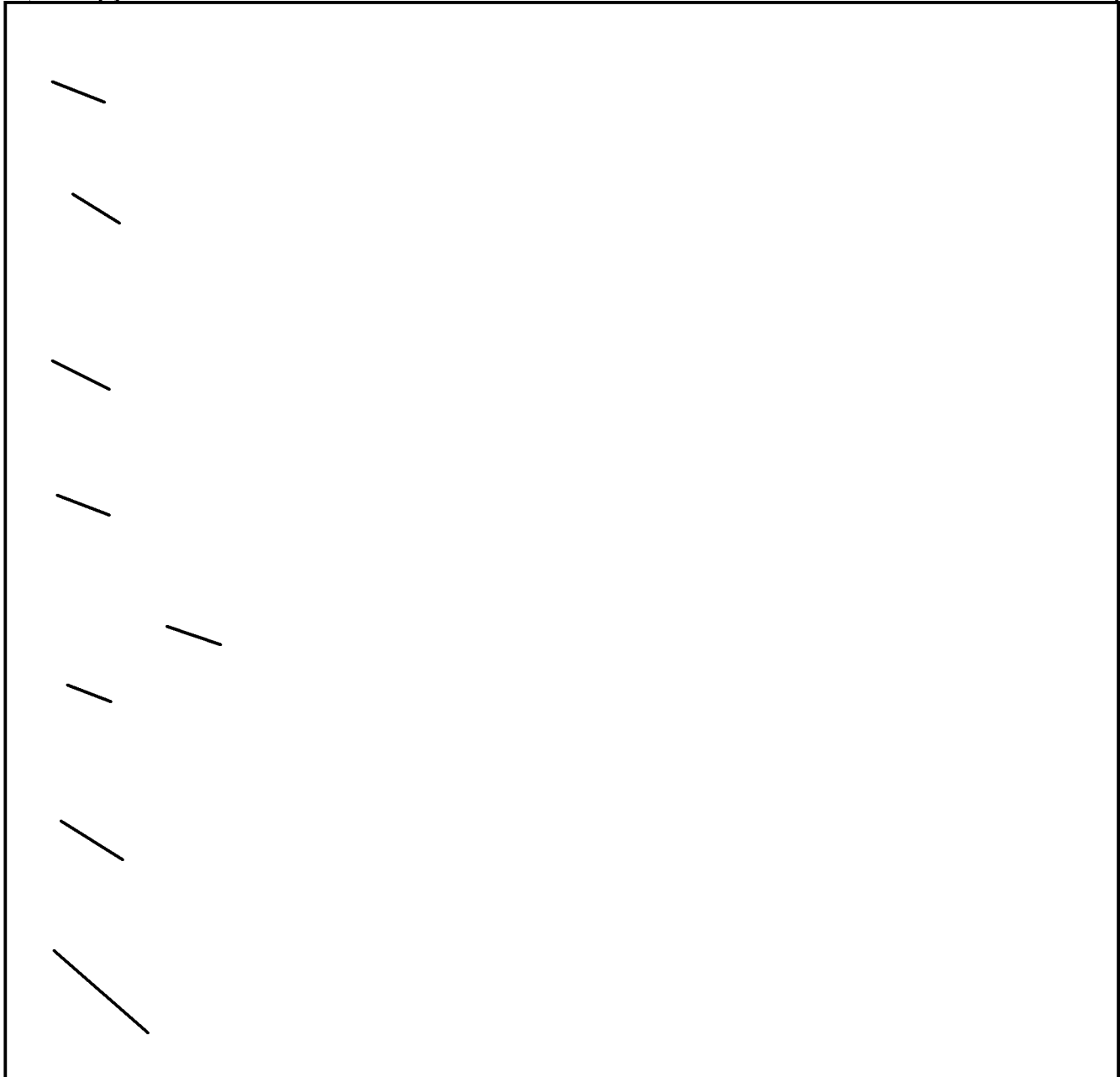
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³³ For example, a bank statement covering time periods outside the dates provided by the BR would not be an overproduction because it is a preexisting document, and that is how the bank keeps its records.

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(U//FOUO) In addition, digital evidence must be handled according to the Digital Evidence Policy Guide, 0830PG.

9.4.2. (S//NF)



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10. (U//~~FOUO~~) Physical Searches: Special Considerations

10.1. (U//~~FOUO~~) Handling of Information/Items Obtained Pursuant to FISA Physical Search

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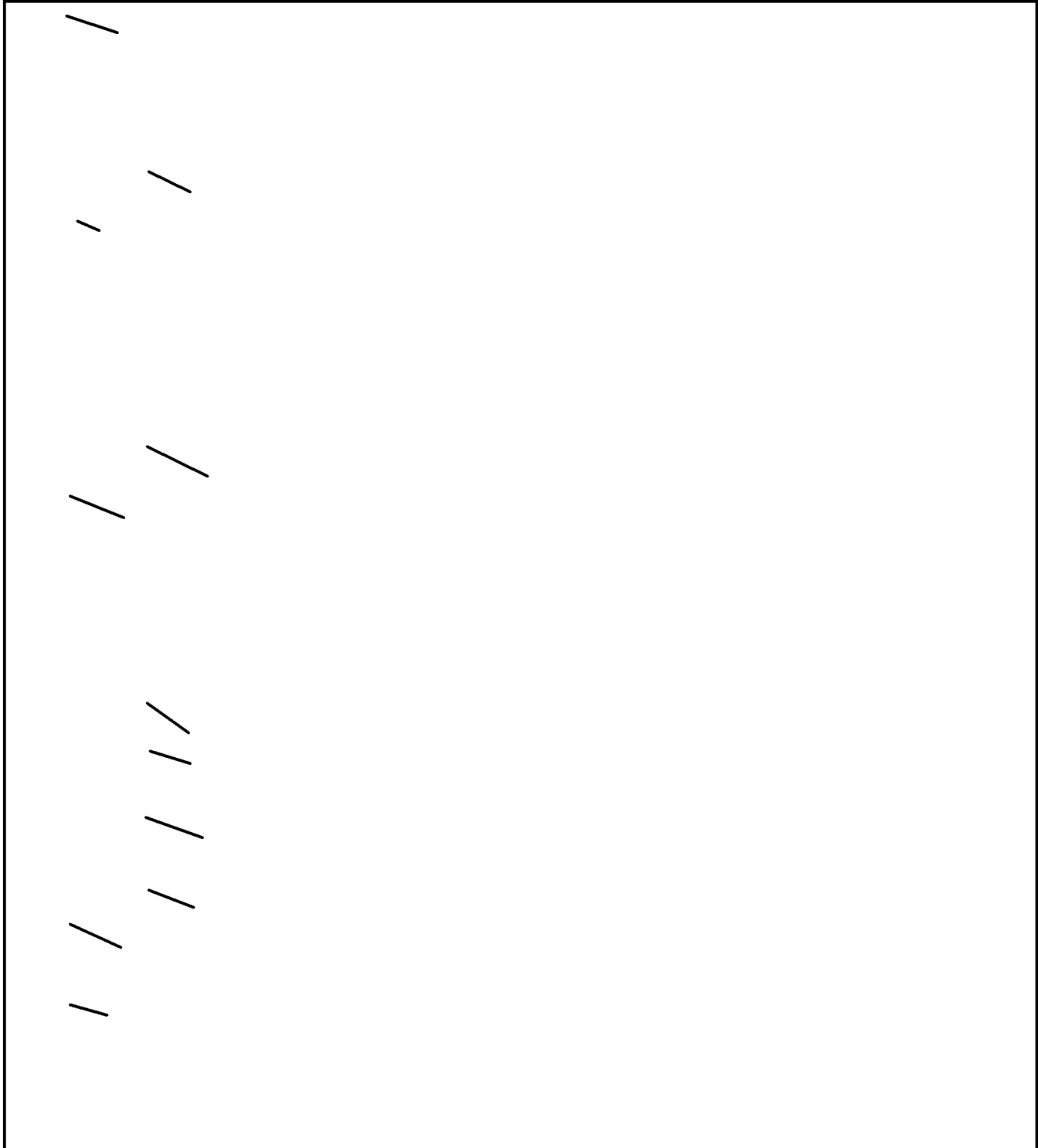
(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
Standard Minimization Procedures Policy Guide



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(U//~~FOUO~~) In addition, digital evidence will be handled according to the Digital Evidence Policy Directive and Policy Guide (0639DPG).

10.1.3.



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12. (S//NF)

12.1. (U) General Principles

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12.2. (U//~~FOUO~~) Dissemination

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13. ~~(S//NF)~~ Overcollection of FISA Material

(U//~~FOUO~~) A FISA overcollection occurs when information is acquired outside the scope of a FISA order, FISA warrant, or other FISA authority (i.e., Section 702 or 705(b) of the FISA Amendments Act). In the business record context, an overcollection also may be called an “overproduction.”

(U//~~FOUO~~) This policy only applies to information acquired pursuant to FISA authority.³⁵ It does not apply to overcollections resulting from NSLs or criminal process such as grand jury or trial subpoenas.

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13.1. (U) Preventing FISA Overcollections

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³⁵ ~~(S//NF)~~

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(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
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- (U//~~FOUO~~) [Redacted]
[Redacted]

(U//~~FOUO~~) [Redacted]

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13.2. (U) Identifying FISA Overcollections

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[Redacted]

(U//~~FOUO~~) [Redacted]

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(U//~~FOUO~~) [Redacted]

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13.3. (U) Notifications

(U//~~FOUO~~) [Redacted]

13.3.1. (U) Initial Notification

(U//~~FOUO~~) [Redacted]

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(U//~~FOUO~~) [Redacted]

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(U//~~FOUO~~) [Redacted]

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(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
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13.3.2. (U) Notification of Destruction of Overcollection

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13.4. (U) Reporting Potential IOB Matters

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13.5. (U) Handling of Overcollected Material

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13.6. (U) Sequestration

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13.7. (U) Destruction

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13.7.1. (U) Authorization for Destruction

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[Redacted]

13.7.2. (U) Method of Destruction

13.7.3. (U) Destruction of Classified Materials

(U//FOUO) The destruction of FISA overcollections must conform with current FBI policies, as articulated in the PD 0506D, *Destruction of Classified and Sensitive Material*, for the destruction of classified material. Any questions with regard to the proper destruction of classified material should be directed to the local FO security officer.

(U//FOUO) FO SSAs are responsible for ensuring that subordinates follow the policies for purging overcollected FISA-acquired information and keeping written records of approvals in the appropriate electronic and paper case files.

13.7.3.1. (U) Destruction of Material in Field Offices

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13.7.3.2. (U) Destruction of Materials at FBIHQ

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13.7.3.3. (U) Destruction of Materials in the Possession of the NSD OI

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13.8. (U) Retrieving Overcollected Information That Has Been Disseminated

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13.9. (U) Technical Assistance

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13.10. (U) Other Assistance

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14. (U//~~FOUO~~) Accuracy

14.1. (U//~~FOUO~~) Paramount Importance of Accuracy

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14.2. (U//~~FOUO~~) Scope

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14.3. (U//~~FOUO~~) Procedures to Ensure the Accuracy of FISA Applications

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Appendix A: (U) Emergency Disclosure of FISA-Acquired Information to Other Government Officials

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Appendix B: (U) List of Higher Authorities

(U//FOUO) Below are links to various higher or related legal authorities referenced throughout this PG:

- (U) *Standard Minimization Procedures for FBI Electronic Surveillance and Physical Search Conducted Under the Foreign Intelligence Surveillance Act* (signed May 17, 2016, effective August 15, 2016)
- (U) • ~~(S//NF)~~ *Minimization Procedures Used by the Federal Bureau of Investigation in Connection with Acquisitions of Foreign Intelligence Information Pursuant to Section 702 of the Foreign Intelligence Surveillance Act of 1978, as amended* (November 13, 2013)
- (U) *Federal Bureau of Investigation Standard Minimization Procedures for Tangible Things Obtained Pursuant to Title V of the Foreign Intelligence Surveillance Act* (March 7, 2013)
- (U) *Gates Procedures* (March 29, 2013)




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Appendix C: (U) Final Approvals

POLICY TITLE: <i>Foreign Intelligence Surveillance Act and Standard Minimization Procedures Policy Guide</i>	
Date of Last Renewal	N/A
Publish Date	2016-08-11
Effective Date	2016-08-11
Review Date	2019-08-11
APPROVALS	
Sponsoring Executive Approval	Trisha B. Anderson Deputy General Counsel
General Counsel Approval	James A. Baker General Counsel
Final Approval	Andrew G. McCabe Deputy Director

(U//~~FOUO~~) Foreign Intelligence Surveillance Act and
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Appendix D: (U) Contact Information

Office of the General Counsel		
National Security and Cyber Law Branch		
		J. Edgar Hoover Building 935 Pennsylvania Avenue, NW Washington, DC 20535 

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