



U.S. Department of Justice

Office of Legislative Affairs

Washington, D.C. 20530

July 6, 2007

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Please find enclosed responses to questions for the record, which were posed to Attorney General Alberto Gonzales following his appearance before the Committee on April 19, 2007. The hearing concerned Department of Justice Oversight. The Department is working expeditiously to provide the remaining responses, and we will forward them to the Committee as soon as possible.

The Office of Management and Budget has advised us that from the perspective of the Administration's program, they have no objection to submission of this letter.

We hope this information is helpful. Please do not hesitate to contact this office if we may be of further assistance with this, or any other matter.

Sincerely,

A handwritten signature in black ink that reads "Richard A. Hertling".

Richard A. Hertling
Principal Deputy Assistant Attorney General

Enclosures

cc: The Honorable Arlen Specter
Ranking Minority Member

Department of Justice Responses to
Questions for the Record posed to
Attorney General Alberto Gonzales
Senate Judiciary Committee
Oversight Hearing April 19, 2007
(Part 1)

Leahy 1 **I am very concerned about the Department's lack of competence in issuing National Security Letters (“NSLs”) to obtain sensitive information about ordinary Americans. Recently, the Justice Department's Inspector General reported on a pattern of unacceptable abuses of NSLs by the FBI, where time and time again the FBI did not follow the law, or even its own rules, in obtaining sensitive personal information about thousands of ordinary Americans and others. According to the Inspector General's report, one in every five of the NSL files reviewed contained violations of the law, and more than half of the NSLs reviewed did not even meet the FBI's own standards. Please state when you first became aware of the widespread abuses of NSLs at the FBI.**

ANSWER: Prior to the public release of the Inspector General’s report on March 9, 2007, the Office of the Inspector General provided drafts of the report for classification and factual review. Upon learning of the findings contained in the draft report, the Attorney General was concerned, promptly ordered a detailed review of report’s findings and recommendations, and directed senior Department officials, including officials at the FBI, to address the shortcomings identified by the Inspector General’s report.

Leahy 2 **Please describe what, if any steps you undertook to address and stop these abuses.**

ANSWER: NSLs are, as the IG found, an “indispensable tool” in the Department of Justice’s counterterrorism efforts. They are, however, a tool that must be used responsibly and in a manner consistent with applicable laws, regulations, and policies. To ensure that this vital tool is used appropriately, the Attorney General has ordered broad and significant efforts within the Department of Justice, including the FBI, to fully address the issues raised by the Inspector General's report.

First, the Attorney General has ordered the National Security Division (NSD) and the Department's Chief Privacy and Civil Liberties Officer to work closely with the FBI to take corrective actions, including implementing all of the recommendations made by the Inspector General, and to report directly to him on a regular basis and advise whether any additional actions need to be taken. The Attorney General has also asked the Inspector General to report back to him in July on the FBI's implementation of the recommendations made in the IG’s report.

Second, the FBI Director ordered a one-time review of ten percent of all national security cases in the 56 FBI field offices and headquarters. The FBI is currently reviewing and assessing information from this review and will brief Congress on its

findings. At the Attorney General's direction, the National Security Division has also begun conducting regular National Security Investigation reviews at FBI field offices, working in conjunction with the FBI. These regular reviews represent a substantial new level and type of oversight of national security investigations by career Justice Department lawyers with years of intelligence experience. This enhanced oversight capability will allow the NSD to more fully evaluate FBI national security investigations and help ensure their compliance with applicable legal requirements and guidelines.

Third, with respect to the use of so-called "exigent letters," the FBI has issued a Bureau-wide directive prohibiting the use of the type of letters described in the Inspector General's report. Following discussions between the Office of the Inspector General (OIG) and the FBI, the OIG and the FBI decided to conduct a joint investigation, led by the OIG, into the FBI's use of exigent letters. The joint review will examine whether there has been any violation of criminal law, administrative misconduct, or improper performance of official duties with regard to the use of these exigent letters. In addition, the Attorney General has asked an Associate Deputy Attorney General and the Justice Department's Office of Professional Responsibility to examine the role FBI attorneys played in the use of exigent letters.

Fourth, the Attorney General has directed the National Security Division to begin reviewing all violations that the FBI refers to the Intelligence Oversight Board (IOB) in order to identify recurring problems and to assess the FBI's response to such violations. This review will focus on whether the IOB referrals suggest that a change in policy, training, or oversight mechanisms is required. The Attorney General has instructed the NSD to report to him semiannually on such referrals and to inform the Department's Chief Privacy and Civil Liberties Officer of any referral that raises serious civil liberties or privacy issues. The Department of Justice also consulted and obtained input from the Privacy and Civil Liberties Oversight Board.

Fifth, the FBI is already taking a number of steps to improve the accuracy of the reporting of NSL statistics to Congress. Last year, the FBI began developing a new NSL tracking database and plans to deploy the system to one field office for testing in July 2007. The system is expected to be deployed to all field offices by the end of CY 2007. FBI field offices are conducting hand counts of NSLs to compare against the information contained in the current database. The FBI has corrected deficiencies in its current database to reduce the potential for error, and is working to correct any known errors in the data.

Sixth, the Attorney General has asked the NSD to consult with the FBI as it reviews and makes any necessary revisions to existing FBI guidance regarding NSLs. The FBI has issued comprehensive guidance throughout the Bureau concerning the proper use of NSLs. This comprehensive guidance was been briefed prior to being finalized both to the Congress and to privacy and civil liberties groups. A number of their suggestions were incorporated into the guidance. The Attorney General has also instructed the Department's Executive Office for United States Attorneys to review its existing training materials and guidance regarding terrorism investigations and

prosecutions in order to ensure that NSLs are properly described in such materials. In addition, the FBI has initiated the development of a new training course on the use of NSLs. Once this course has been fully developed, the FBI will issue a directive mandating training for all Special Agents-in-Charge, Assistant Special Agents-in-Charge, Chief Division Counsel, and all appropriate FBI agents and analysts. While this course is being developed, the FBI's Office of General Counsel has instructed its National Security Law Branch attorneys that any time they are in a field office, no matter the reason for their visit, they must schedule mandatory NSL training.

Finally, the Attorney General and the Director of National Intelligence (DNI) jointly directed the Department of Justice's Privacy and Civil Liberties Office and the Office of the DNI to convene a working group to examine how NSL-derived information is used and retained by the FBI, and that working group has been convened and has begun its examination.

These steps, along with others that the Department of Justice is taking, demonstrate the Attorney General's commitment to ensure that National Security Letters are used responsibly as the Department, including the Bureau, continues its efforts to protect the Nation during the War on Terror.