

The Department of Justice Office of the Inspector General (OIG) today released a report examining the Federal Bureau of Investigation's (FBI) progress in implementing recommendations from prior reports involving the use of national security letters (NSL) and the use of NSLs from 2007 through 2009. In sum, the OIG review found that the FBI and the Department have fully implemented 31 of 41 recommendations made in our prior reports on these topics, and 10 that require additional information or attention. In addition, because we identified challenges in certain areas during our compliance review, we made 10 new recommendations to the FBI and the Department to further improve the use and oversight of NSLs.

NSLs are written directives that the FBI issues to third parties to obtain non-content telephone and electronic communication records, financial records, and consumer credit information. Today's report is a follow-up to the OIG's first and second reports on the FBI's use of NSLs after the enactment of the *USA Patriot Act* in 2001. In those reviews, the OIG found repeated instances of the FBI's misuse of NSL authorities and discovered the FBI's practice of issuing so-called exigent letters to obtain telephone records, instead of using NSLs or other legal process. The OIG conducted an in-depth review of the FBI's use of exigent letters and other informal methods to obtain telephone records and issued a separate report on that topic in January 2010.

The report issued today found that the FBI and the Department have devoted considerable resources toward implementing the recommendations made in our past reports and taking additional measures to improve the FBI's compliance with NSL requirements. We determined that the FBI and the Department have fully implemented 23 of 28 recommendations from our first and second NSL reports by creating new internal controls, providing guidance and training to FBI personnel, establishing new record-keeping practices, and conducting periodic reviews of NSL use. Our compliance review of NSLs issued by the FBI in 2008 and 2009 demonstrated that these efforts have resulted in substantial improvement in the FBI's compliance with NSL requirements.

Our review found that five recommendations from our prior NSL reports require additional information or attention to address the accuracy of information entered into the FBI's web-based NSL workflow and database (the "NSL subsystem") and improve the FBI's record-keeping practices. Our report identifies steps the FBI should take to address these issues.

In addition, during our compliance review, the OIG identified compliance challenges in certain areas with regard to NSLs issued in 2007 through 2009, including FBI personnel's identification of information the FBI is not authorized to receive in response to an NSL, documentation of the justification for an NSL request, and adherence to the FBI's record-keeping policies. Our report makes new recommendations to help the FBI and the Department address these challenges.

The OIG's report also describes other noteworthy issues related to the FBI's use of NSLs. These issues include the scope of the phrase "toll billing records" in the *Electronic Communication Privacy Act* (ECPA) NSL statute. The term is undefined, and our review found that it is unclear whether all of the information the FBI receives in response to NSL requests for toll billing records falls within the scope of the statute. Our report recommends that the FBI and the Department revive their efforts to bring about a legislative amendment that defines the phrase "toll billing records."

Our review found that the FBI and the Department have fully implemented 8 of 13 recommendations made in the OIG's 2010 report on the use of exigent letters and other informal practices related to ECPA-protected telephone records. Five recommendations require additional effort and attention from the FBI or the Department, three of which concern training and guidance on certain aspects of the ECPA and the remaining two concern topics that the FBI determined are classified or law enforcement sensitive.

The unclassified report released publicly today contains information that is redacted because the FBI determined the information is classified, law enforcement sensitive, or "for official use only."

In addition, in a few instances, information has been redacted because the FBI has asserted the information is protected from disclosure by the attorney-client privilege, attorney work product doctrine, or deliberative process privilege. The OIG disagreed with some of these assertions. Further, certain information concerning the Intelligence Oversight Board, a component of the President's Intelligence Advisory Board within the Executive Office of the President (PIAB), has been marked "for official use only" by the PIAB. We disagree with these markings as well.

The classified report, containing only those redactions of information the FBI asserted is protected from disclosure by the attorney-client privilege or attorney work-product doctrine, has been provided to the Director of National Intelligence, the Intelligence Oversight Board, and Congress. The full classified report, without redactions, has been provided to the Department and the FBI.

The unclassified version of the report released today, including an executive summary outlining our findings and recommendations, can be found at the following link: <http://www.justice.gov/oig/reports/2014/s1408.pdf>.