



# **National Security Letters**

**Presented to the Legal Advisor Certification In-Service  
Dumfries, Virginia**

**September 15, 2011**

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# Roadmap to NSL Training

- What are National Security Letters?
- What you CAN do / CANNOT do
- Legal Standard to Issue an NSL = “Relevance”
- NSL Subsystem to 
  - 
  -
- What Must the NSL Include?
- What Must the EC Include?
- Legal Review is Required
- Who May Approve NSLs?
- Electronic Service and Electronic Receipt of Results
- Overproduction
- Electronic Communications Transactional Records
- Dissemination of NSL Information
- Emergencies, “Media/News Organization NSL,” Reporting Requirements, NSL Payments, and miscellaneous information

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# What are National Security Letters?

- Letter sent to a third party (telephone companies, Internet service providers, consumer credit reporting agencies, and financial institutions) directing the recipients to turn over certain customer records and similar information.
- NSLs are comparable to administrative subpoenas.
- FBI issues NSLs without court approval. However, the recipient of an NSL may challenge it in court.
- NSLs are often the first techniques used in investigations.

# What are National Security Letters?

The legal authority for NSLs is derived from four statutes:

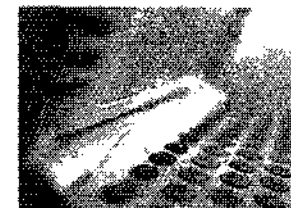
1. Right to Financial Privacy Act (RFPA): customer's or entity's financial records
2. Electronic Communications Privacy Act (ECPA): records of telecommunications providers (phone and e-mail records)
3. Fair Credit Reporting Act (FCRA): limited credit information (§ 1681u) and full credit reports (§ 1681v)
4. National Security Act of 1947: records related to finances and travel of government employees, obtained in investigations involving alleged leaks of classified information by such employees



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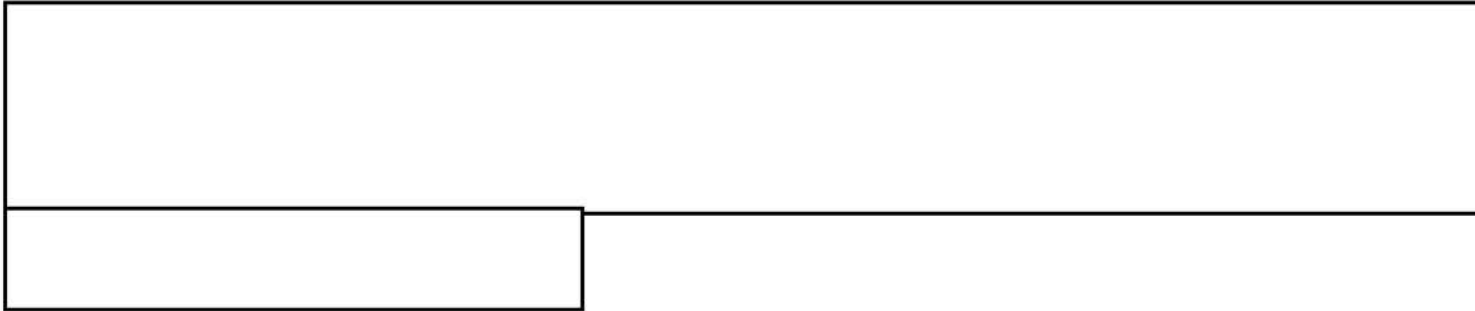


# Legal History of NSL

- In 1976, the Supreme Court held that an individual's bank account records did not fall within the protection of the Fourth Amendment prohibition on unreasonable searches and seizures.
- Congress responded by passing several laws protecting various types of records, but Congress included exceptions providing some access to statutorily protected records for CI purposes. Similar statutory protections were also enacted for electronic communications transactional records and credit bureau records.
- As with financial records, these later statutes also included exceptions for access to records relevant to CI investigations. These “exceptions” comprise the authority for NSLs, which are used to compel the production of certain types of records.

# NSLs – What you CAN Do

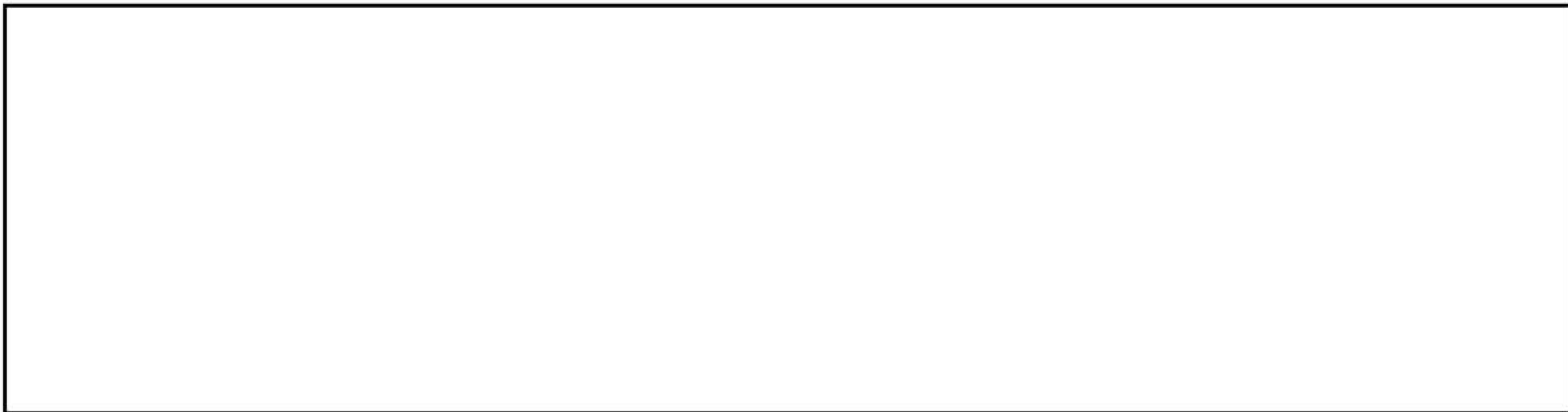
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- FBI issues NSLs without court approval. However, the recipient of an NSL may challenge it in court.

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# NSLs – What you CANNOT Do

- [REDACTED]
- NSLs cannot be used in domestic terrorism cases, general criminal investigations, [REDACTED]  
[REDACTED]
  - They are called National Security Letters because they are in national security cases.
- NSLs cannot be used to acquire the content of electronic communications, e.g., e-mail.

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# Legal Standard to Issue an NSL = “Relevance”

- Information sought must be relevant to an
  - [REDACTED]
  - National security investigation (terrorism or counterintelligence investigation)
- For FCRA § 1681v (full credit report), [REDACTED]  
[REDACTED]
- [REDACTED]
- Use the least intrusive means to obtain the information

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# What is “Relevance”?

- The information sought must be relevant to the investigation.

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[REDACTED]

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- Information is relevant if has significance and demonstrable bearing on the matter at hand. (Webster’s Dictionary)
- Information is relevant if it affords evidence tending to prove or disprove the matter at issue. (Webster’s Dictionary)

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(DIOG § 18.6.6.)

# Examples of Relevance

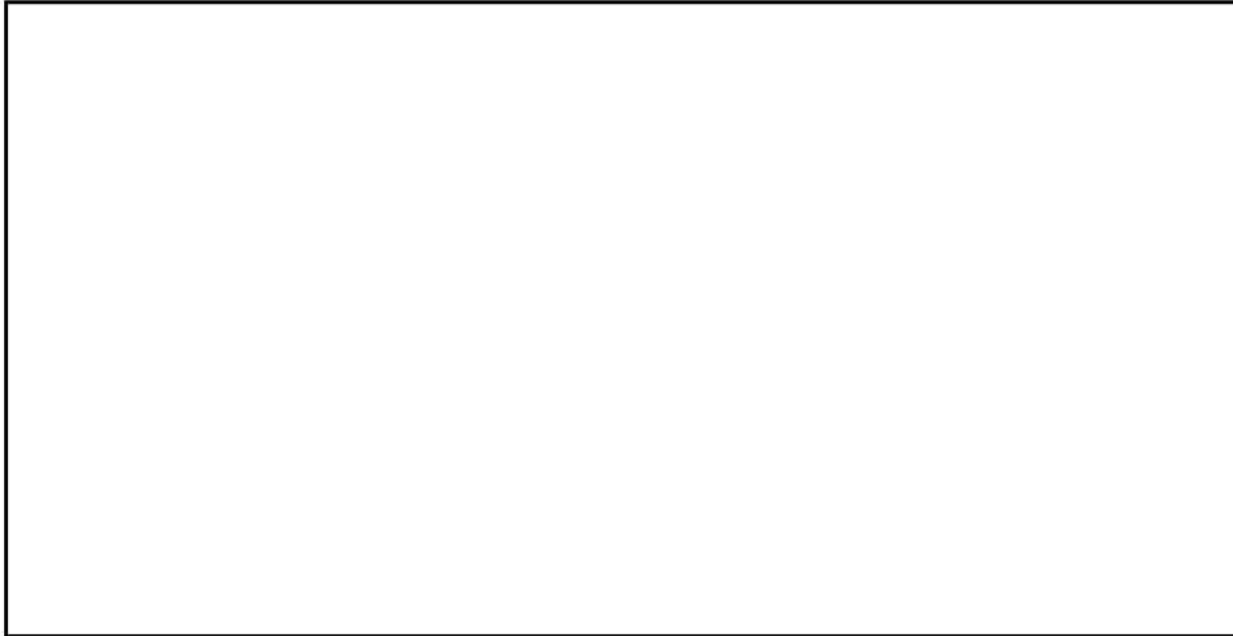
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# Some Important Considerations

- What the FBI cannot obtain through an NSL



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- Will the NSL be served on the appropriate type of recipient?
  - RFPA:
  - ECPA:



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# NSL Scenarios

You are Supervisory Special Agent (SSA) [redacted] working in the Chicago field office on a Friday afternoon when your telephone rings. A subordinate, SA [redacted] is working on a few cases and is asking for NSLs on a number of subjects. You have to prepare NSLs for the SAC's signature.

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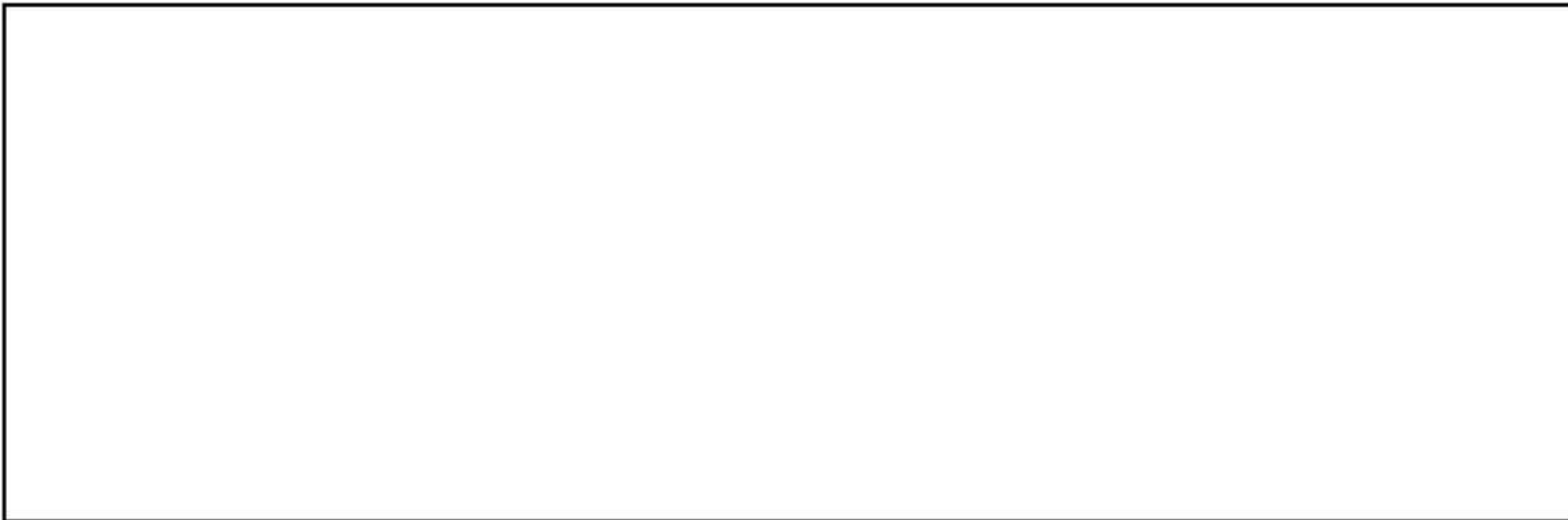
# NSL Scenario #1


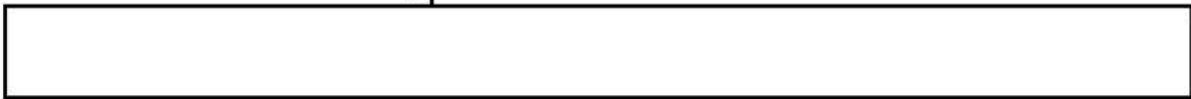
- SA [redacted] wants [redacted]  
[redacted]  
[redacted] May you  
approved the NSL?
- Answer: Yes. These records are relevant to the investigation

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# NSL Scenario #2

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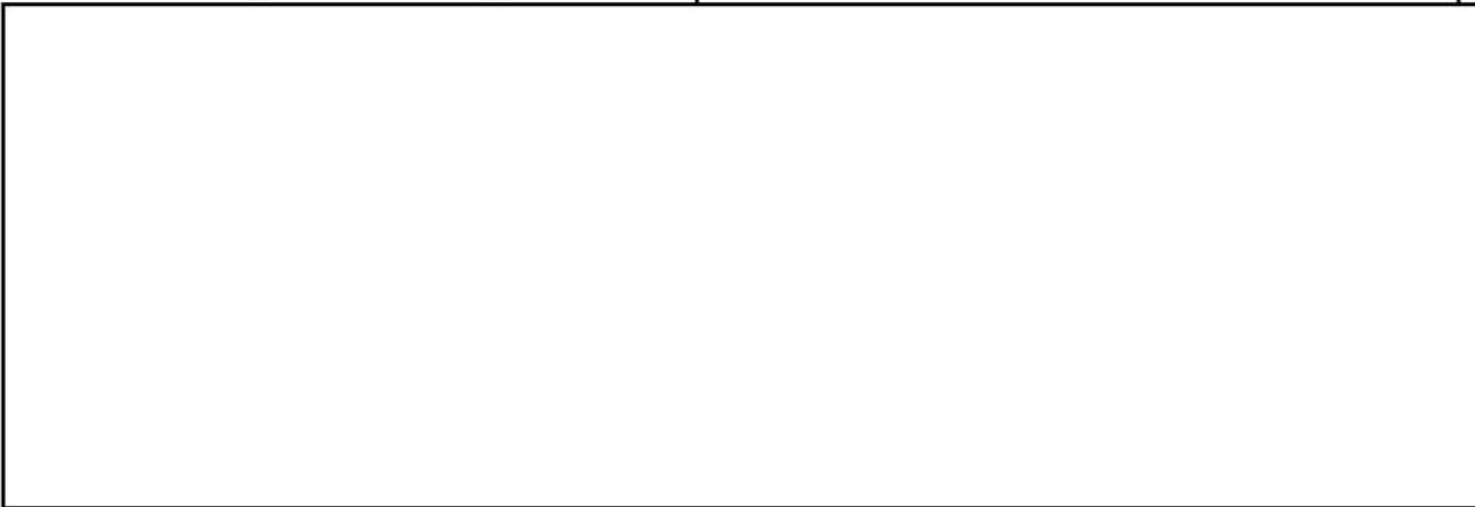
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- Answer: Yes,   
 or is  
otherwise relevant to the investigation, then the  
telephone records are relevant to the investigation.

# NSL Scenario #3

- After speaking with 

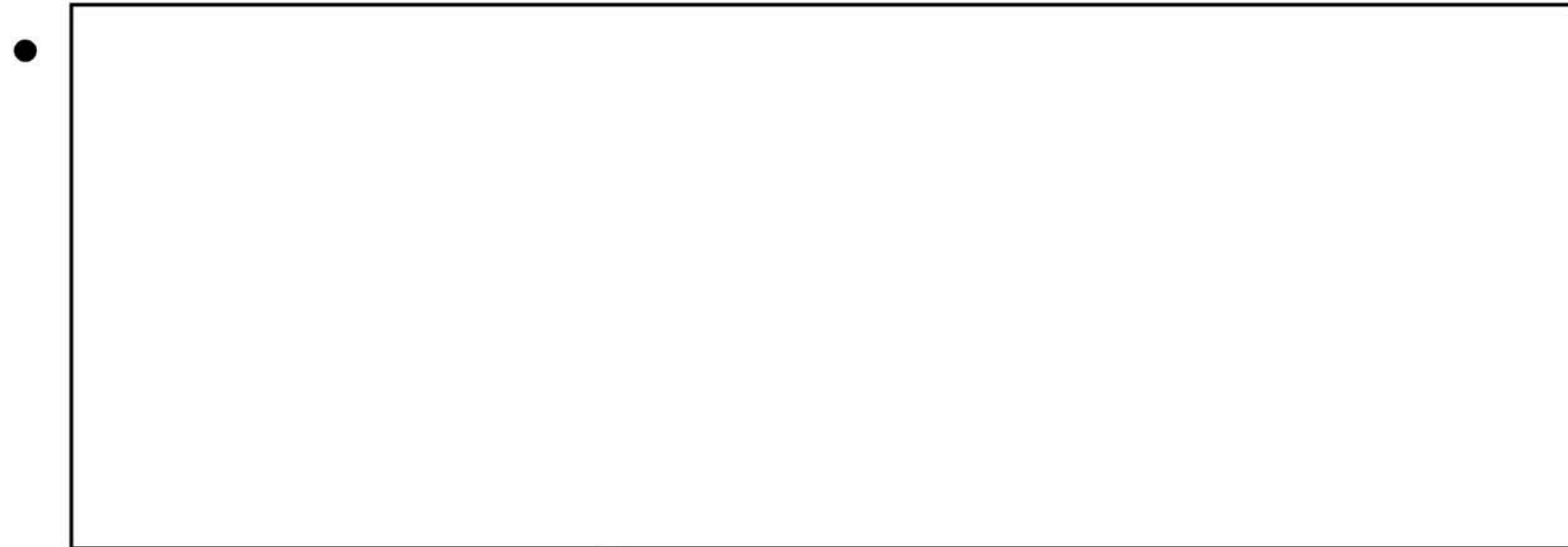
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- Answer: No. NSLs may not be issued if there is no reason to believe the information may be relevant to the investigation.

# NSL Scenario #4

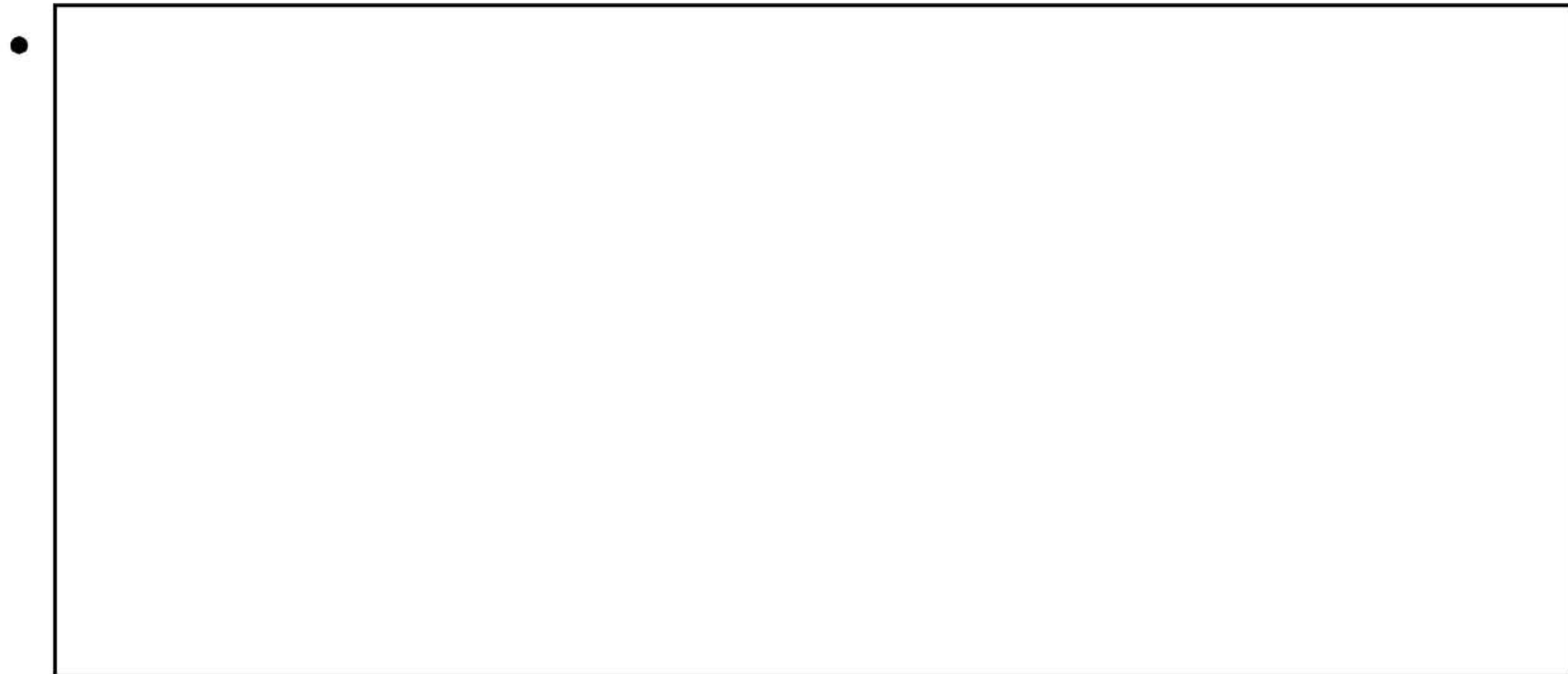
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- Answer: No. NSLs may not be used in domestic terrorism cases.

# NSL Scenario #5

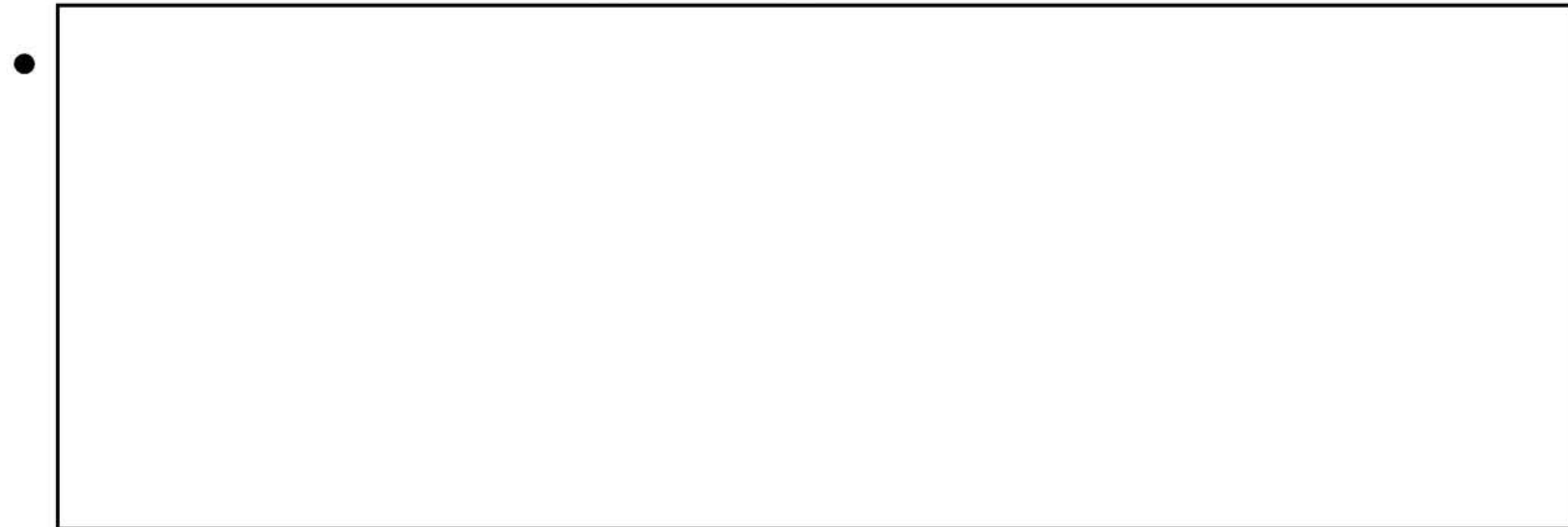
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- Answer: Yes. The information would be relevant to the counterintelligence investigation.

# NSL Scenario #6

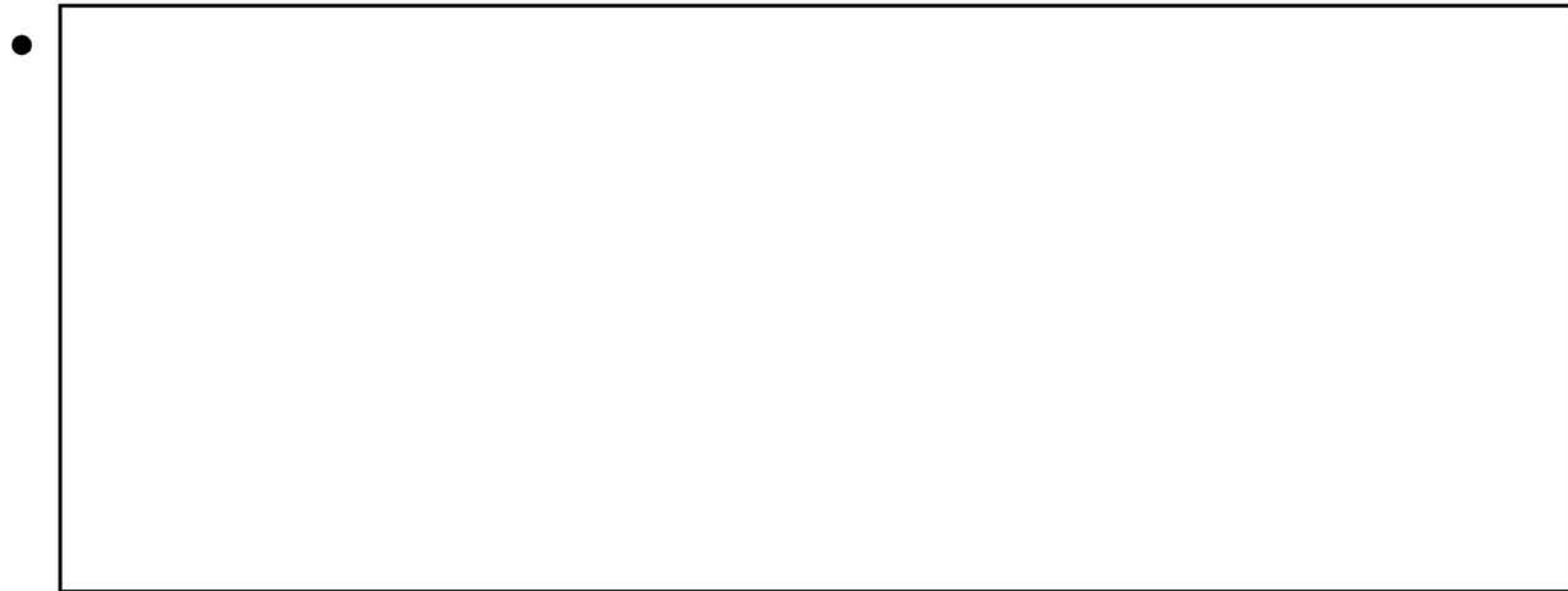
- May the FBI issue in NSL for the full credit report of the Chicago-area subject under Fair Credit Reporting Act § 1681v?



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# NSL Scenario #7

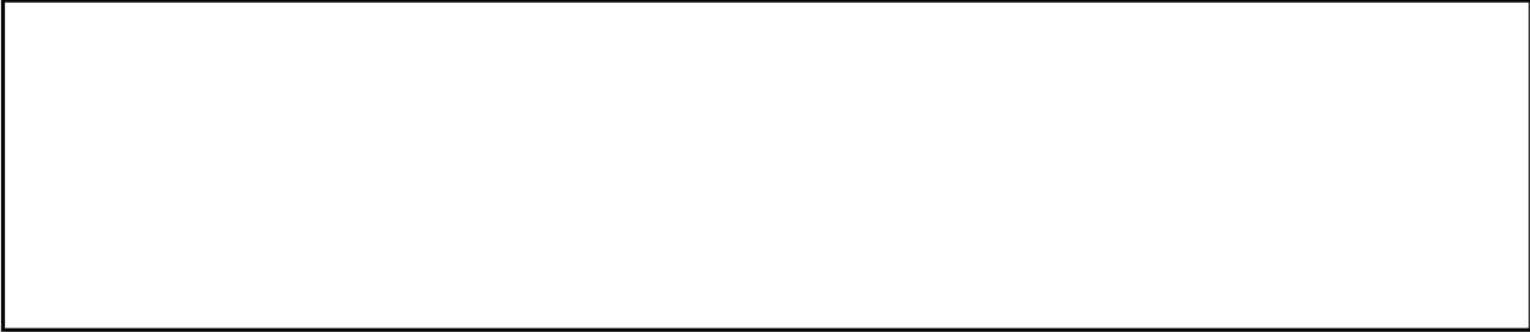
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- Answer: Yes. The information would be relevant to the counterintelligence investigation.

# NSL Scenario #8

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- Answer: Yes. The information would be relevant to the counterintelligence investigation.



# NSL Scenario #9

- [REDACTED]
- [REDACTED]  
[REDACTED]  
[REDACTED]

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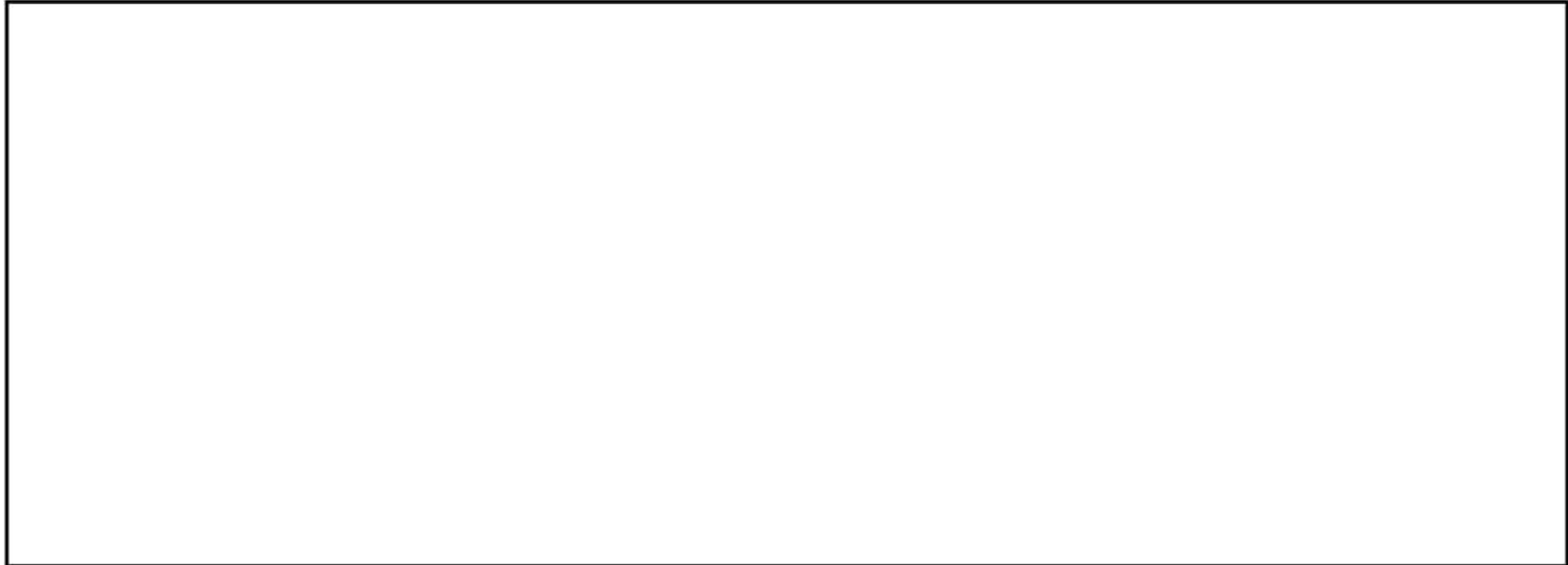
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# NSL Scenario #10

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May you approve the NSL?

- Answer: No. NSLs can be issued only in open, predicated investigations.

# NSL Subsystem to

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- The (web-based) NSL subsystem allows you to create the NSL and supporting EC. Using the subsystem ensures:
  - The information in the NSL is consistent with the supporting EC
  - The appropriate statutory authority is cited
  - The necessary approvals are obtained
- Final approver must sign a hard copy of the NSL
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- All NSLs must be created in

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[Redacted]

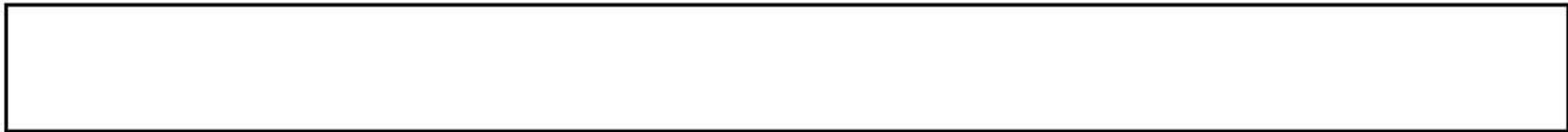
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- Guidance is at DIOG § 18.6.6.3.7. Specific Procedures

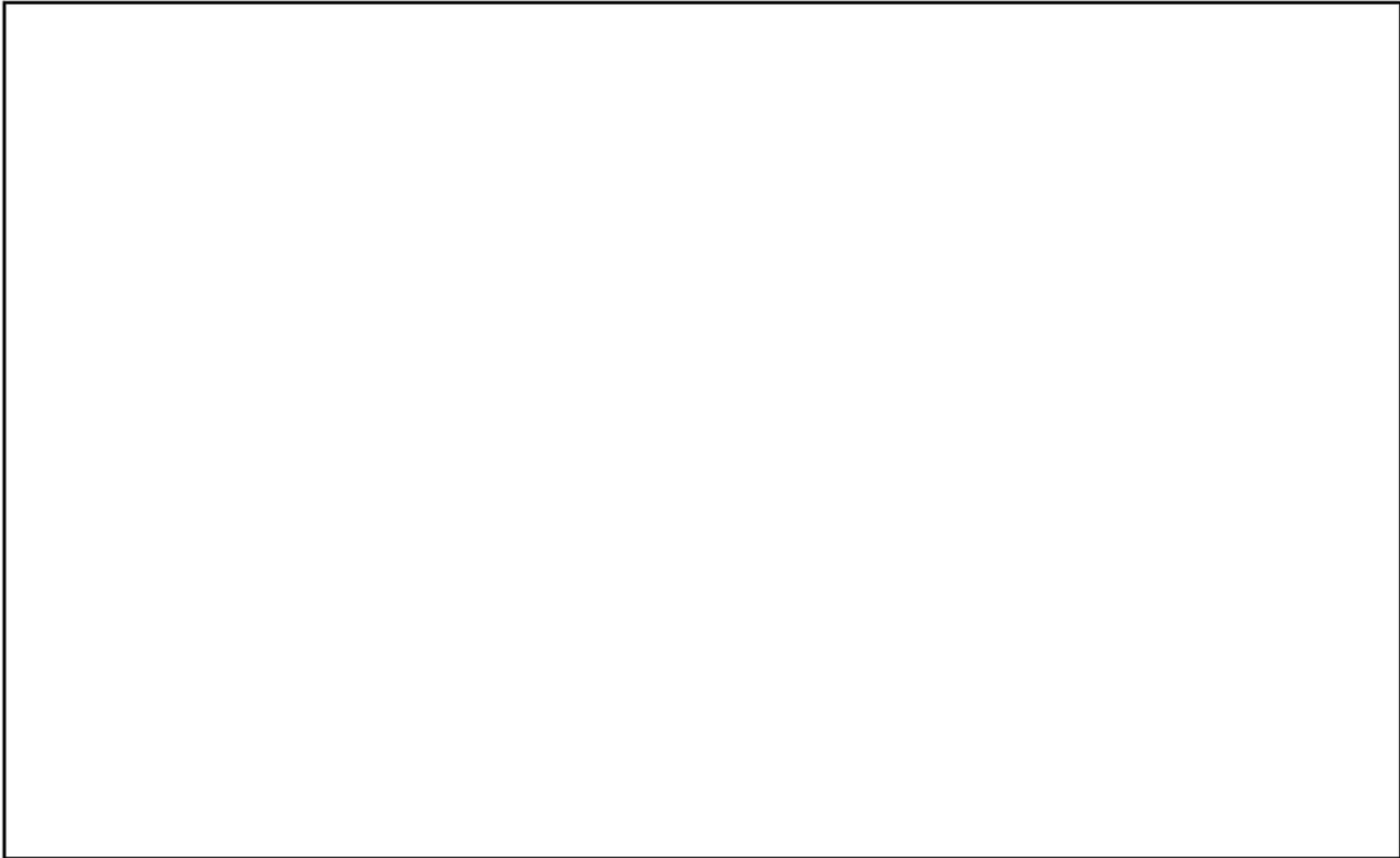
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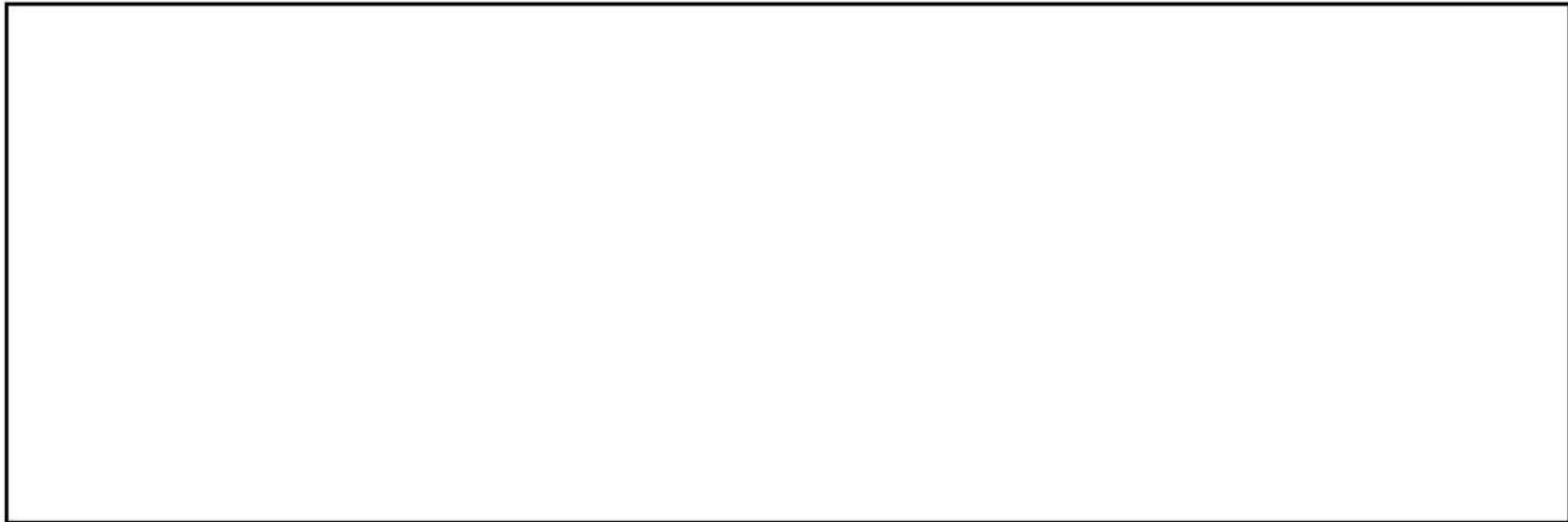
# What Must the NSL Include?

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- The final approver's certification that the information sought is relevant to the investigation.

# What Must the NSL Include?

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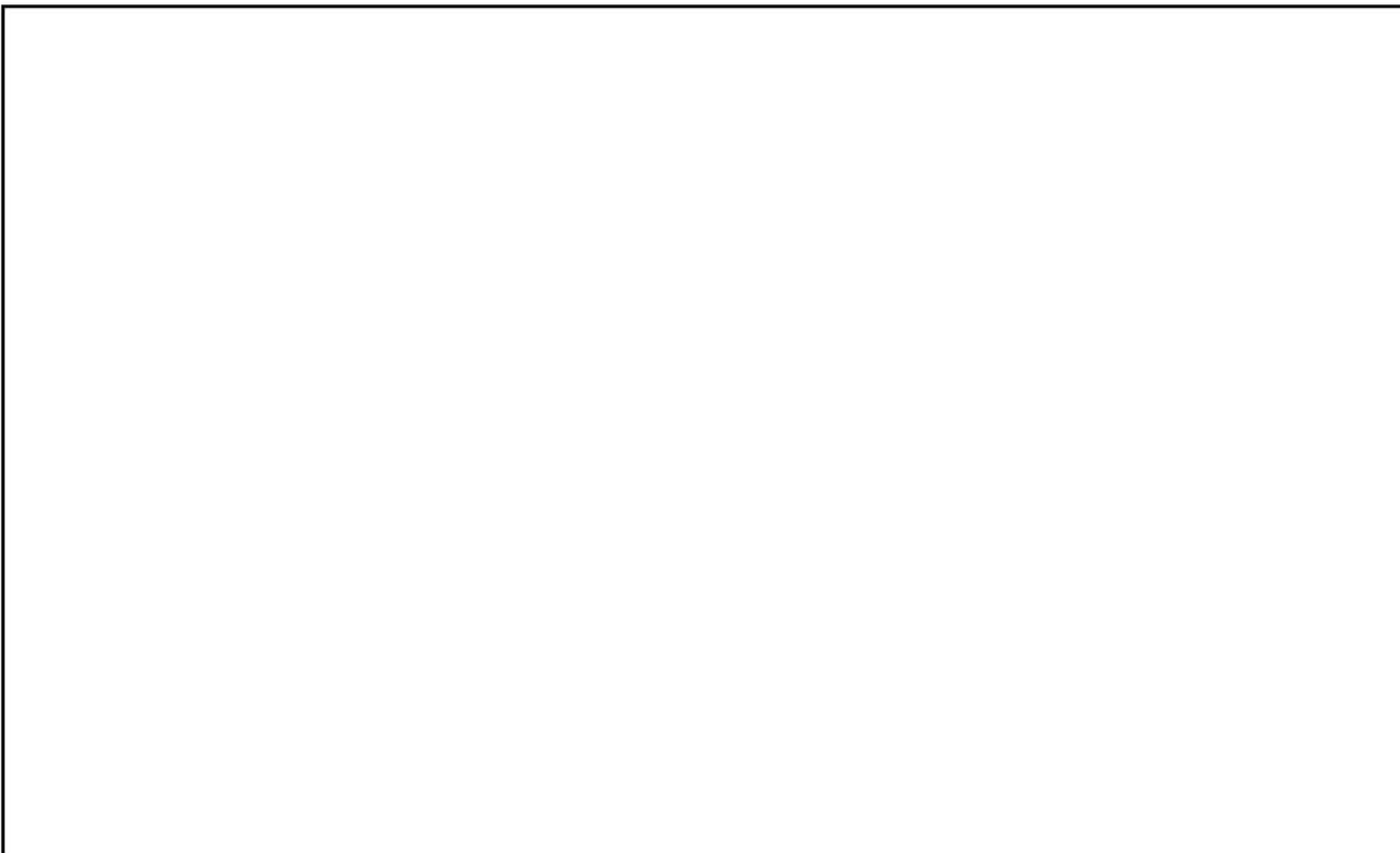
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# What Must the EC Include?

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(Specific samples are listed in DIOG § 18.6.6.3.7.1)



# What Must the EC Include?

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# Legal Review is Required

- NSLs must have legal review
  - CDC/ADC review NSLs created in the field.
  - NSLB attorney reviews NSLs created at HQ.
  - Ensure predication for the underlying investigation exists.
  - Ensure the information sought is relevant to the investigation.
  - Ensure the information sought may be obtained under the particularly cited NSL statute.

# Who May Approve NSLs?

- The authority to sign NSLs has been delegated to:
  - Director
  - Deputy Director
  - Executive Assistant Director and the Associate EAD for the National Security Branch
  - Assistant Directors and all DADs for CT/CD/Cyber
  - General Counsel (GC)
  - Deputy GC for the National Security Law Branch
  - Assistant Directors in Charge in NY, DC, and LA
  - All SACs
- Acting Official: FBI officials properly designated to serve in these positions in an acting capacity may approve NSLs. See CPO 0227N.

# Serving NSLs

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- All NSLs should have a reasonable return date.

# Electronic Service of NSLs

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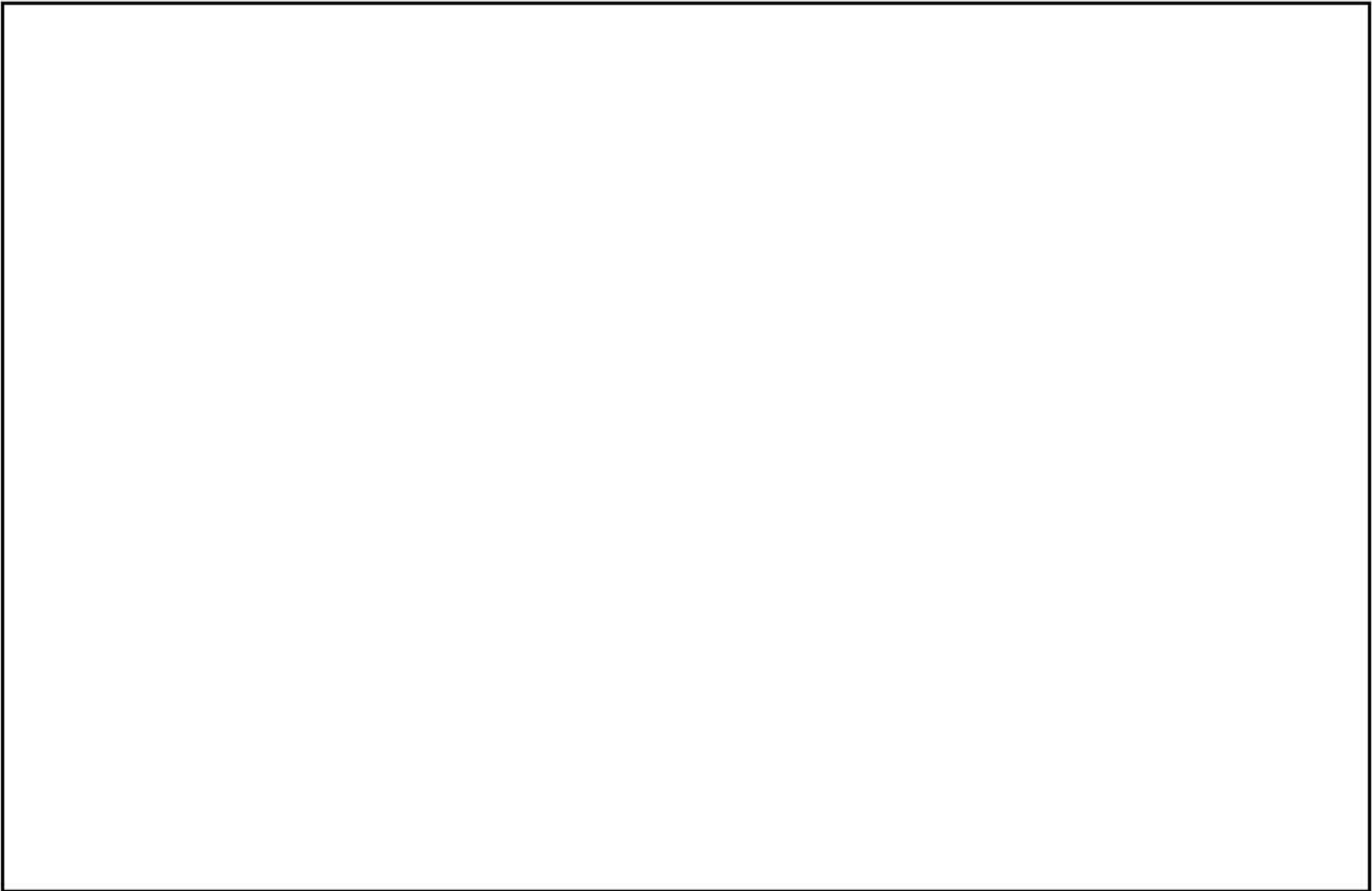
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- DIOG § 18.6.6.3.10. “Electronic Service and Electronic Returns of NSLs.”

# Receipt of NSL Information

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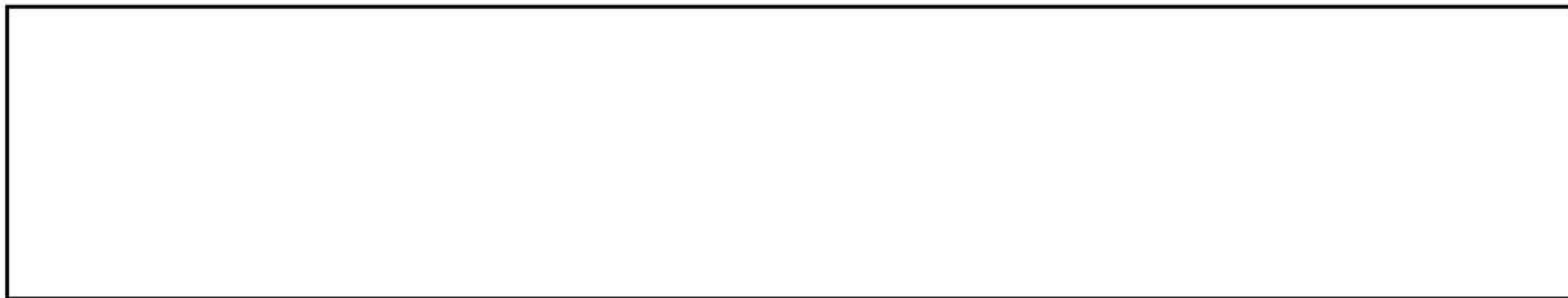


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# What is “Overproduction”



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# What is “Overproduction”

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# What is “Overproduction”

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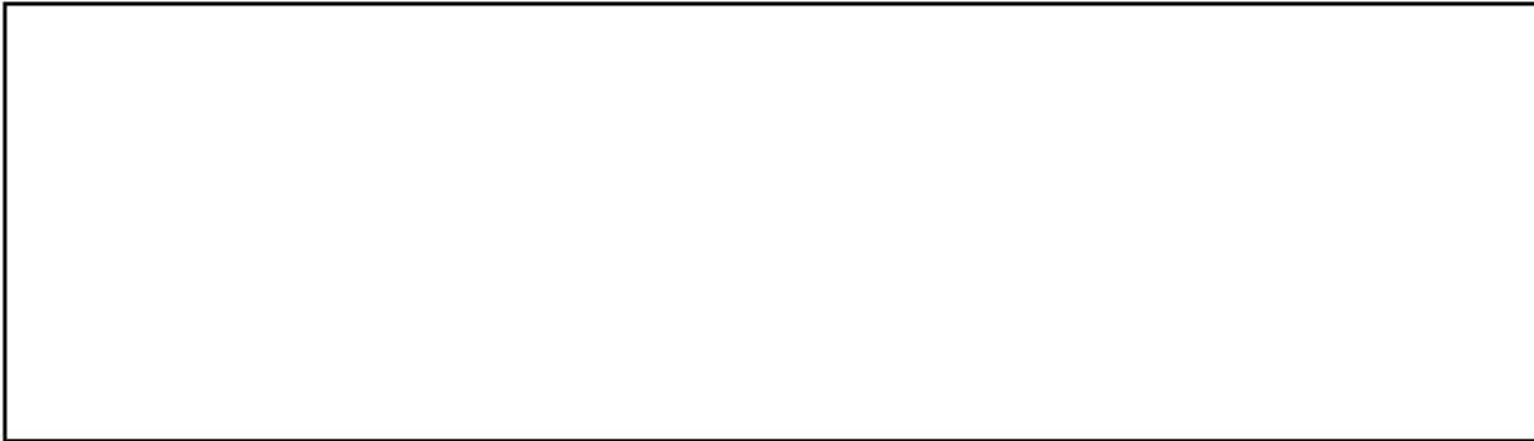
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epic.org

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# Important to Review NSL Information

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# Common Overproduction Problems

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# Common NSL Errors

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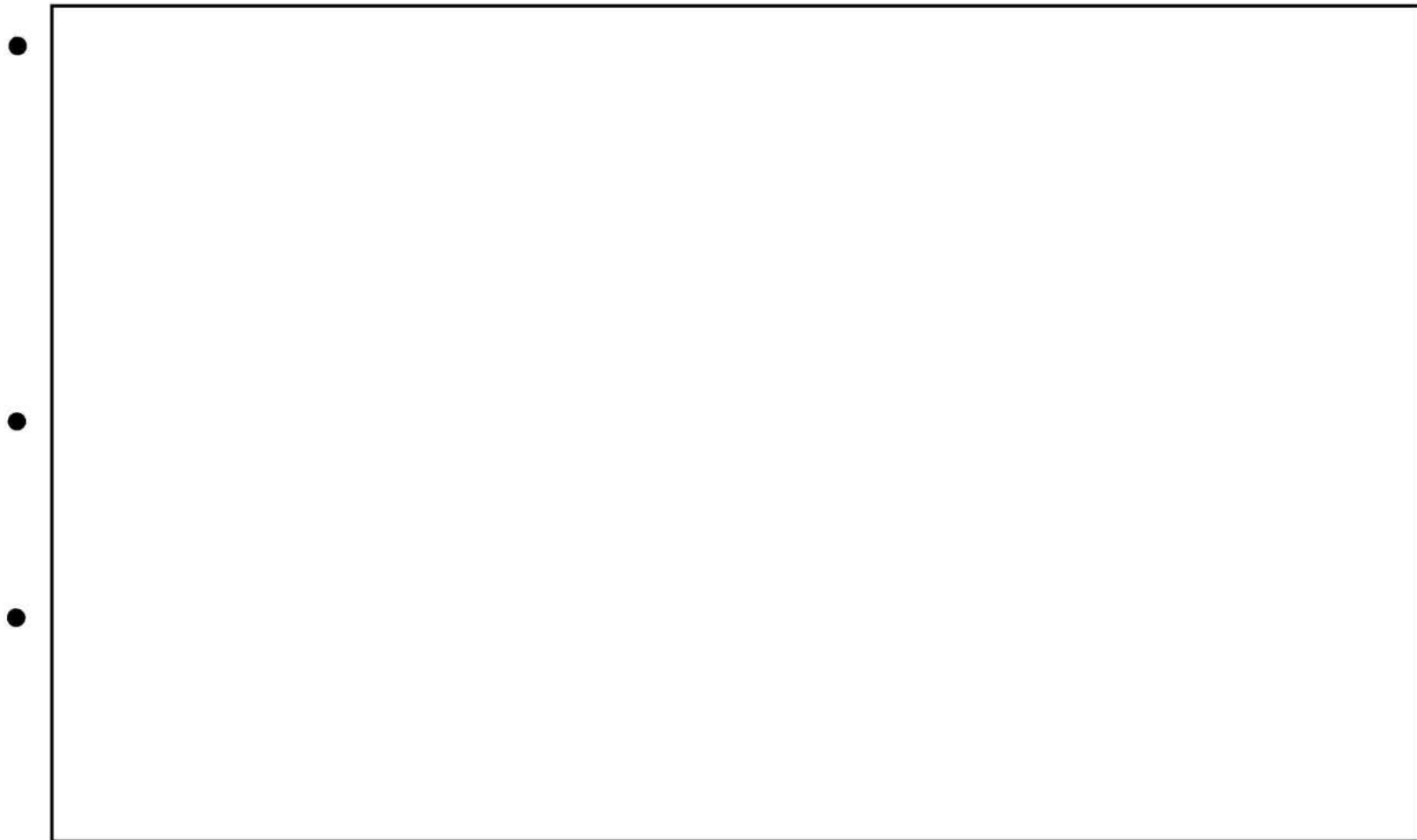
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# Electronic Communications Transactional Records



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# Electronic Communications Transactional Records



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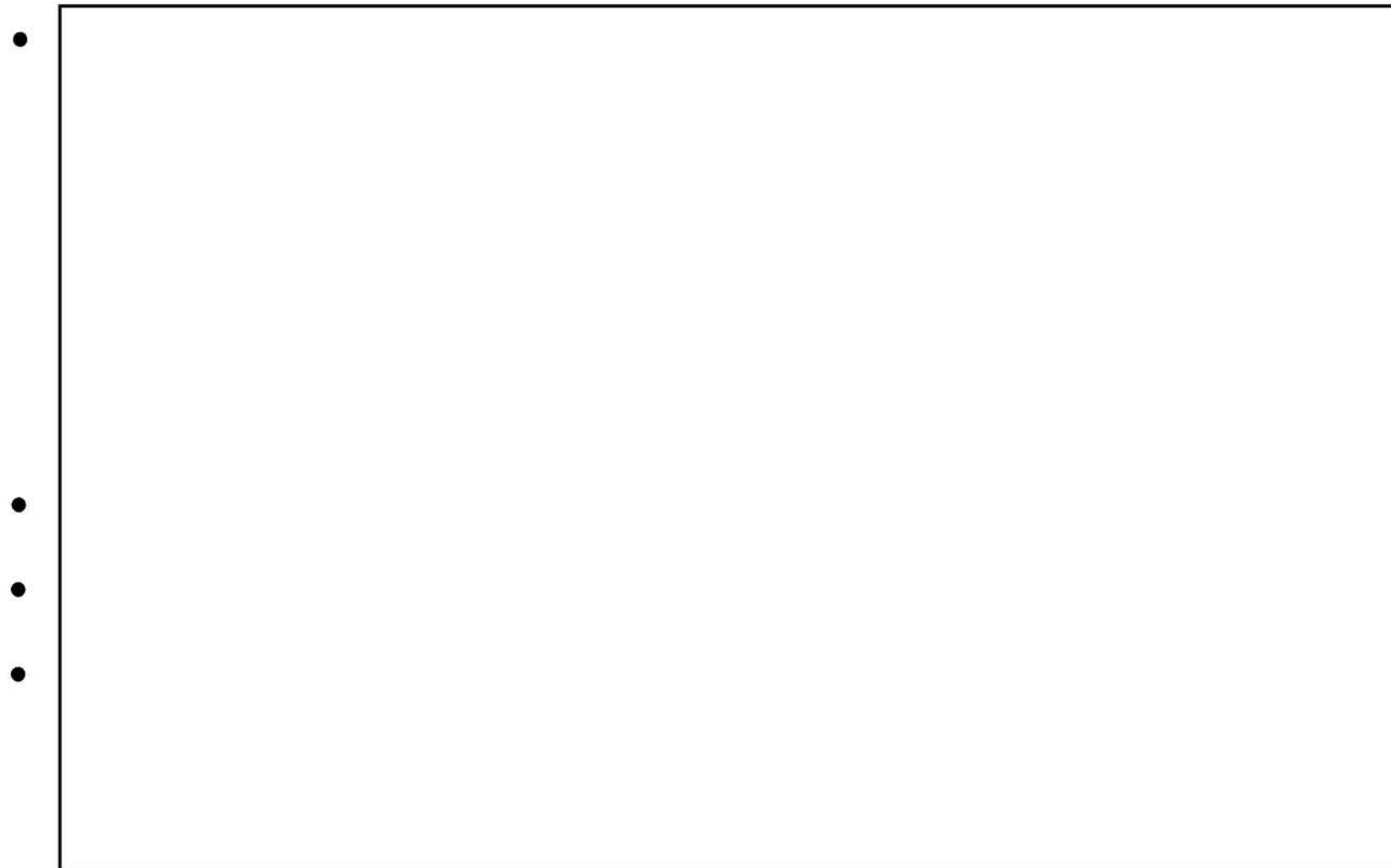
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# Electronic Communications Transactional Records

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# Electronic Communications Transactional Records



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# Dissemination of NSL Information

- Information obtained via an NSLs may be disseminated in accordance with (1) the Attorney General Guidelines for Domestic Operations (AGG-DOM) and (2) the specific statutory limitations
  - For ECPA or RFPA NSLs, dissemination is permitted if it is clearly relevant to the responsibilities of the recipient agency.
  - FCRA § 1681u (limited credit information) permits dissemination as necessary for the approval and conduct of CI investigation.
  - FCRA 1681v (full credit report) contains no specific dissemination provision, beyond the AGG-DOM.

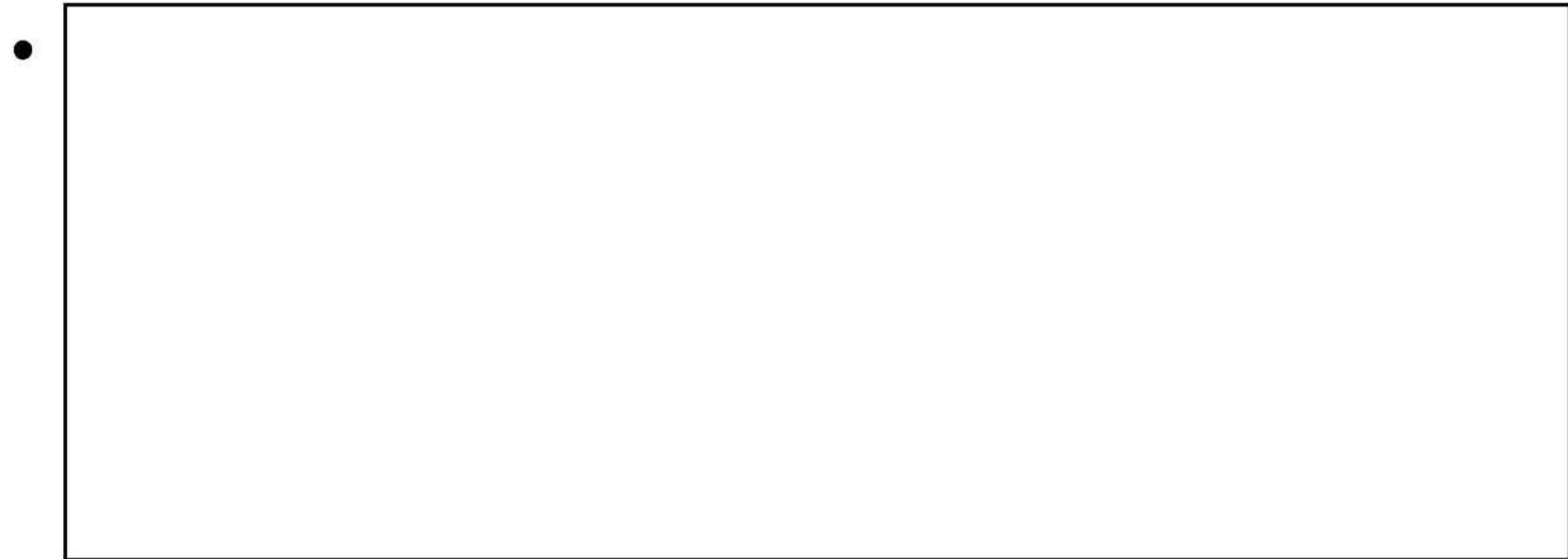
# Emergency Circumstances

- No exigent letters: Generally, an NSL (or grand jury subpoena or another form of legal process) must be used to compel ECPA information.
- ECPA protected information can be obtained in an emergency under 18 U.S.C. § 2702 if the provider in good faith believes there is an emergency involving death or serious injury requires disclosure of the records without delay.
  - A standard letter is available to make requests for ECPA protected information in emergency situations.
  - Letter makes clear the disclosure is voluntary, and it provides the recipient with the information necessary to allow them to make a good faith determination that an emergency exists.
  - See DIOG § 18.6.6.3.7.5 “Emergency Circumstances.”

# Telephone Toll Records of Members of Media and News Organizations

- Investigation of members of media and news organizations is a sensitive investigative matter.

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- DIOG – Appendix G: Classified Provisions

# Reporting Requirements

- The EC must reflect the USPER status

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## Why?

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# Payment for NSL information

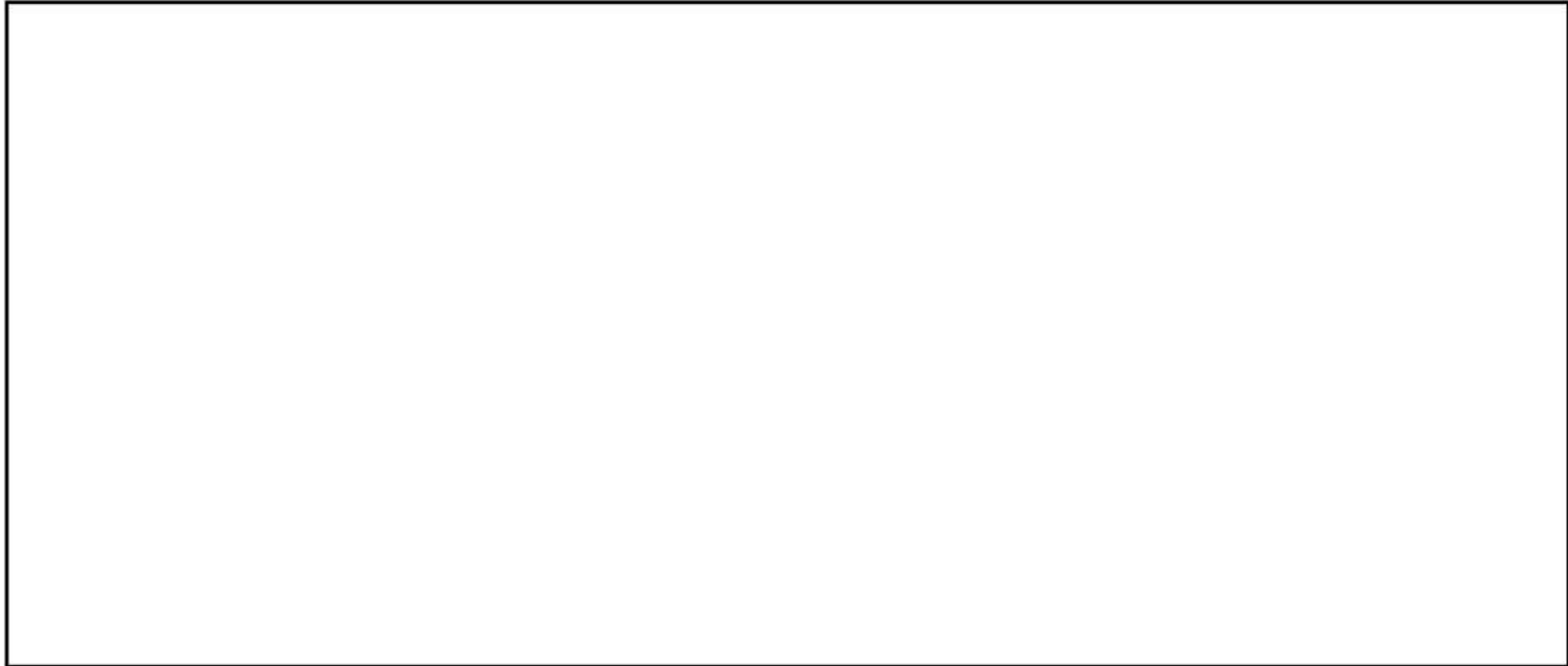
- No legal obligation to compensate recipients of NSLs under
  - ECPA (telephone and electronic communications transactional records)
  - FCRA, 15 U.S.C. § 1681v (full credit reports in IT cases)and therefore no payment should be made.
- See EC, 319X-HQ-A1487720-OGC, serial 222, for a form letter to be sent in response to demands for payment concerning these NSLs.
- Compensation required for RFPA NSLs (financial records). A fee schedule is at 12 C.F.R. § 219.3, Appendix A (photocopying = \$.25 per page; searching = \$22 per hour for clerical staff).

# What are “Financial Institutions” (RFPA NSLs)

31 U.S.C. § 5312(a)(2):

... insured bank; commercial bank or trust company; private banker; credit union; thrift institution; broker or dealer registered with the SEC; investment banker or investment company; currency exchange; issuer, redeemer or cashier of travelers' checks, checks, money orders; operator of a credit card system; insurance company; pawnbroker; loan or finance company; travel agency; licensed sender of money; telegraph company; persons involved in real estate closings and settlements; US Postal Service; agency of US/state/local gov't carrying out any of foregoing; casino; any business similar to the above list; any business whose cash transactions have high degree of usefulness in criminal, tax or regulatory matters.”

# Full Credit Report – IT Cases



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# References

- Financial records: The Right to Financial Privacy Act (RFPA), 12 U.S.C. § 3414(a)(5);
- Identity of financial institutions: Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681u(a);
- Consumer identifying information: FCRA, 15 U.S.C. § 1681u(b);
- Identity of financial institutions and consumer identifying information: FCRA, 15 U.S.C. §§ 1681u(a) and (b);
- Full credit reports in international terrorism investigations: FCRA, 15 U.S.C. § 1681v; and
- Telephone subscriber information, toll billing records, electronic communication subscriber information, and electronic communication transactional records: Electronic Communications Privacy Act (ECPA), 18 U.S.C. § 2709.



# Questions



National Security Law Branch (NSLB)

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Direct:



NSLB Front Desk:



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# National Security Letters

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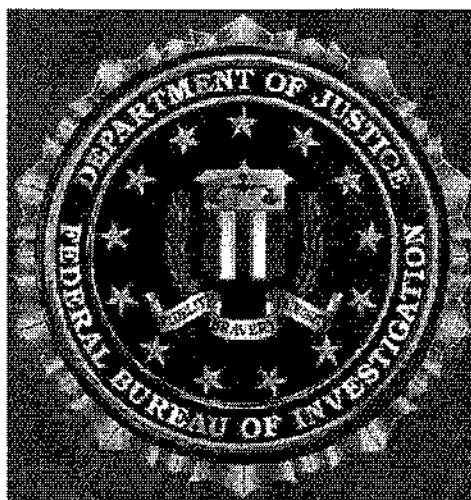
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# National Security Letters

CDC Conference  
March 4, 2013

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National Security Law Branch, FBI Headquarters  
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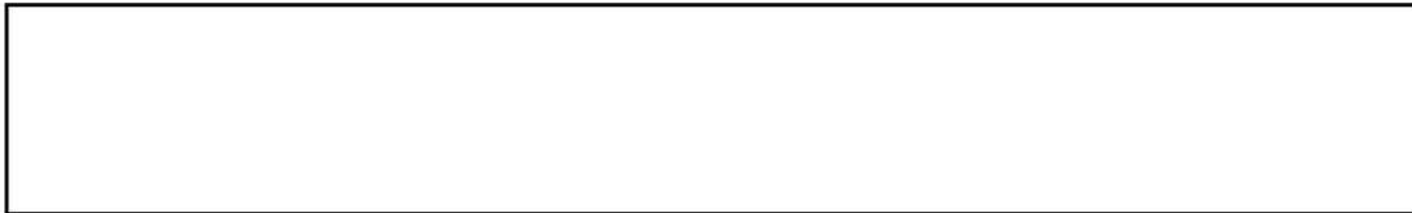
# Roadmap to NSL Training

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- What you CAN Do and CANNOT Do
- Legal Standard = “Relevance”
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# National Security Letters?

## Virtual Academy Course:



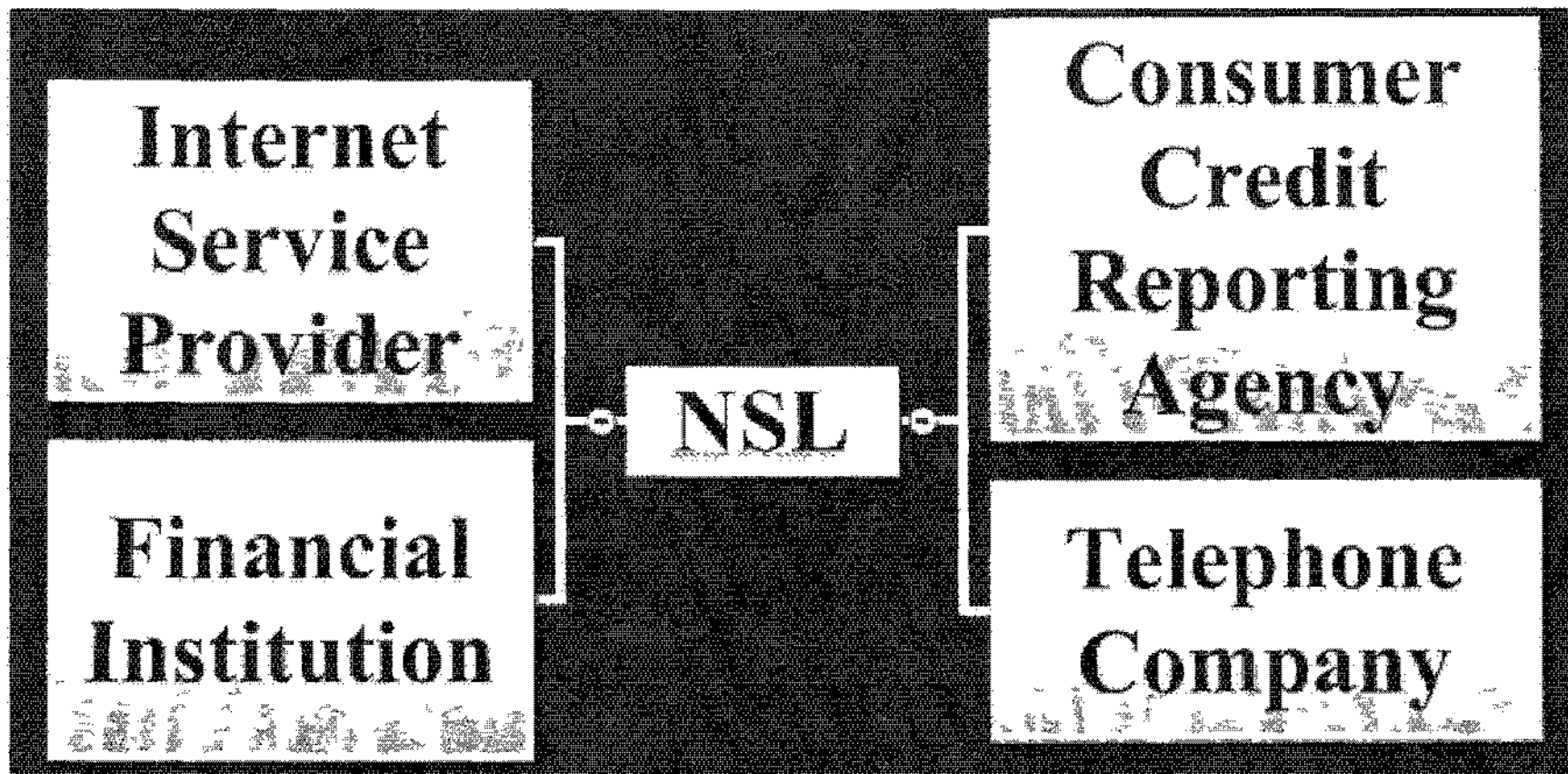
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(It is Fun Beyond Imagination)

# What are National Security Letters?

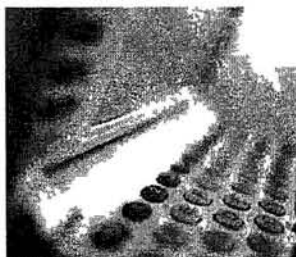
- “Letter” that instructs the recipient to provide records and information to the FBI.
- NSL  $\approx$  to administrative subpoena.
- NSLs are issued without court approval.
- NSLs are often the first investigative technique used in national security investigations.

# FBI Issues NSLs to Whom?



# NSL Statutes

1. Electronic Communications Privacy Act (ECPA) -- telecommunications subscriber information, toll billing records, and electronic communication transactional records
2. Right to Financial Privacy Act (RFPA) -- financial records
3. Fair Credit Reporting Act (FCRA) -- consumer credit reports and credit identity information (§ 1681u) and full credit reports (§ 1681v)







# Legal History of NSLs

- *United States v. Miller* (1976): A person who gives information to a third party no longer has a legitimate expectation of privacy in the content of the information. The government obtaining that information does not violate the Fourth Amendment prohibition on unreasonable searches and seizures.
- Congress later passed laws to protect certain types of records from disclosure. Congress also provided limited access to records for CI purposes. Congress later expanded the access for CT purposes.

# NSLs – What you CAN Do

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- Information sought must be relevant to the investigation.

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# NSLs – What you CANNOT Do

- NSLs are not used in:

- [REDACTED]
- Domestic terrorism cases
- General criminal investigations
- [REDACTED]

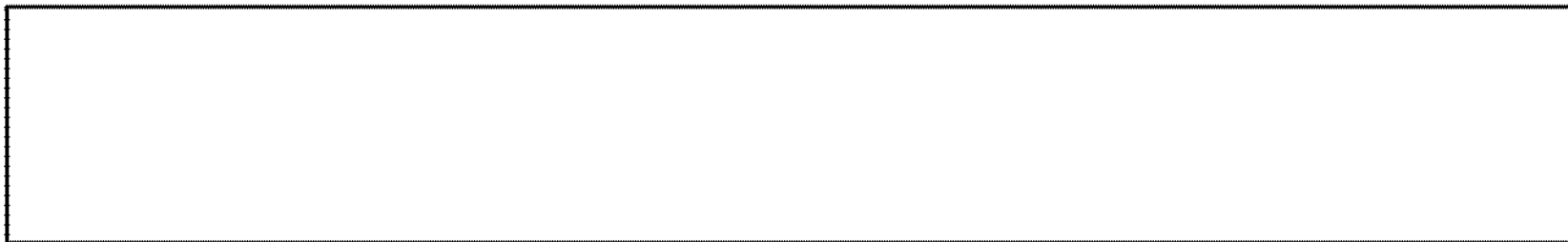
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- NSLs not used to acquire the content of electronic communications, e.g., e-mail.

# NSLs – What you CANNOT Do

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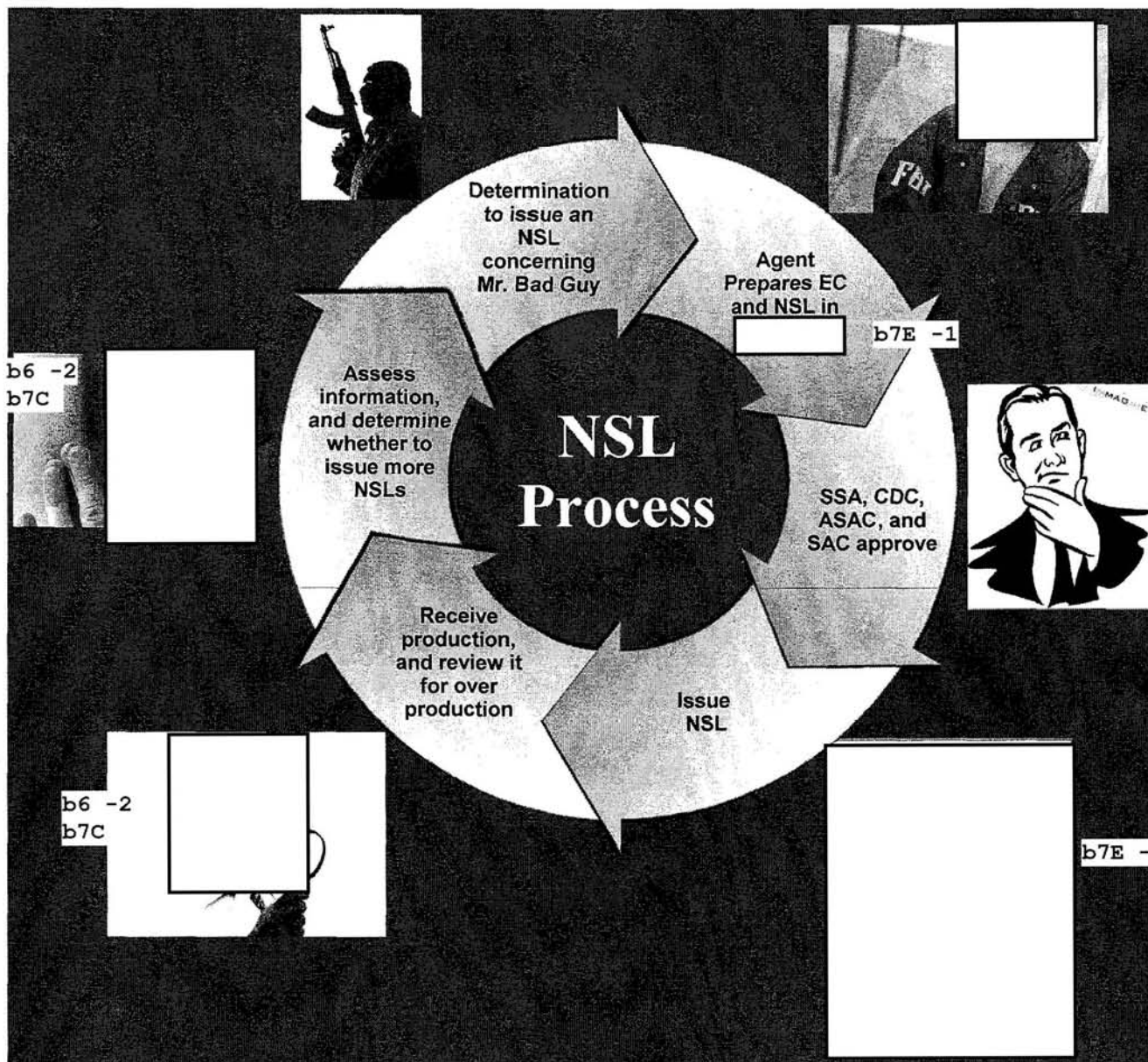
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## Legal Standard = “Relevance”

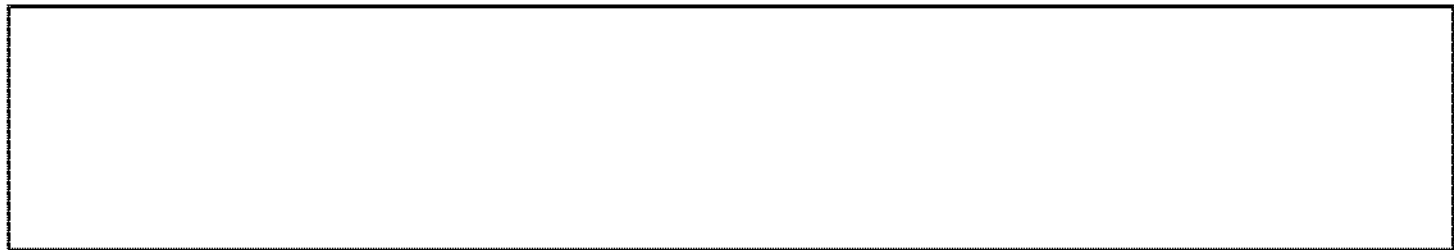
- Information sought must be relevant to:
  - 
  - National security investigation (counterintelligence or terrorism)

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# What is “Relevance”?

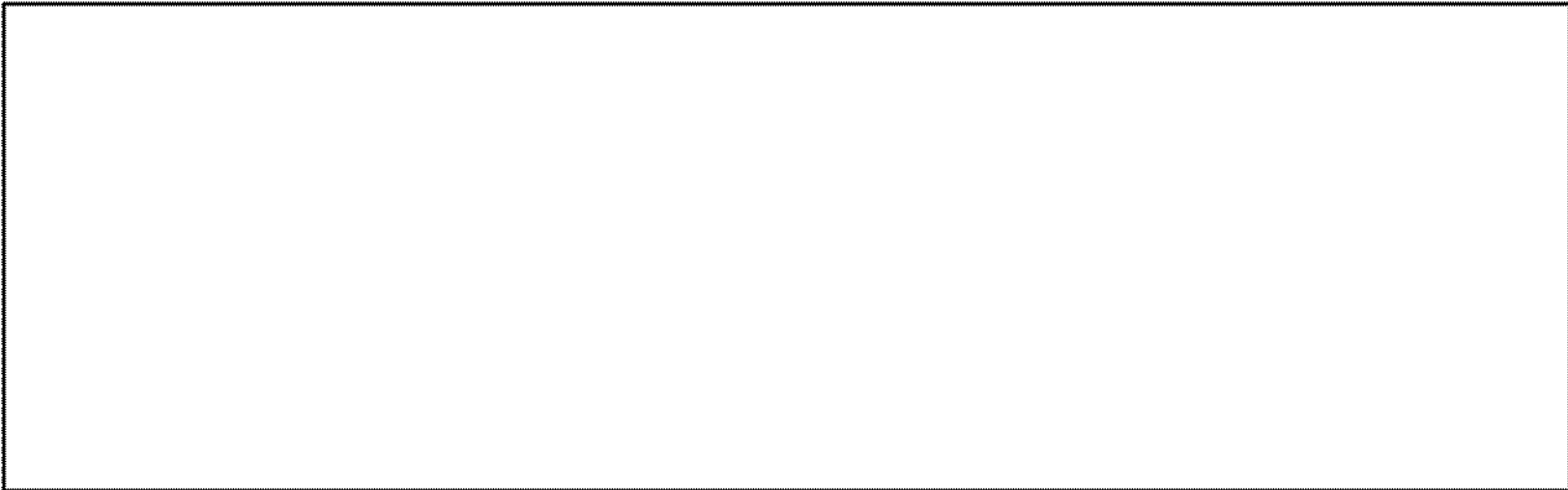
- Relevant information:
  - Tends to make a fact more or less probable. (Webster’s Dictionary)
  - Has significance and demonstrable bearing on the matter at hand. (Webster’s Dictionary)

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# Examples of Relevance



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Answer: No. How would the records be relevant?

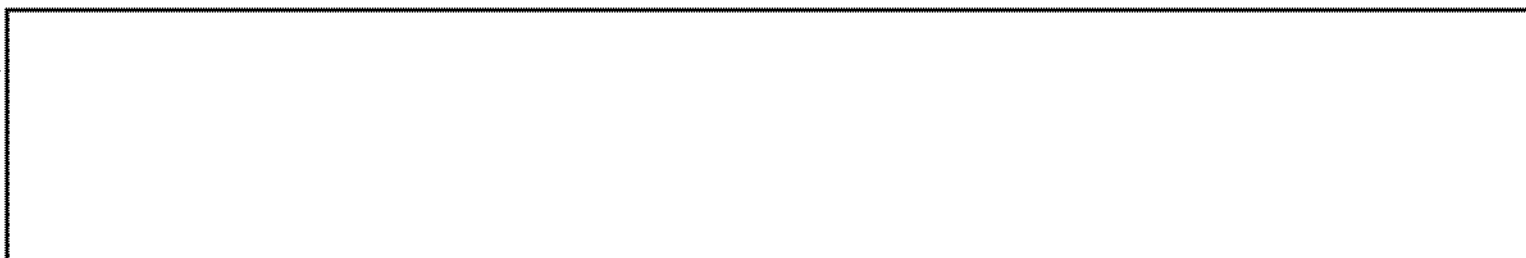


# Examples of Relevance



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# Examples of Relevance

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# Cannot Obtain with an NSL

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## Correct Type of NSL

- Right to Financial Privacy Act (RFPA) NSLs are issued to financial institutions.

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- Electronic Communications Privacy Act (ECPA) NSLs are issued to providers of electronic communication services.

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- Fair Credit Reporting Act (FCRA) are issued to credit agencies.

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# Scenarios

You are SSA [ ] in the Chicago field office and when your telephone rings. A subordinate, SA [ ] is working on a few cases and is asking for NSLs on a number of subjects. You have to approve the NSLs before they can go to the CDC, ASAC, and then SAC.

b6 -1  
b7C

# Scenario #1

- SA [redacted] wants [redacted]  
[redacted]  
[redacted] May you  
approved the NSL?

Answer: Yes. The telephone records are relevant to the investigation.

b6 -1  
b7C  
b7E -1

## Scenario #2

b7E -1

- [REDACTED]

Answer: Yes.

[REDACTED] or is otherwise relevant to the investigation, then the financial records are relevant to the investigation.

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## Scenario #3

b7E -1

- After speaking with 
- 

Answer: No. NSLs may not be issued if there is no reason to believe the information may be relevant to the investigation.



## Scenario #4

b7E -1

Answer: No. NSLs may not be used in *domestic* terrorism cases.

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## Scenario #5

b7E -1

Answer: Yes. The information would be relevant to the counterintelligence investigation.

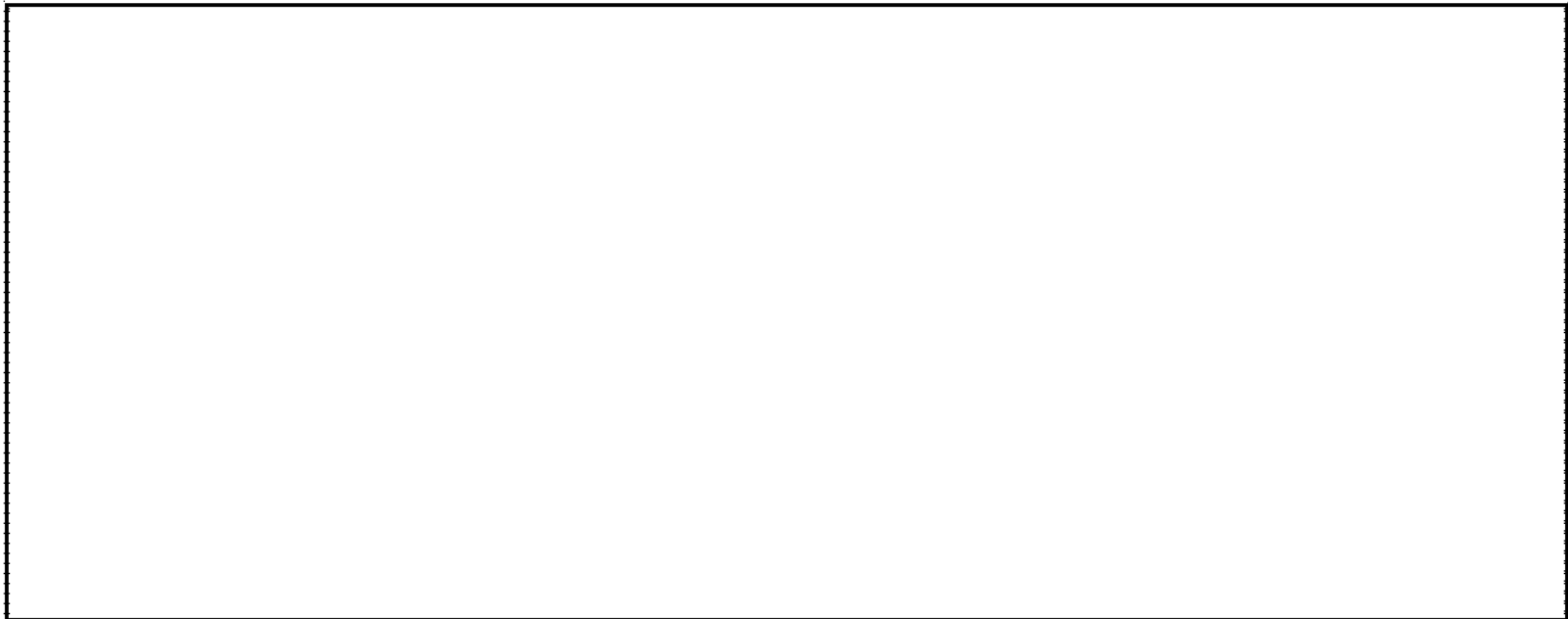
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## Scenario #6

- May the FBI issue in NSL for the full credit report of the Chicago-area subject under the Fair Credit Reporting Act § 1681v?



b5 -2  
b7E -4

# Scenario #7

b7E -1

•

Answer: Yes. The information would be relevant to the counterintelligence investigation.

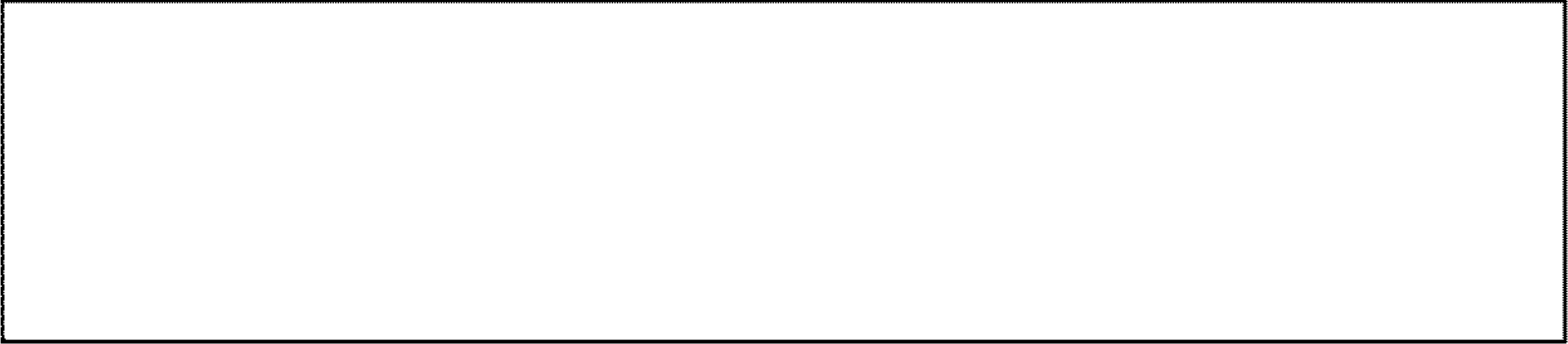
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## Scenario #8

b7E -1

- 

Answer: Yes. The information would be relevant to the counterintelligence investigation.

# Scenario #9

- 

b7E -1

b5 -2  
b7E -4

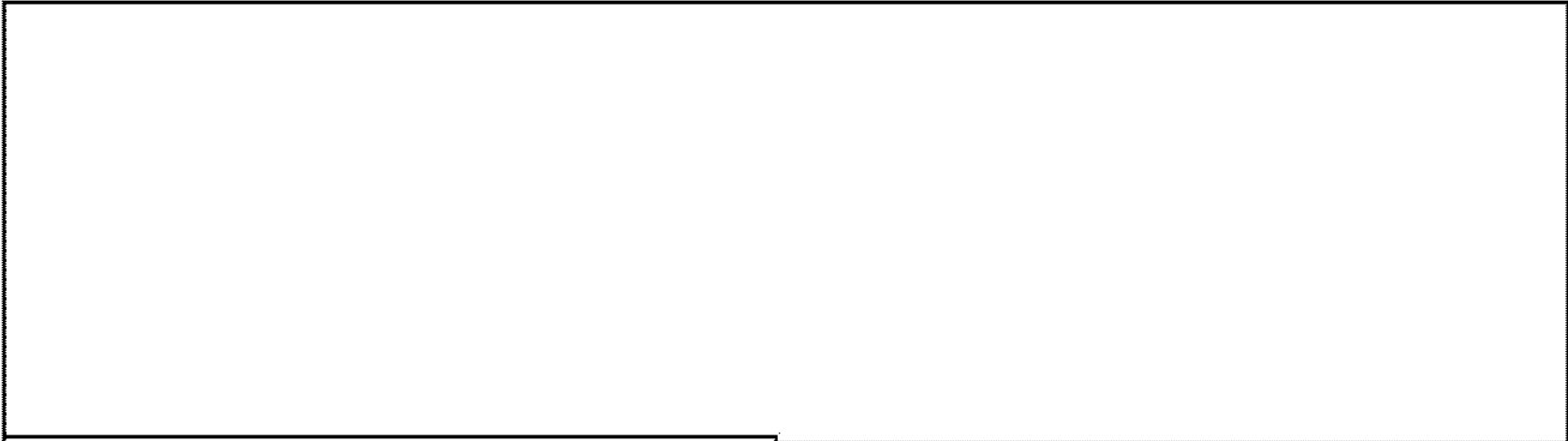

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# Scenario #10

b7E -1

•   
 May you approve  
the NSL?

Answer: No. NSLs can be issued only in open, predicated investigations.

# NSL Subsystem to [REDACTED]

b7E -1

- NSLs must be created in [REDACTED]
- [REDACTED] is a web-based subsystem
- Using [REDACTED] ensures:
  - The information in the NSL and EC match,
  - The correct statutory authority is cited,
  - The necessary approvals are obtained.
- Final approver (SAC) signs a hard copy of the NSL.

b7E -1

b7E -1





b7E -1



b7E -1

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b7E -1



b7E -1

- DIOG § 18.6.6.3.7, Specific Procedures.

# What Must the EC Include?

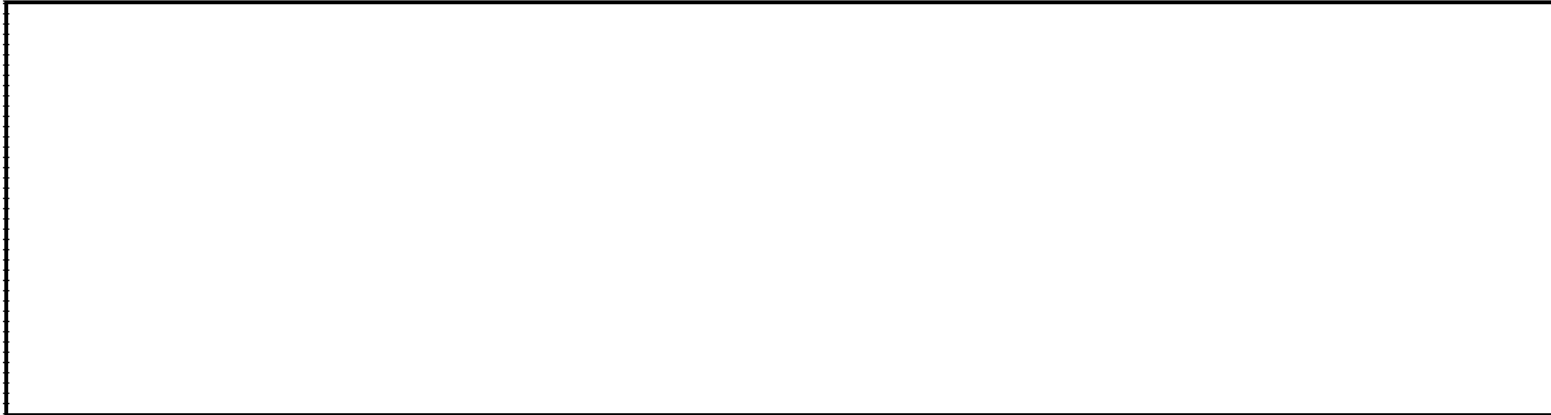
b7E -1

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# What Must the EC Include?



b7E -1

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# Potential Error in EC

b7E -1

- 

- What is missing?

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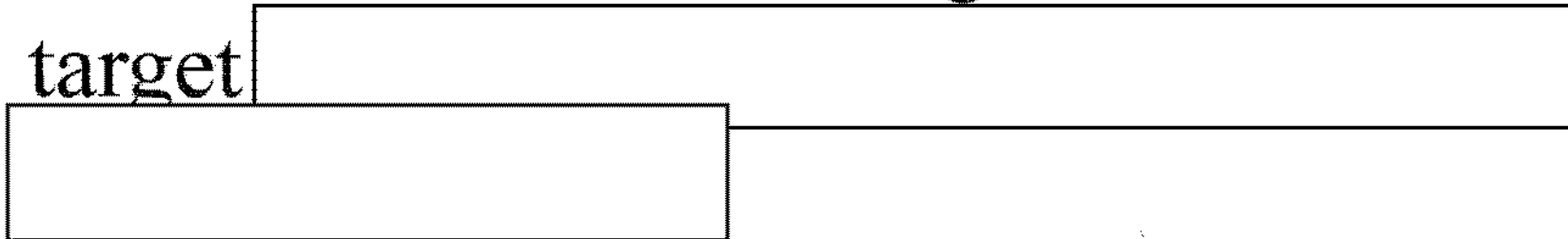
## Potential Error in EC

- Answer: The connection (“relevance”)

A large rectangular box with a black border, representing a redacted area of text.

b7E -1

- Solution: Include a sentence that connects the records sought and the NSL target

A large rectangular box with a black border, representing a redacted area of text.

b7E -1

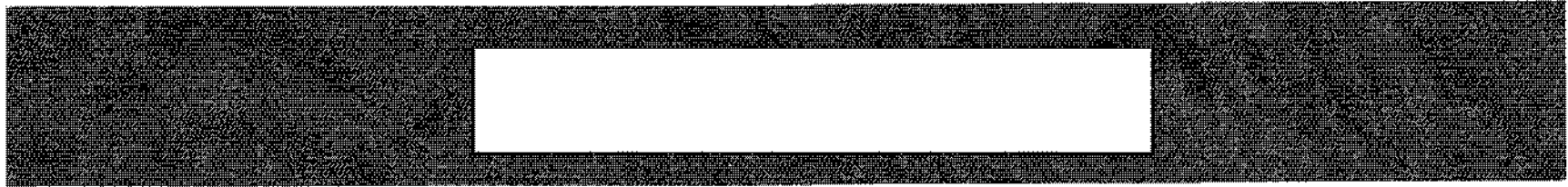
# What Must the NSL Include?

b7E -1

- [REDACTED]
- [REDACTED]
- SAC's certification that the information sought is relevant to the investigation.

b7E -1

- [REDACTED]



b7E -1



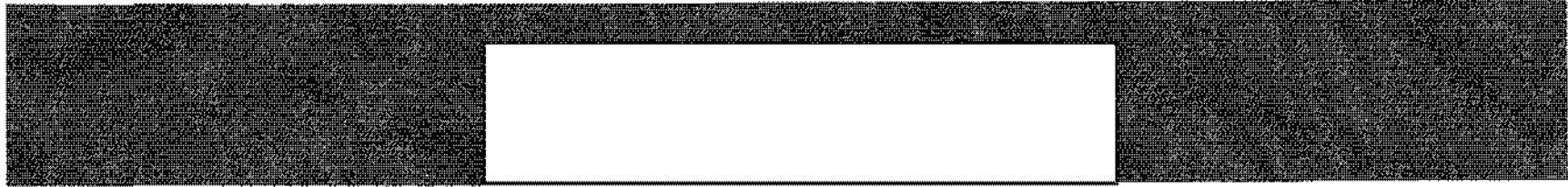
b7E -1

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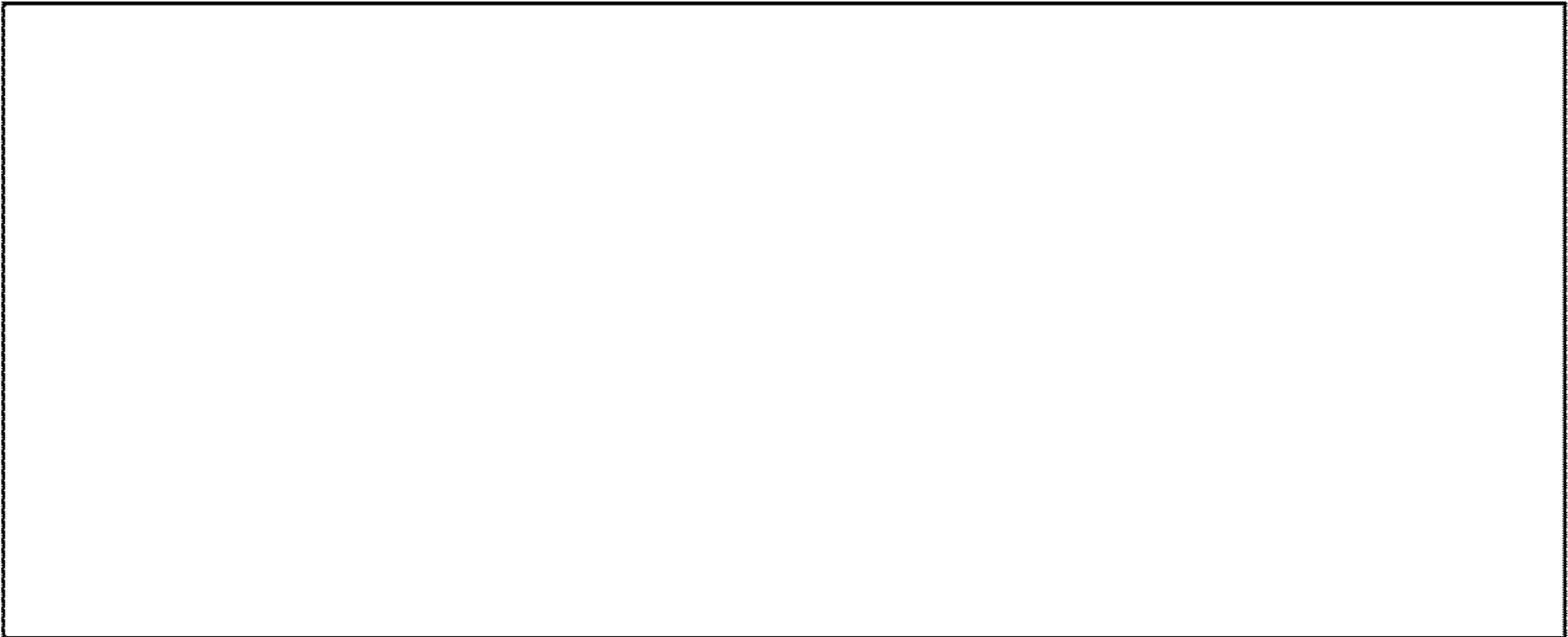
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b7E -1



b7E -1

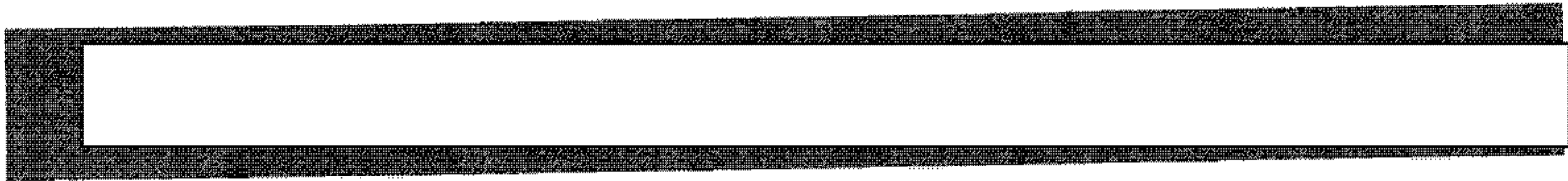


b7E -1



(DIOG §

18.6.6.3.7.1.)



b7E -1



b7E -1

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## CDC / ADC Legal Review

- Ensure predication for the underlying investigation exists.
- Ensure the information sought is relevant to the investigation.
- Ensure the information sought may be obtained under the NSL statute being cited.
- NSLB reviews NSLs created at HQ.

## Who May Approve NSLs?

- Deputy Director
- Executive Assistant Director and Associate EAD for NSB
- Assistant Directors and DADs for CT, CTD, CyD, and **WMDD (added in May 2012)**.
- General Counsel
- Deputy General Counsel, National Security Law Branch
- Assistant Director in Charge in NY, DC, and LA
- All SACs

# Who May Approve NSLs?

Acting Official: FBI officials properly designated to serve in these positions in an acting capacity may approve NSLs.

See Corporate Policy Directive 0227D (Delegation of an Acting Official to Approve and Sign National Security Letters).

# Serving NSLs

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b7E -4

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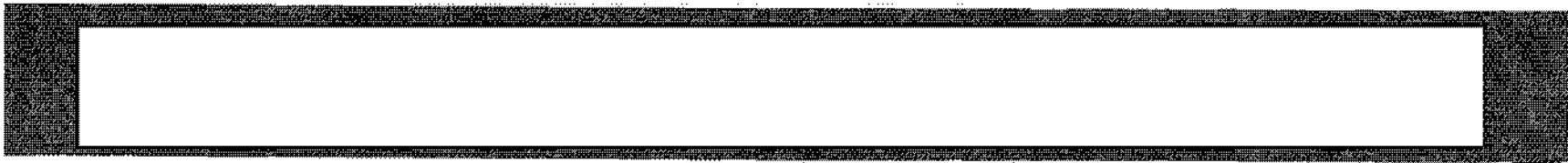
44

# Electronic Service of NSLs

b7E -1

- 
- 
- DIOG § 18.6.6.3.10, Electronic Service and Electronic Returns of NSLs.

b7E -1



b7E -1



b7E -1

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# Receipt of NSL Information

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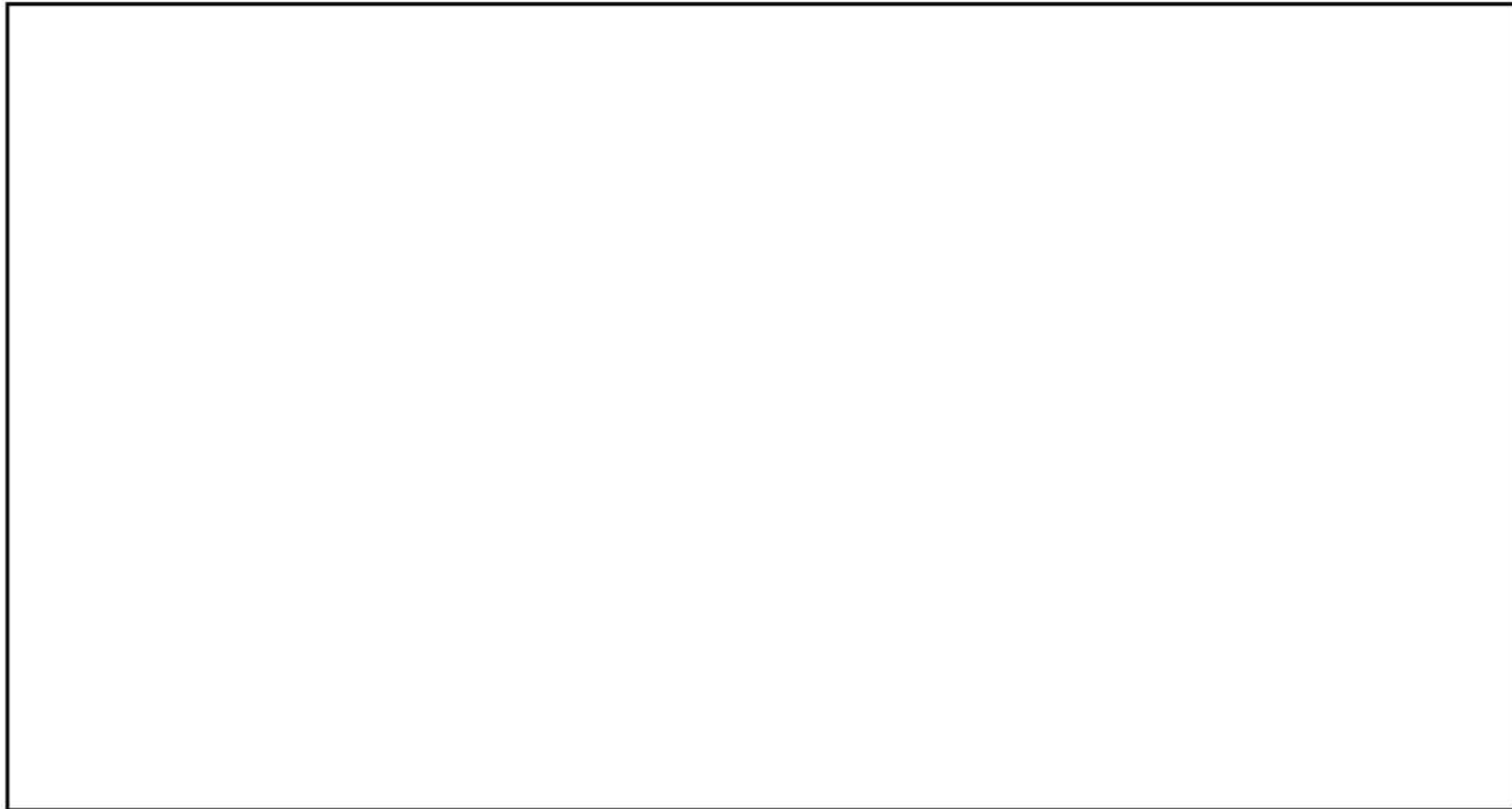
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# What is “Overproduction”

b7E -1



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# What is “Overproduction”

b7E -1

- 

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# What is “Overproduction”

b7E -1

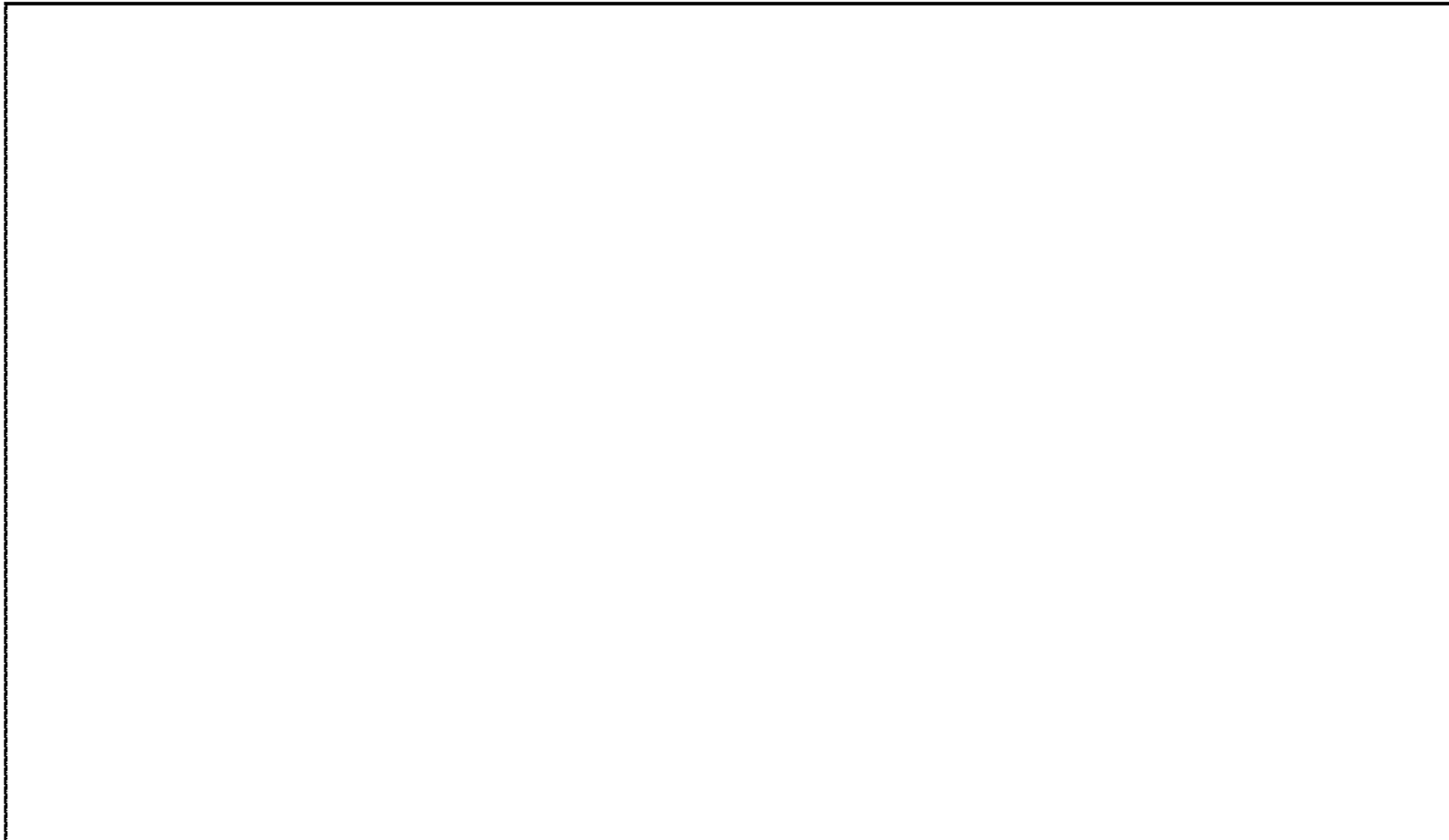
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# You Must Review the Return Information

b7E -1



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# Potential Overproduction Problems (1)

b7E -1



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# Potential Overproduction Problems (2)



b7E -1

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# Potential NSL Errors

b5 -2  
b7E -4

b7E -1

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# Electronic Communications Transactional Records

b7E -1



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55

# Electronic Communications Transactional Records



b7E -1



b7E -1

2/12/13

UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~

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# Electronic Communications Transactional Records

b7E -1



2/12/13

UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~

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# Electronic Communications Transactional Records

b7E -1

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# Dissemination of NSL Information

- NSLs information may be disseminated in accordance with (1) the Attorney General Guidelines for Domestic Operations (AGG-DOM) and (2) the specific statutory limitations
  - ECPA or RFPA: Dissemination is permitted if it is clearly relevant to the responsibilities of the recipient agency.
  - FCRA § 1681u (limited credit information): Dissemination as necessary for the approval and conduct of CI investigation.
  - FCRA 1681v (full credit report) contains no specific dissemination provision, beyond the AGG-DOM.

# Emergency Circumstances

- No “exigent letters.”
- Generally, an NSL (or grand jury subpoena or another form of legal process) must be used to compel information.

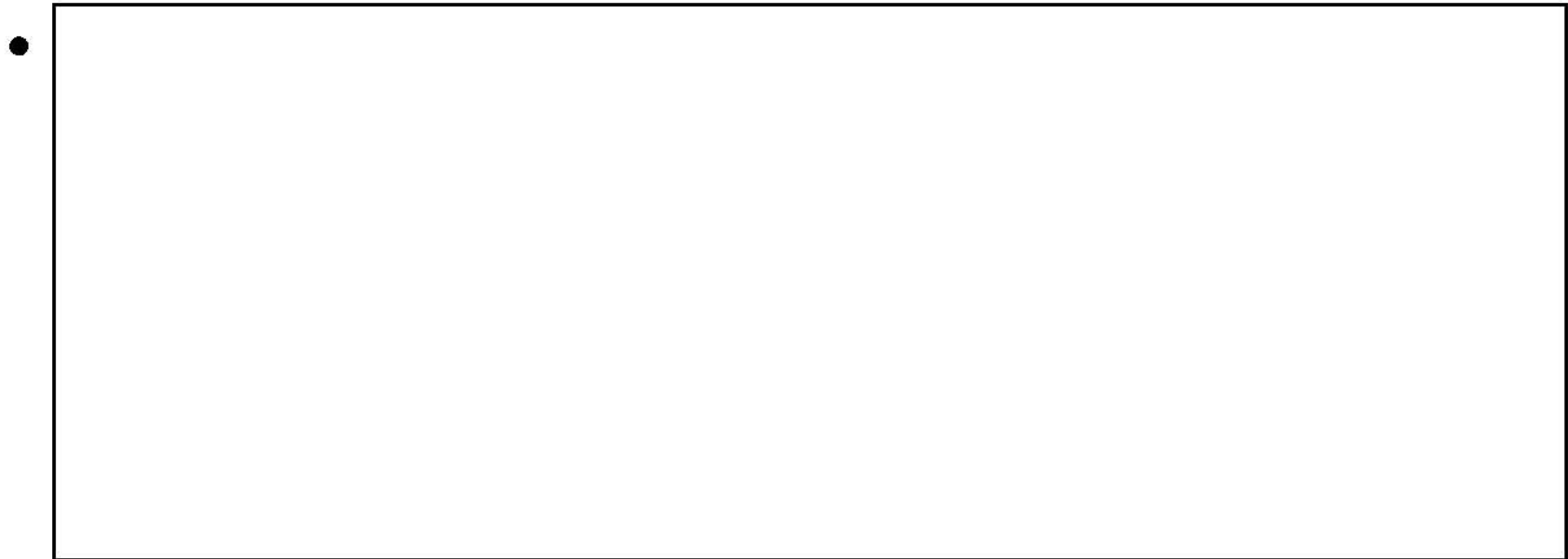
# Emergency Circumstances

- Pursuant to 18 U.S.C. § 2702, a provider may disclose information without delay if in good faith s/he believes an emergency exists involving death or serious injury. DIOG § 18.6.6.3.7.5, Emergency Circumstances.
  - Use Voluntary Emergency Disclosure Form   to request ECPA-protected information in emergency.
  - Letter clarifies that disclosure is voluntary and provides recipient the information necessary to make a good faith determination that an emergency exists.

b7E -4

# Telephone Toll Billing Records of Members of Media & News Organizations

- Investigation of members of media and news organizations is a sensitive investigative matter.



b7E -1

- DIOG – Appendix G: Classified Provisions



# Congressional Reporting Requirements

- EC must reflect USPER status

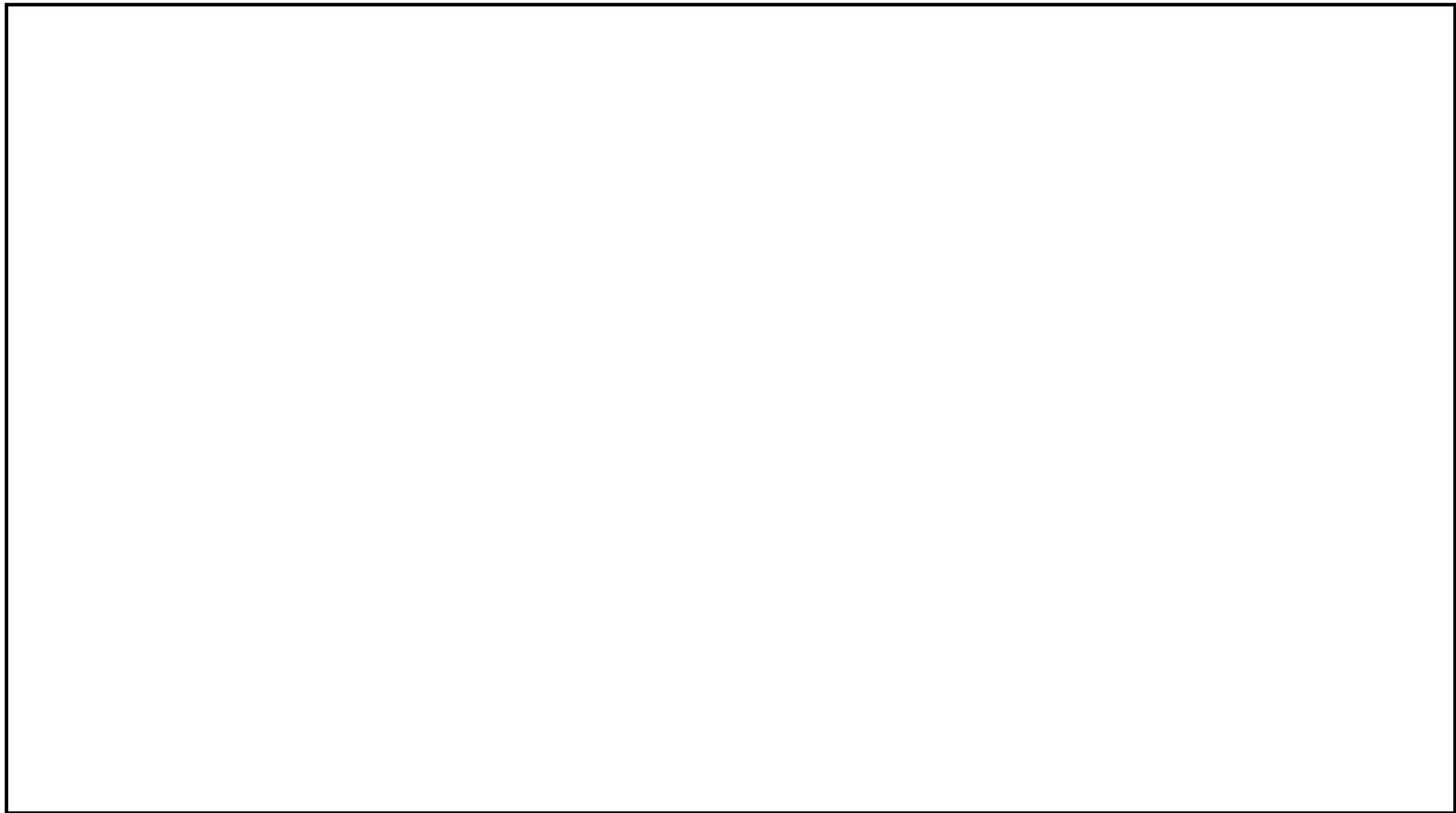
b5 -2  
b7E -4

Why?

b7E -4

# Retain NSL Return Information

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# Payment for NSL Information

- No obligation to compensate recipients of NSLs under
  - ECPA (telephone and electronic communications transactional records)
  - FCRA, 15 U.S.C. § 1681v (full credit reports in IT cases)
- 319X-HQ-A1487720-OGC, serial 222, has a form letter to use in responding to payment demands.
- Compensation required for RFPA NSLs (financial records). A fee schedule is at 12 C.F.R. § 219.3, Appendix A (photocopying = \$.25 per page; searching = \$22 per hour for clerical staff).

# What are “Financial Institutions” (RFPA NSLs)

31 U.S.C. § 5312(a)(2):

... insured bank; commercial bank or trust company; private banker; credit union; thrift institution; broker or dealer registered with the SEC; investment banker or investment company; currency exchange; issuer, redeemer or cashier of travelers’ checks, checks, money orders; operator of a credit card system; insurance company; pawnbroker; loan or finance company; travel agency; licensed sender of money; telegraph company; persons involved in real estate closings and settlements; US Postal Service; agency of US/state/local gov’t carrying out any of foregoing; casino; any business similar to the above list; any business whose cash transactions have high degree of usefulness in criminal, tax or regulatory matters.”

# Full Credit Report in CI Cases

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# More Training

- Virtual Academy courses

- [REDACTED]
- “ [REDACTED] NSL Subsystem Training”

b5 -2  
b7E -4

- Read

- DIOG 18.6.6 National Security Letters

- [REDACTED]

b7E -4

- Live training provided by NSLB. Contact [REDACTED]

b6 -1  
b7C  
b7E -3

[REDACTED] at [REDACTED]

# International Terrorism

The term “international terrorism” means activities that--

- (1) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or any State;
- (2) appear to be intended—
  - (A) to intimidate or coerce a civilian population;
  - (B) to influence the policy of a government by intimidation or coercion; or
  - (C) to affect the conduct of a government by assassination or kidnapping;and
- (3) occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.

# Domestic Terrorism

The term “domestic terrorism” means activities that —

(A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;

(B) appear to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

(C) occur primarily within the territorial jurisdiction of the United States.



# References

- The Right to Financial Privacy Act (RFPA), 12 U.S.C. § 3414(a)(5) (financial records)
- Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681u(a) (identity of financial institutions)
- FCRA, 15 U.S.C. § 1681u(b) (consumer identifying information)
- FCRA, 15 U.S.C. §§ 1681u(a) and (b) (identity of financial institutions and consumer identifying information)
- FCRA, 15 U.S.C. § 1681v (full credit reports in international terrorism investigations)
- Electronic Communications Privacy Act (ECPA), 18 U.S.C. § 2709 [telephone subscriber information (name, address, and length of service), toll billing records, and electronic communication transactional records]

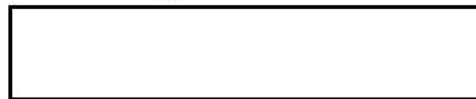


# QUESTIONS



National Security Law Branch (NSLB)  
FBI Headquarters

Direct:



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