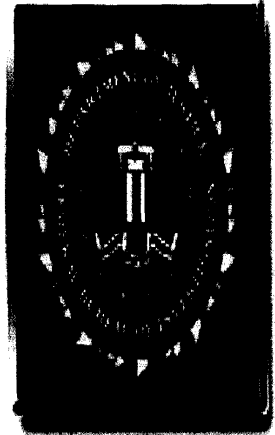


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FEDERAL BUREAU OF INVESTIGATION
BRIEFING TO THE SENATE JUDICIARY COMMITTEE

OVERALL CLASSIFICATION:

Domestic Investigations and Operations Guide (DIOG)



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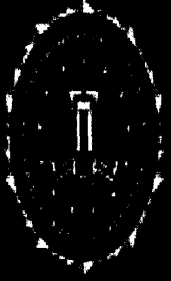
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2009

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DIOG Overview

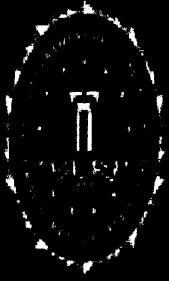
- The DIOG was written to implement The Attorney General's Guidelines for Domestic FBI Operations (AGG-DOM) and applies to all domestic investigative activities and intelligence collection conducted by the FBI.
- The Domestic Investigations and Operations Guide (DIOG) was approved by FBI Director Robert Mueller on December 16, 2008.
- The purpose of the DIOG is to standardize policy to ensure that criminal, national security, and foreign intelligence investigative activities are consistent throughout the FBI.
- The DIOG applies to all FBI employees, Task Force Officers, and all other individuals operating under FBI authority.



Investigation Progression

The DIOG provides guidance throughout the FBI investigative process. Investigations progress through the following three phases:

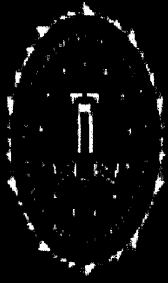
- Assessment
- Preliminary Investigation
- Full Investigation



Assessments

Prior to opening an assessment, an FBI employee must:

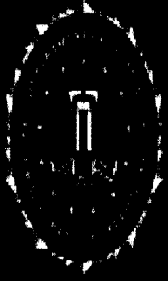
- determine an authorized purpose;
- follow specific work flows for management and documentation;
- not initiate based solely on the exercise of these First Amendment rights; (unless a group exercising its First Amendment rights also threatens or advocates violence or destruction of property)
- and must ensure that the assessment is an appropriate use of personnel and financial resources.



Preliminary Investigations

A Preliminary Investigation may be initiated if:

- a federal crime or a threat to the national security has, is or may occur, or;
- an individual, group, property or activity is or may be a target of federal criminal activity or threats to the national security; and
- the investigation may obtain information relating to the subject(s) involvement in such activities or protect against the activity or threat.



Full Investigations

The AGG-DOM authorizes a third level of investigative activity-predicated investigations. Full Investigations may be initiated if there is an “articulable factual basis” of possible criminal or national threat activity.

The three types of Full Investigations include:

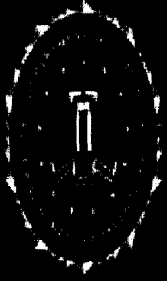
- Single and Multi-subject
- Enterprise
- Positive Foreign Intelligence.



Sensitive Investigative Matters

Investigations and Assessments are deemed "Sensitive Investigative Matters (SIMs)" when they involve activities of:

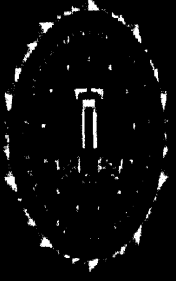
- A domestic public official (involving corruption or national security threat)
- A political candidate (involving corruption or national security threat)
- A religious or political organization, or individual prominent in such
- News media
- Matters having an academic nexus
- Any other matter which should be brought to the attention of FBIHQ or DOJ, in the judgment of authorizing official



Undisclosed Participation (UDP)

- Policy driven by EO 12333
- AGG-Dom required a UDP policy and AG approval of that policy
- FBI Policy seeks uniformity in National Security Investigations and Criminal investigations

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Undisclosed Participation (UDP)

General Undisclosed Participation (UDP):

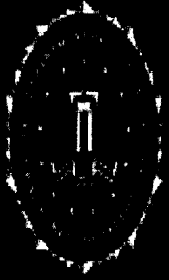
- General UDP occurs when an FBI employee or Confidential Human Source (CHS), acting on behalf of the FBI, becomes a member or participates in the activity of an organization without disclosing FBI affiliation to an appropriate official of the organization
- "Organization" means an association of two or more persons formed for any lawful purpose (social, political, religious, business, etc.)

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Undisclosed Participation (UDP) Approval Levels

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Investigative Summary Charts

The following charts outline Investigative Methods and approval requirements for these methods, as well as the categories of Investigations.



Field Office Investigations Chart

Field Office Investigations Chart							
Investigation	Purpose	Duration	Documentation	Approval	Justification Review	SIM	Responsible Entity
Type 1	Activities constituting violations of federal criminal law or threats to the national security	As long as necessary to achieve purpose and objective; No time limit	FD-71 or Guardian as soon as practical	Any employee can initiate; SSA or SIA Approval	Every 30 days	CDC review; SAC approval	Investigative Squad
Type 2	The involvement or role of individuals, groups, or organizations in such activities (#1 above)						
					Every 90 days; If probationary employee, every 60 days	CDC review; SAC approval	FIG (Collection Team) or Investigative Squad
Type 4	Obtaining information to inform or facilitate intelligence analysis and planning	As long as necessary to achieve purpose and objective; No time limit	EC before initiating	Prior SSA or SIA Approval	Every 90 days; If probationary employee, every 60 days	CDC review; SAC approval	FIG (Investigative Squad can support)
Type 5	Identify, assess, validate or maintain the cover or credibility of a CHS	CHSP Mand AGG-CHS	classification	CHSPM and AGG-CHS	CHS Manual	Not addressed in DIOG; Follow CHS Manual	FIG or Investigative Squad
Investigation	Predication	Duration	Documentation	Approval	Justification Review	SIM	Responsible Entity
PI	Initiated on the basis of "information or an allegation" indicating the existence of a circumstantial description of a DIOG Section 8.5	6 months; One extension by SAC; no extension after 1 year; HQ will not act on it or report	EC	Prior SSA Approval (CI also requires FBIHQ notice)	Every 90 days; If probationary employee, every 60 days	CDC Review, SAC Approval; Notification to USAO or DOJ & HQ within 30 days	Investigative Squad
Full	Initiated if there is an "articulable factual basis" that reasonably indicates circumstances described in DIOG Section 7.5 exist	No time limit; Factual predication determines outcome	EC	Prior SSA with FBIHQ (& DOJ notice on NSB USPER matters)	Every 90 days; If probationary employee, every 60 days	CDC Review, SAC Approval; Notification to USAO or DOJ & HQ within 30 days	Investigative Squad
Enterprise Full	Investigation is predicated when there is an articulable factual basis for the investigation that reasonably indicates the group or organization is engaged in Racketeering, IT, DT, or other. See DIOG Section 8.4	No time limit; Factual predication determines outcome	EC	Prior SSA with FBIHQ and DOJ notice	Every 90 days; If probationary employee, every 60 days	CDC Review, SAC Approval; Notification to USAO or DOJ & HQ within 30 days	Investigative Squad
PFI Full	Investigation may obtain Positive Foreign Intelligence (PFI) that is responsive to a foreign intelligence requirement	Until the requirement is met; No time limit	EC	Prior DIOGMS approval; notice to DOJ/NSO within 30 days	Every 90 days; If probationary employee, every 60 days	CDC Review, SAC Approval; Section Chief approval	FIG

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Investigative Methods Summary

Authorized Methods for Assessments and Predicated Investigations

Note: Red indicates methods not allowed under a particular operational activity; Green indicates methods allowed.

Assessments

Preliminary
InvestigationsFull
Investigations

Obtain publicly available information

Access and examine FBI and other DOJ records, and obtain information from any FBI or DOJ personnel

Access and examine records maintained by, and request information from, other federal, state, local, tribal, or foreign governmental entities or agencies

Use online services and resources (whether nonprofit or commercial)

Use and recruit human sources in conformity with AG Guidelines Regarding the Use of FBI Confidential Human Sources

Interview or request information from members of the public and private entities

Accept information voluntarily provided by governmental or private entities

Engage in observation or surveillance not requiring a court order

Mail covers

Physical searches of personal or real property where a warrant or court order is not legally required because there is no reasonable expectation of privacy (e.g., trash covers)

Consensual monitoring of communications, including consensual computer monitoring, is subject to legal review by the CDC or the FBI OGC. Where a sensitive monitoring circumstance is involved, monitoring must be approved by the Criminal Division or, if the investigation concerns foreign intelligence or a threat to the national security, by the National Security Division

Use of closed-circuit television, direction finders, and other monitoring devices, subject to legal review by the CDC or FBI OGC

Polygraph examinations

Undercover operations

Compulsory process as authorized by law, including Federal Grand Jury and other subpoenas and National Security Letters (Federal Grand Jury subpoenas for telephone and electronic mail subscriber records can be used during type 1 and 2 Assessments only)

Accessing stored wire and electronic communications and transactional records

Use of pen registers and trap and trace devices

Electronic surveillance

Foreign Intelligence collection under Title VII of FISA

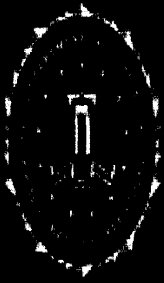
Physical searches, including mail openings, where a warrant or court order is legally required because there is an expectation of privacy



Investigative Methods Approval Summary

Authorized Method Reference		Approval (None/Required/Not Permitted/SSA Approval/Field Office Approval/ASAC Approval)		
		Assessments	Predicated	Foreign Intelligence
1	5.9A	Obtain publicly available information	None Required	None Required
		Tasking a LCE to attend religious service	Not Permitted	SSA Approval
2	5.9B	Physical surveillance of a person or group (Consult the DIOG for handheld photo and video surveillance with no reasonable expectation of privacy)	[redacted] consult DIOG for requirements	None Required
		[redacted]	Field Office Approval	Field Office Approval
		[redacted]	ASAC Approval	ASAC Approval
3	5.9C	Access and examine FBI and other Department of Justice (DOJ) records and obtain information from any FBI or other DOJ personnel	None Required	None Required
4	5.9D	Access and examine records maintained by, and request information from, other federal, state, local, or tribal, or foreign governmental entities or agencies	None (Unless such approval is required by MOU or other agreements)	None (Unless such approval is required by MOU or other agreements)
5	5.9E	Use online services and resources (whether nonprofit or commercial)	None Required	None Required
6	5.9F	Interview or request information from members of the public and private entities	None Required except for contact with represented persons, members of U.S. Congress or their staffs, White House personnel, or other substantive division requirements	None Required except for contact with represented persons, members of U.S. Congress, or their staffs, White House personnel, or other substantive division requirements
7	5.9G	Accept information voluntarily provided by governmental or private entities	None Required	None Required
8	5.9H	Use and recruit human sources	None Required (utilize [redacted])	None Required (utilize Delta)
		Tasking a CHS to attend religious service	SAC Approval	SSA Approval
9	5.9I	Federal Grand Jury subpoenas or telephonic electronic subscriber information	US Attorney Office Approval (Type 1 and 2 Assessments Only)	Not Permitted
10	5.9C	Pattern Based Data Mining	SORC	SORC

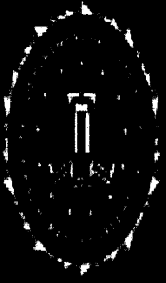
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Investigative Methods Approval Summary (cont.)

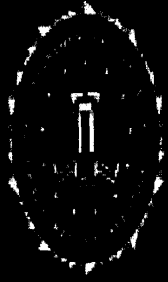
		Assessments	Predicated	Foreign Intelligence
11	11.3	Mail covers		
12	11.4	Physical searches of personal or real property where a warrant or court order is not legally required because there is no reasonable expectation of privacy (e.g. [redacted])		
13	11.5	Consensual monitoring of communications, including consensual computer monitoring	CDC or OGC Review SSA Approval	CDC or OGC Review SSA Approval
14	11.5	Consensual monitoring of communications, including consensual computer monitoring, with a sensitive monitoring circumstance	CDC or OGC Review, SAC Approval, DOJ Criminal or DOJ NSD Approval	CDC or OGC Review, SAC Approval, DOJ Criminal or DOJ NSD Approval
15	11.6	Use of closed-circuit television, direction finders, and other monitoring devices		
16	11.7	Polygraph examinations	SSA Approval	SSA Approval
17	11.8	Under cover operations, Group II	CDC Review, SAC or ASAC with delegated authority; National Security cases also require NSD unit UACB	CDC Review, SAC or ASAC with delegated authority, NSB-Unit/UACB Approval
18	11.8	Under cover operations, Group I	CDC review, SAC, and AD and C UORC or UCR (EAD/DD certain cases) Approval	CDC review, SAC and AD and UCR (EAD/DD certain cases) Approval
19	11.9	Compulsory process as authorized by law; Federal Grand Jury and trial subpoenas	US Attorney's Office Approval	
20	11.9	Administrative Subpoenas: Drugs	SAC, ASAC, SSRA, or Drug Squad SSA	Not Permitted
		Administrative Subpoenas: Sexual Exploitation		
		Administrative Subpoenas: Healthcare Fraud	U.S. Attorney's Office Approval	
21	11.9	National Security Letters	Field Office: CDC Review, ADIC or SAC Approval.	Not Permitted
			HQ: NSLB Review; DD or EAD-NSB or AD & DADs CT/CD/CyD or GC or Deputy GC-NSLB Approval	Not Permitted
22	11.10	Accessing stored wire and electronic communications and transactional records	Statute/Court Order, Consult DIOG	Not Permitted
23	11.11	Use of pen registers and trap and trace devices	FISA Court or District Court Order	Only Available for Non-USPER by FISA Court order
24	11.12	Electronic surveillance		
25	11.13	Physical searches, where there is reasonable expectation of privacy, including mail openings		
26	11.14	Acquisition of foreign intelligence information in conformity with Title VII of the Foreign Intelligence Surveillance Act	FISA Court Order	FISA Court order

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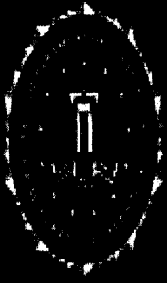
Protection of Civil Liberties

- Section 4 of the DIOG, *Privacy and Civil Liberties, and Least Intrusive Methods* outlines the FBI's oversight, self-regulation, and strict adherence to the Constitution of the United States.
- Throughout section 4, the DIOG discusses the protection of First Amendment rights (Freedom of Speech, Freedom of the Press, Freedom of Peaceful Assembly and to Petition of Government for Redress of Grievances, and Exercise of Religion), civil liberties and privacy issues, and Equal Protection of all Americans under the Fourteenth Amendment.
- Section 4.4 of the DIOG requires FBI employees to use the "Least Intrusive" means or method possible to obtain intelligence or evidence.



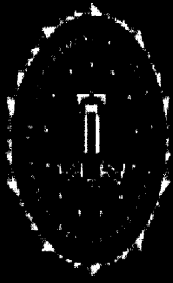
Use of Race and Ethnic Identity in Assessments and Investigations

- The DIOG reiterates Department of Justice (DOJ) guidance which permits the consideration of ethnic and racial identity information based on specific reporting (i.e. eyewitness accounts).
- Consideration of race or ethnicity is permitted in investigative or collection scenarios, if relevant. Examples may include investigations of ethnic-based gangs or terrorist organizations known to be comprised of members of the same ethnic grouping.



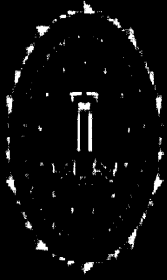
Collecting and Analyzing Demographics

- The DIOG also reiterates DOJ guidance permitting the collection and analysis of demographics if the identification of concentrated ethnic communities will reasonably aid in the analysis of potential threats and vulnerabilities or assist domain awareness for the purpose of performing intelligence analysis.
- In addition, the locations of ethnic-oriented businesses or other facilities may be collected if their locations will reasonably contribute to an awareness of threats and vulnerabilities and intelligence collection opportunities.



Collecting and Analyzing Demographics

- If the collection of ethnic/racial demographics is legally allowable in an investigation, it may also be “mapped” using sophisticated computer geo-mapping technology.
- These maps may be used for domain awareness of an area of responsibility, to track crime trends, or to identify specific communities or areas of interest to support specific assessments or investigations.
- Regardless of the purpose for its use, the relevance of the ethnic or racial information must be clearly demonstrated and documented.



Information Withheld Publicly from the DIOG

The FBI determined that several types of information should be redacted in the Public Release of the DIOG. These types of information include:

Redaction: FBI Policy Directives

Justification: These are internal FBI policies that govern administrative and operational matters not directly related to the DIOG.

Redaction: Terms and Definitions

Justification: Knowledge of specific FBI terms and definitions could allow for circumvention of investigations and spoofing.

Redaction: Collection and/or Analysis of Information

Justification: Knowledge of these internal decision-making criteria could allow for circumvention of collection and analytical techniques.

Redaction: FBI Data Systems

Justification: Many data systems used by the FBI are proprietary.

Redaction: Scenarios & Examples

Justification: Many scenarios and examples used in the DIOG involve sensitive information, such as the names actual terrorist organizations, and provide insight into targeting, recruitment, or FBI assimilation of such organizations.



Information Withheld Publicly from the DIOG

Redaction: Surveillance and Monitoring Techniques

Justification: Knowledge of these specific criteria could allow for circumvention of the techniques.

Redaction: Time Periods

Justification: Knowledge of time period requirements for investigative techniques could damage the effectiveness of the technique or allow for circumvention. For example, a person who believes he may be under investigation may stop using his cellular phone for the specified period of time, thereby hindering the investigation.

Redaction: Notes

Justification: Notes in the DIOG provide internal guidance to FBI operators and Intelligence Analysts.

Redaction: Internal Web and E-mail Addresses

Justification: Publicly releasing contact information of FBI staff could allow for harassment, spam, or spoofing.

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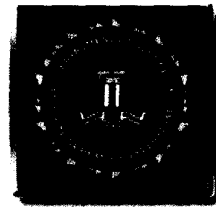


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FBIHQ DIOG Training Session A

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Course Overview

Overall Training Objective:

Provide an instructional foundation on the DIOG and then apply the knowledge gained by using hypothetical examples and scenarios. Upon completing this course of instruction you should have a firm grasp of the concepts and principles underpinning the DIOG.

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Course Overview

Participation Standards:

Questions are welcome; however, if your question is about a specific set of facts that may divert the training objective, please direct your question to one of the Training team members at a break for a response.

During the scenario exercises, participants will be called upon to provide their response to particular facts or circumstances. Each Unit/Section should select a representative to speak for the Unit/Section and rotate that responsibility among the group. The scenarios are meant to prompt discussion, but the presenters must keep the scenario moving forward. Please understand that everyone may not be able to voice their perspective in the group setting. Keep in mind there may be several avenues to reach the same justified conclusion. You may use your handouts and training aids to inform your decision.



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Course Overview

Course Completion:

- You must complete the entire mandatory 16.5 hours of training. You must score an 80% or higher to pass. You will be notified of your score via e-mail. If you do not pass the first time, you will be permitted to take the test again.
- Please annotate on the attendance sheet your presence at the training if you pre-registered. If you did not pre-register, please print your name, division, and the items requested on the attendance roster.
- After the course is complete, you will be receiving a survey e-mail containing questions that will test your knowledge and understanding of the material presented. The test is open book.

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AGG-Dom: Overview

- Provides ability to FBI authorities to be more proactive and preventative, and the flexibility to deal with complex threats that do not fall neatly into individual programs
- Provides clarity and improves compliance by combining several sets of guidelines into one consistent set of guidelines
- Removes discrepancies, sets uniform rules for criminal, national security, and foreign intelligence collection cases. Each program will have a program-specific policy guide (PG)



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AGG-Dom: Overview

- Reduces reporting requirements, particularly in the national security area
- Recognizes Special Events and Domain Management as part of the FBI's mission
- Recognizes the FBI's obligation to provide investigative assistance and joint operational support to other agencies, including the U.S. intelligence community
- Creates a new category outside of predicated investigations named "Assessments"

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Policy Environment for Domestic Operations

Constitution, Statutes, and Executive Orders

AG GUIDELINES (AGG-Dom)

Apply to domestic national security and criminal investigative activities, including interagency coordination and intelligence analysis.

FBI's Domestic Investigations and Operations Guide (DIOG)

Program Policy Implementation Guides

Program
Guide

Program
Guide

Program
Guide

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DIOG Section 1: Scope & Purpose

- **DIOG applies to all investigative and intelligence collection activities conducted by the FBI**
 - within the United States
 - in the United States territories
 - outside the territories of all countries
- **DIOG does not apply to investigative and intelligence collection activities of the FBI in foreign countries**
 - governed by AGGs for Extraterritorial FBI Operations (national security and criminal)



DIOG Section 1: Scope & Purpose

- The primary purpose of the AGG-DOM and the DIOG is to standardize policy so that criminal, national security and foreign intelligence investigative activities are performed in a legal and consistent manner
- The DIOG replaces numerous FBI manuals, electronic communications, letterhead memoranda and other policy documents. The DIOG is located on the Corporate policy Office (CPO) Policy and Guidance Library web site
- The changes implemented by the DIOG better equip you to protect the people of the United States against crime and threats to the national security
- The DIOG stresses the importance of oversight and self-regulation to ensure compliance



DIOG Section 2: General Authorities & Principles

- **The AGG-Dom replaces six guidelines:**
 - The Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations (May 30, 2002)
 - The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (October 31, 2003) *
 - The Attorney General's Supplemental Guidelines for Collection, Retention, and Dissemination of Foreign Intelligence (November 29, 2006)



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DIOG Section 2: General Authorities & Principles

- **The AGG-Dom also replaces:**
 - The Attorney General Procedure for Reporting and Use of Information Concerning Violations of Law and Authorization for Participation in Otherwise Illegal Activity in FBI Foreign Intelligence, Counterintelligence or International Terrorism Intelligence Investigations (August 8, 1988) *
 - The Attorney General's Guidelines for Reporting on Civil Disorders and Demonstrations Involving a Federal Interest (April 5, 1976)
 - The Attorney General's Procedures for Lawful, Warrantless Monitoring of Verbal Communications (May 30, 2002) (only portion applicable to FBI)

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DIOG Section 2: General Authorities & Principles

Note: Regarding Extraterritorial FBI's Operations, the AGG-Dom did not repeal or supersede certain portions of the prior guidelines (marked * in prior slides). These national security extraterritorial portions continue to remain in effect pending the approval of new Attorney General's Guidelines for Extraterritorial FBI Operations for both national security and criminal investigations. Additionally, the classified Attorney General Guidelines for Extraterritorial FBI Operations and Criminal Investigations (1993) continue to remain in effect pending approval of the new guidelines.

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DIOG Section 2: General Authorities & Principles

The FBI is authorized to:

- Conduct investigations and collect evidence (criminal and national security) and collect foreign intelligence (AGG-Dom, Part II)
- Provide investigative assistance to federal, state, local, tribal, and foreign agencies (AGG-Dom, Part III) and (DIOG Section 12)
- Collect information necessary for and conduct intelligence analysis & planning (AGG-Dom, Part II & IV) and (DIOG Section 15)
- Retain and share information (AGG-Dom, Part VI) and (DIOG Section 14)

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DIOG Section 2: General Authorities & Principles

The word “Assessment” has two distinct meanings:

- The AGG-Dom authorizes as an investigative activity an “assessment” which requires an authorized purpose and objective as discussed in DIOG Section 5.
- The U.S. intelligence community uses the word “assessment” to describe written intelligence products as discussed in DIOG Section 15.7.B.

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DIOG Section 2: General Authorities & Principles

- **The FBI is an intelligence agency as well as a law enforcement agency**
- **The FBI is authorized to engage in intelligence analysis and planning, using all lawful sources of information:**
 - development of overviews and analysis
 - research and analysis to produce reports and assessments
 - operate intelligence systems that facilitate and support investigations through ongoing compilation and analysis of data and information



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DIOG Section 2: General Authorities & Principles

- **The FBI is the “lead federal agency” in the following areas:**
 - Federal Crimes of Terrorism (listed in DIOG Section 2.4.C)
 - Other non-Terrorism federal crimes (listed in DIOG Section 2.4.D)
 - Counterintelligence and Espionage (listed in DIOG Section 2.4.F)
 - Criminal Investigations (some listed in DIOG Section 2.4.G; see also CID PGs)

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DIOG Section 2: General Authorities & Principles

Departures from the AGG – Dom:

In Advance: FBI Director, Deputy Director, or EAD (NSB or Criminal Cyber Response and Services Branch) must approve with notice to the General Counsel.

In Emergency: Approving authority who authorizes the departure must give notice as soon thereafter as practical to Director, Deputy Director or EAD with notice to General Counsel – OGC must keep records of all departures to advise DOJ, as required.

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DIOG Section 2: General Authorities & Principles

Departures from the DIOG:

In Advance: Appropriate substantive AD or DAD must approve with notice to the General Counsel or appropriate Deputy General Counsel (DGC).

In Emergency: Approving authority who authorizes the departure must give notice as soon thereafter as practical; SAC or HQ Section Chief must provide written notice to appropriate substantive AD and the General Counsel.

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DIOG Section 2: General Authorities & Principles

The AGG-Dom and DIOG apply to all FBI domestic investigations and operations conducted by “FBI employees” – defined as:

- applicable support personnel
- intelligence analysts
- special agents
- task force officers (TFO)
- detailees
- FBI contractors
- confidential human sources (CHS)

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DIOG Section 2: General Authorities & Principles

Authorities of an FBI Special Agent:

1. Investigate violations of the laws, including the criminal drug laws, of the United States (21 U.S.C. § 871; 28 U.S.C. §§ 533, 534 and 535; 28 C.F.R. § 0.85)
2. Collect evidence in cases in which the United States is or may be a party in interest (28 C.F.R. § 0.85 [a]) as redelegated through exercise of the authority contained in 28 C.F.R. § 0.138 to direct personnel in the FBI
3. Make arrests (18 U.S.C. §§ 3052 and 3062)
4. Serve and execute arrest warrants and seize property under warrant; issue and/or serve administrative subpoenas; serve subpoenas issued by other proper authority; and make civil investigative demands (18 U.S.C. §§ 3052, 3107; 21 U.S.C. § 876; 15 U.S.C. § 1312)

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DIOG Section 2: General Authorities & Principles

Authorities of an FBI Special Agent (cont.):

5. Carry firearms (18 U.S.C. § 3052)
6. Administer oaths to witnesses attending to testify or depose in the course of investigations of frauds on or attempts to defraud the United States or irregularities or misconduct of employees or agents of the United States (5 U.S.C. § 303)
7. Seize property subject to seizure under the criminal and civil forfeiture laws of the United States (e.g., 18 U.S.C. §§ 981 and 982)
8. Perform other duties imposed by law

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DIOG Section 2: General Authorities & Principles

The AGG-Dom did not limit other authorized FBI activities, such as:

- Conducting background checks and inquiries concerning applicants and employees under federal personnel security programs
- Maintenance and operation of national criminal records systems and preparation of national crime statistics
- Forensic assistance and administration functions of the FBI Laboratory

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DIOG Section 3: FBI's Core Values

The FBI's Core Values are:

- Rigorous obedience to the U.S. Constitution
- Respect for the dignity of all those we protect
- Compassion
- Fairness
- Uncompromising personal integrity and institutional integrity
- Accountability by accepting responsibility for our actions and decisions and their consequences
- Leadership, by example, both personal and professional

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DIOG Section 3: Compliance

Everyone's Responsibility:

- To learn and understand the laws, rules and regulations that govern their activities
- To fully comply with all laws, rules and regulations governing investigations, operations, programs and activities
- To report to proper authority any known or suspected failures to adhere to the law, rules or regulations



DIOG Section 3: Deputy Director Roles and Responsibilities

DIOG Section 3.2:

- DD is the proponent of the DIOG and subordinate implementing procedural directives and specific policy implementation guides (PGs)
- DD has oversight of DIOG compliance, monitoring and auditing processes
- DD has responsibility for DIOG training
- DD, through the Corporate Policy Office (CPO), will ensure the DIOG is updated one year from implementation, and every three years thereafter



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DIOG Section 3: Special Agent, Intelligence Analyst, Task Force Officer, FBI Contractor, and Others - Roles and Responsibilities

DIOG Section 3.3:

- Comply with AGG-Dom and DIOG standards for initiation, conducting, and closing investigative activity; collection activity; or use of an investigative method
- Obtain training on DIOG standards relevant to their position and perform activities consistent with those standards
- Ensure all investigative activity complies with all laws and policy
- Identify victims, offer FBI assistance, and furnish information to the FBI Victim Specialist

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DIOG Section 3: Special Agent, Intelligence Analyst, Task Force Officer, FBI Contractor, and Others - Roles and Responsibilities

(Continued – DIOG Section 3.3)

- Ensure civil liberties and privacy are protected throughout the assessment or investigative process
- Conduct no investigative activity solely on the basis of activities protected by the 1st Amendment or solely on the basis of race, ethnicity, national origin or religion of the subject
- Report non-compliance to the proper authority

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DIOG Section 3: Supervisor Roles and Responsibilities

DIOG Section 3.4.A – Supervisor Defined:

- Field Office or FBIHQ personnel, including: SIA, SSA, SSRA, UC, ASAC, ASC, SAC, DAD, AD, ADIC, and EAD

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DIOG Section 3: Supervisor Roles and Responsibilities

DIOG Section 3.4.B - Supervisor Responsibilities:

- Determine whether the DIOG standards are satisfied for initiating, approving, conducting and closing an investigative activity, collection activity, or investigative method
- Ensure all investigative activity complies with all laws and policy
- Obtain training on DIOG standards relevant to their position and conform their decisions to those standards
- Ensure civil liberties and privacy are protected throughout the assessment or investigative process

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DIOG Section 3: Supervisor Roles and Responsibilities

Continued DIOG Section 3.4.B - Supervisor Responsibilities:

- If encountering a practice that does not comply with the law, rules, or regulations, the supervisor must:
 - 1. report that compliance concern to the proper authority
 - 2. take action to maintain compliance, when necessary
- Ensure no retaliation or adverse action is taken against persons who raise compliance concerns

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DIOG Section 3: Supervisor Roles and Responsibilities

DIOG Section 3.4.C - Supervisory Delegation:

- Any DIOG requirement imposed on a Supervisor may be delegated/performed by a designated Acting, Primary, or Secondary Relief supervisor as indicated below, unless specified otherwise by federal statute, EO, PD, AGG, FBI Policy or any other regulation.
 - Supervisor may delegate authority to a supervisor one level junior to himself/herself (e.g. SAC to ASAC; or SC to Assistant/SC)
 - Must identify the task delegated
 - Must identify the supervisory position given approval authority
 - Must be in writing
 - Must be retained appropriately
 - Higher level Supervisors in the same chain-of-command as the original supervisor may approve a particular activity without written delegation documentation

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DIOG Section 3: Supervisor Roles and Responsibilities

DIOG Section 3.4.D - Investigative File Reviews:

- Conducted by full-time supervisors or primary relief supervisors with subordinates
 - (other relief supervisors must have written SAC authority to conduct)
- Conducted with all Agents, Resident Agents, TFOs, analysts, detailees, and FBI contractors, as appropriate
- Conducted in-person or by telephone when necessary
- Conducted in private
- Documented/noted on ACS ICMC report, FD-71 or Guardian
- Conducted at least every 60 days for Probationary Agents, recommended every 30 days

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DIOG Section 3: Supervisor Roles and Responsibilities

Assessment Justification/File Reviews:

- Conducted for every 30 day period for Type 1 and 2 Assessments
 - (with 10 additional days to complete and document)
- Conducted for every 90 day period for Type 3, 4, and 6 Assessments
 - (with 30 additional days to complete and document)
- Supervisor Must:
 - Evaluate progress made toward the achievement of authorized purpose and objective
 - Ensure activities that occurred during prior period were appropriate
 - Determine whether it is reasonably likely that information may be obtained that is relevant to the authorized objective – thus warranting an extension for another 30/90 day period
 - Determine whether adequate predication has been developed to open a predicated investigation
 - Determine whether the assessment should be terminated



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DIOG Section 3: Supervisor Roles and Responsibilities

Predicated (Preliminary and Full) Investigation File Reviews:

- Conducted for every 90 day period
 - (with 30 additional days to complete and document)
- Supervisor Must:
 - Evaluate progress made toward the achievement of authorized purpose and objective
 - Ensure activities that occurred during prior period were appropriate
 - Determine whether it is reasonably likely that information may be obtained that is relevant to the authorized objective – thus warranting an extension for another 90 day period
 - Determine whether adequate predication has been developed to open/or continues to justify a predicated investigation

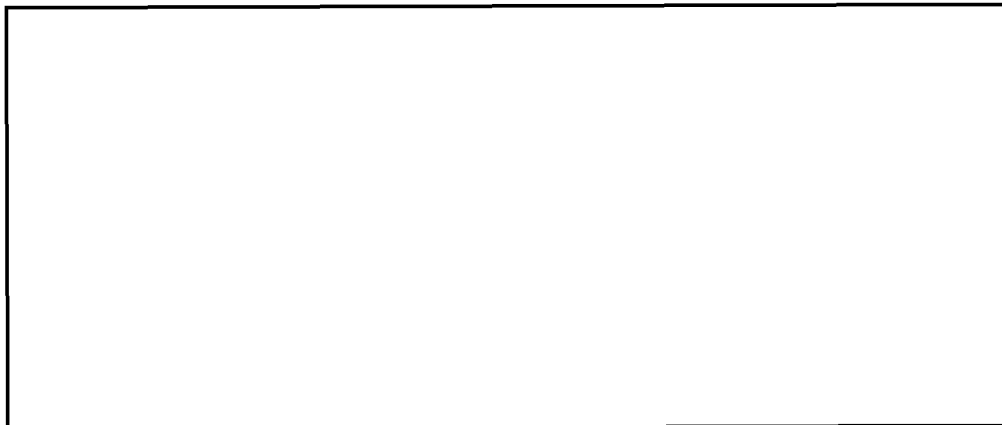
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DIOG Section 3: Unaddressed Work

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 Note: the FD-71 provides a new mechanism to assign an Assessment to an electronic Unaddressed Work File in the appropriate classification

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DIOG Section 3: CDC's Role and Responsibilities

CDC's Role and Responsibilities:

1. Must review all Assessments, Preliminary Investigations (PI) and Full Investigations (FI) that involve a "Sensitive Investigative Matter" (SIM)
2. Must review particular investigative methods as mandated by DIOG Section 5 and 11
3. Requirements imposed on the CDC may be performed by an Associate Division Counsel, Legal Advisor, or designated Acting CDC. All delegations must be in writing and retained appropriately.

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DIOG Section 3: CDC Roles and Responsibilities

CDC Determinations:

The primary purpose of the CDC's review is to ensure the legality of the actions proposed. In this context, the review includes a determination that the:

- Investigative activity is not legally objectionable (can be overruled by OGC)
 - Activity is not based solely on the exercise of 1st Amendment rights or on the race, ethnicity, national origin or religion of the subject
- The investigation is founded upon an "authorized purpose" (Assessments) or have adequate factual predication (Preliminary and Full)
- Advise as to the "wisdom" of the proposed action



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DIOG Section 3: CDC Roles and Responsibilities

Continued: CDC Determinations

The CDC's determination is based on facts known at the time of the review and recommendation.

The CDC may require additional reviews or provide guidance as to monitoring the results of investigative activity to ensure that the authorized purpose and/or factual predication remain intact after additional facts are developed.

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DIOG Section 3: OGC Roles and Responsibilities

OGC Role: In coordination with the DOJ NSD, the OGC is responsible for conducting regular reviews of all aspects of FBI national security and foreign intelligence activities.

The primary purpose of the OGC's review is to ensure the legality of the actions proposed. These reviews, conducted in the field offices and in HQ Units, broadly examine such activities for compliance with the AGG-Dom and other requirements. In this context, the review includes a determination that the:

- Investigative activity is not legally objectionable (Activity is not based solely on the exercise of 1st Amendment rights or on the race, ethnicity, national origin or religion of the subject)
- The investigation is founded upon an "authorized purpose" (Assessments) or have adequate factual predication (Preliminary and Full) and meets the standards in the DIOG
- Advise as to the "wisdom" of the proposed action

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DIOG Section 3: OGC Roles and Responsibilities

Continued: OGC Determinations

- The OGC's determination above is based on facts known at the time of the review and recommendation.
- The OGC may require additional reviews or provide guidance as to monitoring the results of investigative activity to ensure that the authorized purpose and/or factual predication remain in tact after facts are developed

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DIOG Section 3: Other Roles and Responsibilities

CPO = Corporate Policy Office: Oversight and Implementation of the DIOG; Report compliance risks to OIC (DIOG Section 3.7)

OIC = Office of Integrity and Compliance: Identify compliance risk areas, adequacy of policy and training programs, monitor DIOG compliance (DIOG Section 3.8)

DCO = Division Compliance Officer: One identified in each Field Office to assist the OIC to identify potential non-compliance risk areas and report them to proper authority and OIC (DIOG Section 3.10)

PM = Program Manager: HQ entity that identifies, prioritizes, and analyzes compliance risks and takes appropriate corrective action (DIOG Section 3.9)

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DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

- Responsibility to protect the American public, not only from crime and terrorism, but also from incursions into their constitutional rights; accordingly, all investigative activities must fully adhere to the Constitution and the principles of civil liberty and privacy.
- Provisions of the AGG-Dom, other AG guidelines, and oversight from DOJ components, are designed to ensure FBI's activities are lawful, appropriate, and ethical, as well as effective in protecting civil liberties and privacy.
- DOJ and FBI's Inspection Division, Office of Integrity and Compliance, the OGC, other Bureau components, and **you** share responsibility for ensuring the FBI meets these goals.



DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

- No investigation or assessment can be commenced based solely on race, ethnicity, national origin, religion of the subject or the exercise of First Amendment rights.
- Corollary to this AGG requirement is the Privacy Act, which states that each agency that maintains a system of records shall "maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or **unless pertinent to and within the scope of an authorized law enforcement activity.** 5 U.S.C. 552a(e)(7).



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DIOG Section 4 Scenario

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- What can you do with this information?

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DIOG Section 4 Scenario

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DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

FIRST AMENDMENT RIGHTS:

Individuals or groups who communicate with each other or with members of the public in any form in pursuit of social or political causes—such as opposing war or foreign policy, protesting government actions, promoting certain religious beliefs, championing particular local, national, or international causes, or a change in government through non-criminal means, and actively recruit others to join their causes—have a fundamental constitutional right to do so. An assessment may not be initiated based solely on the exercise of these First Amendment rights. If, however, a group exercising its First Amendment rights also threatens or advocates violence or destruction of property, an assessment would be appropriate

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DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

FIRST AMENDMENT RIGHTS (cont.):

- No investigative activity, including assessments, may be taken solely on the basis of activities that are protected by the First Amendment or on the race, ethnicity, national origin or religion of the subject.
- If an assessment or predicated investigation touches on or is partially motivated by First Amendment activities, race, ethnicity, national origin or religion, it is particularly important to identify and document the basis for the assessment with clarity

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DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

All activities must be consistent with the Attorney General's 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies (forbids the use of racial profiling and requires activities involving the investigation or prevention of threats to the national security to comply with the Constitution and laws of the United States)

The DIOG stresses several points in each section:

- No investigation or assessment can be commenced based solely on race, ethnicity, national origin, religion, or exercise of First Amendment rights
- The FBI must use the least intrusive method that is feasible under the circumstances
- In connection with Foreign Intelligence collection, agents must operate openly and consensually with U.S. Persons, to the extent practicable
- All investigative activities must have an "authorized purpose"

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DIOG Section 4: Use of Race or Ethnicity

DIOG Guidance on use of Race or Ethnicity

As to individuals:

1. Permits the consideration of ethnic and racial identity information based on specific reporting;
2. The race or ethnicity of suspected members, associates, or supporters of an ethnic-based gang or criminal enterprise may be collected when gathering information about or investigating the organization; or
3. Ethnicity may be considered in evaluating whether a subject is—or is not—a possible associate of a criminal or terrorist group that is known to be comprised of members of the same ethnic grouping—as long as it is not the dominant factor for focusing on a particular person

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DIOG Section 4: Use of Race or Ethnicity

DIOG Guidance on use of Race or Ethnicity

As to a community:

1. Collecting and analyzing demographics – if these locations will reasonably aid the analysis of potential threats and vulnerabilities, and, overall, assist domain awareness
2. Geo-Mapping ethnic/racial demographics – if properly collected
3. General ethnic/racial behavior – cannot be collected, unless it bears a rational relationship to a valid investigative or analytical need
4. Specific and relevant ethnic behavior
5. Exploitive ethnic behavior – by criminal or terrorist groups

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DIOG Section 4: Least Intrusive Investigative Method

The AGG-DOM and the DIOG require that the “least intrusive” means or method be considered and, if operationally sound and effective, used to obtain intelligence or evidence in lieu of a more intrusive method

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DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

By emphasizing the use of less intrusive
means, employees will be able to balance:

Our need for evidence/intelligence

vs.

Mitigating potential negative impact on the privacy and civil
liberties of people/public

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DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

Primary factor in determining “intrusiveness”:

- The degree of procedural protection that the law and the AGG-DOM provide for the use of the particular method.
 - Examples of “more intrusive” methods: Search Warrants, wiretaps, UCOs
 - Examples of “less intrusive” methods: checks of government databases, state or local criminal record checks, commercial databases, interviews

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DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

Items to consider when determining the relative intrusiveness of an investigative method:

- Is method permitted prior to the initiation of an assessment?
- Is the method relevant to the assessment or investigation?
- Will the information collected or obtained likely further the investigative objective?
- What alternatives exist for gathering the same information?
- Are those alternatives relatively less intrusive?
- What time span is involved in using the investigative method (days, weeks, months)?
- What confidence level is associated with the information gathered using the investigative method?
- Will the method resolve a pending investigative issue quickly?

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DIOG Section 4: Least Intrusive Investigative Method

Factors to Determine “Intrusiveness”:

1. Nature of the information sought
2. Scope of the information sought
3. Scope of the use of the investigative method
4. Source of the information sought
5. Risk of public exposure



DIOG Section 5 & 11: Investigative Methods

Authorized Methods for Assessments and Predicated Investigations

Note: Red indicates methods not allowed under a particular operational activity; Green indicates methods allowed.

Assessments
Preliminary
Investigations
Full
Investigations

Obtain publicly available information

Access and examine FBI and other DOJ records, and obtain information from any FBI or DOJ personnel

Access and examine records maintained by, and request information from, other federal, state, local, tribal, or foreign governmental entities or agencies

Use online services and resources (whether nonprofit or commercial)

Use and recruit human sources in conformity with AG Guidelines Regarding the Use of FBI Confidential Human Sources

Interview or request information from members of the public and private entities [includes pretextual interviews]

Accept information voluntarily provided by governmental or private entities

Engage in observation or surveillance not requiring a court order

Mail covers

Physical searches of personal or real property where a warrant or court order is not legally required because there is no reasonable expectation of privacy (e.g., trash covers)

Consensual monitoring of communications, including consensual computer monitoring, is subject to legal review by the CDC or the FBI OGC. Where a sensitive monitoring circumstance is involved, monitoring must be approved by the Criminal Division or, if the investigation concerns foreign intelligence or a threat to the national security, by the National Security Division

Use of closed-circuit television, direction finders, and other monitoring devices, subject to legal review by the CDC or FBI OGC

Polygraph examinations

Undercover operations

Compulsory process as authorized by law, including Federal Grand Jury and other subpoenas and National Security Letters (Federal Grand Jury subpoenas for telephone and electronic mail subscriber records can be used during type 1 and 2 Assessments only)

Accessing stored wire and electronic communications and transactional records

Use of pen registers and trap and trace devices

Electronic surveillance

Foreign Intelligence collection under Title VII of FISA

Physical searches, including mail openings, where a warrant or court order is legally required because there is an expectation of privacy

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Investigative Methods/Approvals Chart

		Assessments	Predicated	Foreign Intelligence
1	59A	Obtain publicly available information	None Required	None Required
		Taking a UCE to attend a religious service	Not Permitted	SSA Approval
2	59B	Physical surveillance of person or group (Consult the DIOG for standard photo and video surveillance with no reasonable expectation of privacy)	None Required	None Required
		[Redacted] consult DIOG for requirements	ASAC Approval	ASAC Approval
		[Redacted] ASAC Approval	ASAC Approval	ASAC Approval
3	59C	Access and examine FBI and other Department of Justice (DOJ) records, and obtain information from any FBI or other DOJ personnel	None Required	None Required
4	59D	Access and examine records maintained by, and request information from, other federal, state, local, or tribal or foreign governmental entities or agencies	None (Unless such approval is required by MOU or other agreements)	None (Unless such approval is required by MOU or other agreements)
5	59E	Use online services and resources (whether nonprofit or commercial)	None Required	None Required
6	59F	Interview or request information from members of the public and private entities	None Required except for contact with represented persons, members of U.S. Congress, or their staffs, White House personnel, or other substantive division requirements	None Required except for contact with represented persons, members of U.S. Congress, or their staffs, White House personnel, or other substantive division requirements
7	59G	Accept information voluntarily provided by governmental or private entities	None Required	None Required
8	59H	Use and recruit human sources	None Required (utilize [Redacted])	None Required (utilize Data)
		Tasking a CHS to attend a religious service	SSA Approval	SSA Approval
9	59I	Federal Grand Jury subpoenas for telephone or electronic mail subscriber information	US Attorney Office Approval	US Attorney Office Approval
10	59C	Pattern Based Data Mining	SORC	SORC

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Investigative Methods/Approvals Chart

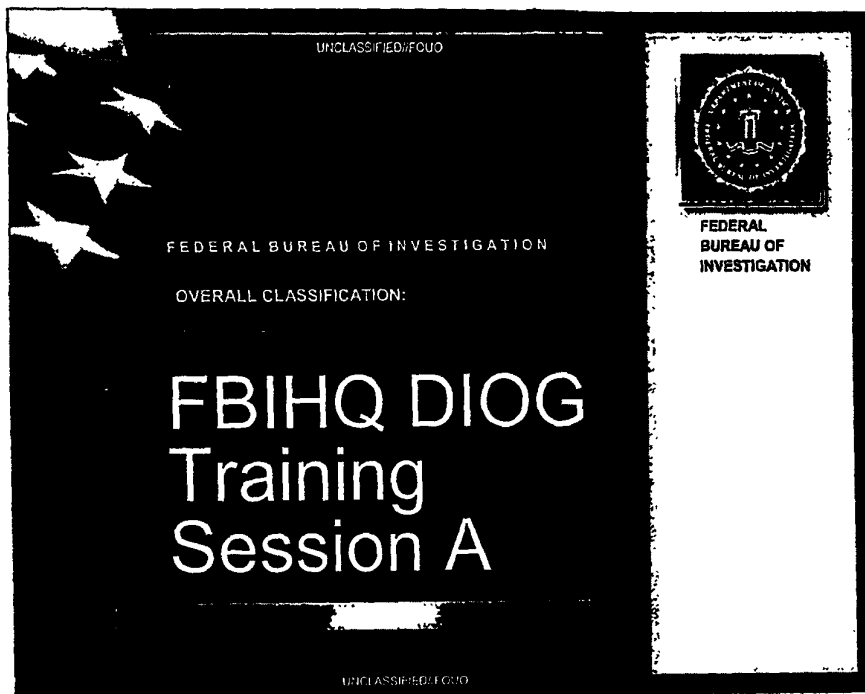
			Assessments	Predicated	Foreign Intelligence
11	11.3	Mail covers			
12	11.4	Physical searches of personal or real property where a warrant or court order is not legally required because there is no reasonable expectation of privacy (e.g., [redacted])			
13	11.5	Consensual monitoring of communications, including consensual computer monitoring	Not Permitted	CDC or OGC Review SSA Approval	CDC or OGC Review SSA Approval
14	11.5	Consensual monitoring of communications, including consensual computer monitoring, with a sensitive monitoring circumstance	Not Permitted	CDC or OGC Review, SAC Approval, DOJ Criminal or DOJ NSD Approval	CDC or OGC Review, SAC Approval, DOJ Criminal or DOJ NSD Approval
15	11.6	Use of closed-circuit television, direction finders, and other monitoring devices			
16	11.7	Polygraph examinations		SSA Approval	SSA Approval
17	11.8	Undercover operations, Group II		CDC Review, SAC or ASAC with delegated authority; National Security cases also require NSD unit UACB	CDC Review, SAC or ASAC with delegated authority; NSB-Unit/UACB Approval
18	11.8	Undercover operations, Group I		CDC review, SAC, and AD and CUORC or UCRC (EAD/DD certain cases) Approval	CDC review, SAC and AD and UCRC (EAD/DD certain cases) Approval
19	11.9	Compulsory process as authorized by law: Federal Grand Jury and trial subpoenas		US Attorney's Office Approval	
20	11.9	Administrative Subpoenas: Drugs	Not Permitted	SAC, ASAC, SSRA, or Drug Squad SSA	Not Permitted
		Administrative Subpoenas: Sexual Exploitation			
		Administrative Subpoenas: Healthcare Fraud		U.S. Attorney's Office Approval	
21	11.9	National Security Letters	Not Permitted	Field Office: CDC Review, ADIC or SAC Approval. HQ: NSLB Review; DD or EAD-NSB or AD & DADs CT/CD/CyD or GC or Deputy GC-NSLB Approval	Not Permitted
22	11.10	Accessing stored wire and electronic communications and transactional records	Not Permitted	Statute/Court Order, Consult DIOG	Not Permitted
23	11.11	Use of pen registers and trap and trace devices	Not Permitted	FISA Court or District Court Order	Only Available for Non-USPER by FISA Court order
24	11.12	Electronic surveillance			
25	11.13	Physical searches, where there is reasonable expectation of privacy, including mail openings			
26	11.14	Acquisition of foreign intelligence information in conformity with Title VII of the Foreign Intelligence Surveillance Act		FISA Court Order	FISA Court order

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Course Overview

Overall Training Objective:

Provide an instructional foundation on the DIOG and then apply the knowledge gained by using hypothetical examples and scenarios. Upon completing this course of instruction you should have a firm grasp of the concepts and principles underpinning the DIOG.

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Course Overview

Participation Standards:

Questions are welcome; however, if your question is about a specific set of facts that may divert the training objective, please direct your question to one of the Training team members at a break for a response.

During the scenario exercises, participants will be called upon to provide their response to particular facts or circumstances. Each Unit/Section should select a representative to speak for the Unit/Section and rotate that responsibility among the group. The scenarios are meant to prompt discussion, but the presenters must keep the scenario moving forward. Please understand that everyone may not be able to voice their perspective in the group setting. Keep in mind there may be several avenues to reach the same justified conclusion. You may use your handouts and training aids to inform your decision.

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Course Overview

Course Completion:

- You must complete the entire mandatory 16.5 hours of training. You must score an 80% or higher to pass. You will be notified of your score via e-mail. If you do not pass the first time, you will be permitted to take the test again.
- Please annotate on the attendance sheet your presence at the training if you pre-registered. If you did not pre-register, please print your name, division, and the items requested on the attendance roster.
- After the course is complete, you will be receiving a survey e-mail containing questions that will test your knowledge and understanding of the material presented. The test is open book.

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AGG-Dom: Overview

- Provides ability to FBI authorities to be more proactive and preventative, and the flexibility to deal with complex threats that do not fall neatly into individual programs
- Provides clarity and improves compliance by combining several sets of guidelines into one consistent set of guidelines
- Removes discrepancies, sets uniform rules for criminal, national security, and foreign intelligence collection cases. Each program will have a program-specific policy guide (PG)

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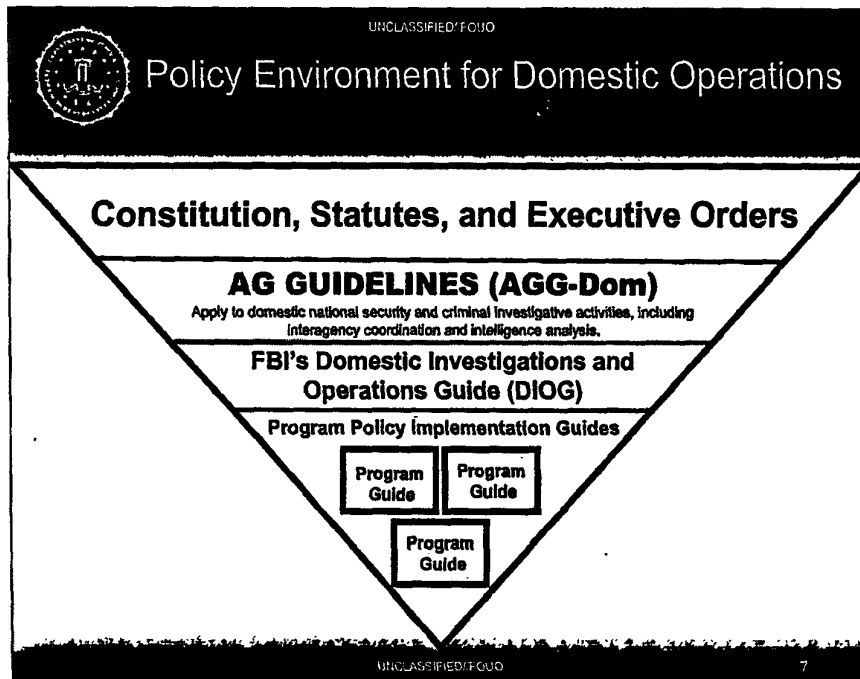
AGG-Dom: Overview

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- Reduces reporting requirements, particularly in the national security area
- Recognizes Special Events and Domain Management as part of the FBI's mission
- Recognizes the FBI's obligation to provide investigative assistance and joint operational support to other agencies, including the U.S. intelligence community
- Creates a new category outside of predicated investigations named "Assessments"

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Teaching Point:

FBIHQ Division Program Policy Implementation Guides
(PG):

- Cannot be less restrictive than the DIOG
- Must comply with the policy contained in the DIOG
- Requests for program policy deviations from the DIOG must be reviewed by the OGC and approved by the Deputy Director



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DIOG Section 1: Scope & Purpose

- **DIOG applies to all investigative and intelligence collection activities conducted by the FBI**
 - within the United States
 - in the United States territories
 - outside the territories of all countries
- **DIOG does not apply to investigative and intelligence collection activities of the FBI in foreign countries**
 - governed by AGGs for Extraterritorial FBI Operations (national security and criminal)

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DIOG Section 1: Scope & Purpose

- The primary purpose of the AGG-DOM and the DIOG is to standardize policy so that criminal, national security and foreign intelligence investigative activities are performed in a legal and consistent manner
- The DIOG replaces numerous FBI manuals, electronic communications, letterhead memoranda and other policy documents. The DIOG is located on the Corporate policy Office (CPO) Policy and Guidance Library web site
- The changes implemented by the DIOG better equip you to protect the people of the United States against crime and threats to the national security
- The DIOG stresses the importance of oversight and self-regulation to ensure compliance

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DIOG Section 2: General Authorities & Principles

- **The AGG-Dom replaces six guidelines:**
 - The Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations (May 30, 2002)
 - The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (October 31, 2003) *
 - The Attorney General's Supplemental Guidelines for Collection, Retention, and Dissemination of Foreign Intelligence (November 29, 2006)

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DIOG Section 2: General Authorities & Principles

- **The AGG-Dom also replaces:**
 - The Attorney General Procedure for Reporting and Use of Information Concerning Violations of Law and Authorization for Participation in Otherwise Illegal Activity in FBI Foreign Intelligence, Counterintelligence or International Terrorism Intelligence Investigations (August 8, 1988) *
 - The Attorney General's Guidelines for Reporting on Civil Disorders and Demonstrations Involving a Federal Interest (April 5, 1976)
 - The Attorney General's Procedures for Lawful, Warrantless Monitoring of Verbal Communications (May 30, 2002) (only portion applicable to FBI)

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DIOG Section 2: General Authorities & Principles

Note: Regarding Extraterritorial FBI's Operations, the AGG-Dom did not repeal or supersede certain portions of the prior guidelines (marked * in prior slides). These national security extraterritorial portions continue to remain in effect pending the approval of new Attorney General's Guidelines for Extraterritorial FBI Operations for both national security and criminal investigations. Additionally, the classified Attorney General Guidelines for Extraterritorial FBI Operations and Criminal Investigations (1993) continue to remain in effect pending approval of the new guidelines.

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DIOG Section 2: General Authorities & Principles

The FBI is authorized to:

- Conduct investigations and collect evidence (criminal and national security) and collect foreign intelligence (AGG-Dom, Part II)
- Provide investigative assistance to federal, state, local, tribal, and foreign agencies (AGG-Dom, Part III) and (DIOG Section 12)
- Collect information necessary for and conduct intelligence analysis & planning (AGG-Dom, Part II & IV) and (DIOG Section 15)
- Retain and share information (AGG-Dom, Part VI) and (DIOG Section 14)

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DIOG Section 2: General Authorities & Principles

The word "Assessment" has two distinct meanings:

- The AGG-Dom authorizes as an investigative activity an "assessment" which requires an authorized purpose and objective as discussed in DIOG Section 5.
- The U.S. intelligence community uses the word "assessment" to describe written intelligence products as discussed in DIOG Section 15.7.B.

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DIOG Section 2: General Authorities & Principles

- **The FBI is an intelligence agency as well as a law enforcement agency**
- **The FBI is authorized to engage in intelligence analysis and planning, using all lawful sources of information:**
 - development of overviews and analysis
 - research and analysis to produce reports and assessments
 - operate intelligence systems that facilitate and support investigations through ongoing compilation and analysis of data and information

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DIOG Section 2: General Authorities & Principles

- **The FBI is the "lead federal agency" in the following areas:**
 - Federal Crimes of Terrorism (listed in DIOG Section 2.4.C)
 - Other non-Terrorism federal crimes (listed in DIOG Section 2.4.D)
 - Counterintelligence and Espionage (listed in DIOG Section 2.4.F)
 - Criminal Investigations (some listed in DIOG Section 2.4.G; see also CID PGs)

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DIOG Section 2: General Authorities & Principles

Departures from the AGG – Dom:

In Advance: FBI Director, Deputy Director, or EAD (NSB or Criminal Cyber Response and Services Branch) must approve with notice to the General Counsel.

In Emergency: Approving authority who authorizes the departure must give notice as soon thereafter as practical to Director, Deputy Director or EAD with notice to General Counsel – OGC must keep records of all departures to advise DOJ, as required.

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DIOG Section 2: General Authorities & Principles

Departures from the DIOG:

In Advance: Appropriate substantive AD or DAD must approve with notice to the General Counsel or appropriate Deputy General Counsel (DGC).

In Emergency: Approving authority who authorizes the departure must give notice as soon thereafter as practical; SAC or HQ Section Chief must provide written notice to appropriate substantive AD and the General Counsel.

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DIOG Section 2: General Authorities & Principles

The AGG-Dom and DIOG apply to all FBI domestic investigations and operations conducted by "FBI employees" – defined as:

- applicable support personnel
- intelligence analysts
- special agents
- task force officers (TFO)
- detailees
- FBI contractors
- confidential human sources (CHS)

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DIOG Section 2: General Authorities & Principles

Authorities of an FBI Special Agent:

1. Investigate violations of the laws, including the criminal drug laws, of the United States (21 U.S.C. § 871; 28 U.S.C. §§ 533, 534 and 535; 28 C.F.R. § 0.85)
2. Collect evidence in cases in which the United States is or may be a party in interest (28 C.F.R. § 0.85 [a]) as redelegated through exercise of the authority contained in 28 C.F.R. § 0.138 to direct personnel in the FBI
3. Make arrests (18 U.S.C. §§ 3052 and 3062)
4. Serve and execute arrest warrants and seize property under warrant; issue and/or serve administrative subpoenas; serve subpoenas issued by other proper authority; and make civil investigative demands (18 U.S.C. §§ 3052, 3107; 21 U.S.C. § 876; 15 U.S.C. § 1312)

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DIOG Section 2: General Authorities & Principles

Authorities of an FBI Special Agent (cont.):

5. Carry firearms (18 U.S.C. § 3052)
6. Administer oaths to witnesses attending to testify or depose in the course of investigations of frauds on or attempts to defraud the United States or irregularities or misconduct of employees or agents of the United States (5 U.S.C. § 303)
7. Seize property subject to seizure under the criminal and civil forfeiture laws of the United States (e.g., 18 U.S.C. §§ 981 and 982)
8. Perform other duties imposed by law

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DIOG Section 2: General Authorities & Principles

The AGG-Dom did not limit other authorized FBI activities, such as:

- Conducting background checks and inquires concerning applicants and employees under federal personnel security programs
- Maintenance and operation of national criminal records systems and preparation of national crime statistics
- Forensic assistance and administration functions of the FBI Laboratory

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DIOG Section 3: FBI's Core Values

The FBI's Core Values are:

- Rigorous obedience to the U.S. Constitution
- Respect for the dignity of all those we protect
- Compassion
- Fairness
- Uncompromising personal integrity and institutional integrity
- Accountability by accepting responsibility for our actions and decisions and their consequences
- Leadership, by example, both personal and professional

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Teaching Points: DIOG Section 3.1:

1. Core values must be fully understood, practice, shared, vigorously defended and preserved.
2. By observing core values – FBI will achieve a high level of excellence in performing both our national security and criminal missions.
3. Information for reporting violations is available from the Office of Integrity and Compliance (OIC).



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DIOG Section 3: Compliance

Everyone's Responsibility:

- To learn and understand the laws, rules and regulations that govern their activities
- To fully comply with all laws, rules and regulations governing investigations, operations, programs and activities
- To report to proper authority any known or suspected failures to adhere to the law, rules or regulations

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Teaching Point: DIOG Section 3.1:

1. DIOG compliance applies to all FBI employees, task force officers, contractor's etc.
2. May not disregard the law, rule, etc. for sake of expediency.
3. Information for reporting.



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DIOG Section 3: Deputy Director Roles and Responsibilities

DIOG Section 3.2:

- DD is the proponent of the DIOG and subordinate implementing procedural directives and specific policy implementation guides (PGs)
- DD has oversight of DIOG compliance, monitoring and auditing processes
- DD has responsibility for DIOG training
- DD, through the Corporate Policy Office (CPO), will ensure the DIOG is updated one year from implementation, and every three years thereafter

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Teaching Point: DD, through the CPO, will review the Program Guides (PGs) for all divisions to ensure compliance with DIOG standards.



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DIOG Section 3: Special Agent, Intelligence Analyst, Task Force Officer, FBI Contractor, and Others - Roles and Responsibilities

DIOG Section 3.3:

- Comply with AGG-Dom and DIOG standards for initiation, conducting, and closing investigative activity; collection activity; or use of an investigative method
- Obtain training on DIOG standards relevant to their position and perform activities consistent with those standards
- Ensure all investigative activity complies with all laws and policy
- Identify victims, offer FBI assistance, and furnish information to the FBI Victim Specialist

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Teaching Point:

1. Laws/policy include the Constitution, federal law, Executive Orders, Presidential Directives, AGG-Dom, other AGGs, Treaties, MOAs/MOUs, DIOG and other policy. When in doubt – consult their Supervisor, the CDC or OGC.
2. Victims include those who have suffered direct physical, emotional, or financial harm as a result of the commission of federal crimes.



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DIOG Section 3: Special Agent, Intelligence Analyst, Task Force Officer, FBI Contractor, and Others - Roles and Responsibilities

(Continued – DIOG Section 3.3)

- Ensure civil liberties and privacy are protected throughout the assessment or investigative process
- Conduct no investigative activity solely on the basis of activities protected by the 1st Amendment or solely on the basis of race, ethnicity, national origin or religion of the subject
- Report non-compliance to the proper authority

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DIOG Section 3: Supervisor Roles and Responsibilities

DIOG Section 3.4.A – Supervisor Defined:

- Field Office or FBIHQ personnel, including: SIA, SSA, SSRA, UC, ASAC, ASC, SAC, DAD, AD, ADIC, and EAD

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DIOG Section 3: Supervisor Roles and Responsibilities

DIOG Section 3.4.B - Supervisor Responsibilities:

- Determine whether the DIOG standards are satisfied for initiating, approving, conducting and closing an investigative activity, collection activity, or investigative method
- Ensure all investigative activity complies with all laws and policy
- Obtain training on DIOG standards relevant to their position and conform their decisions to those standards
- Ensure civil liberties and privacy are protected throughout the assessment or investigative process

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DIOG Section 3: Supervisor Roles and Responsibilities

Continued DIOG Section 3.4.B - Supervisor Responsibilities:

- If encountering a practice that does not comply with the law, rules, or regulations, the supervisor must:
 - 1. report that compliance concern to the proper authority
 - 2. take action to maintain compliance, when necessary
- Ensure no retaliation or adverse action is taken against persons who raise compliance concerns

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Teaching Points:

1. Should report non-compliance to immediate Supervisor and/or OIC.
2. OIC non-retaliation policy located in the CPO policy and guidance library.



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DIOG Section 3: Supervisor Roles and Responsibilities

DIOG Section 3.4.C - Supervisory Delegation:

- Any DIOG requirement imposed on a Supervisor may be delegated/performed by a designated Acting, Primary, or Secondary Relief supervisor as indicated below, unless specified otherwise by federal statute, EO, PD, AGG, FBI Policy or any other regulation.
 - Supervisor may delegate authority to a supervisor one level junior to himself/herself (e.g. SAC to ASAC; or SC to Assistant/SC)
 - Must identify the task delegated
 - Must identify the supervisory position given approval authority
 - Must be in writing
 - Must be retained appropriately
 - Higher level Supervisors in the same chain-of-command as the original supervisor may approve a particular activity without written delegation documentation

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Teaching Points: Question – Can SSA or SIA delegate? No, but an appropriately designated Acting or Relief Supervisor can assume the responsibilities in the absence of the SSA.

DIOG 3.4 C



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DIOG Section 3: Supervisor Roles and Responsibilities

DIOG Section 3.4.D - Investigative File Reviews:

- Conducted by full-time supervisors or primary relief supervisors with subordinates
 - (other relief supervisors must have written SAC authority to conduct)
- Conducted with all Agents, Resident Agents, TFOs, analysts, detailees, and FBI contractors, as appropriate
- Conducted in-person or by telephone when necessary
- Conducted in private
- Documented/noted on ACS ICMC report, FD-71 or Guardian
- Conducted at least every 60 days for Probationary Agents, recommended every 30 days

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Teaching Points: ACS Investigative Case management Case Review report.



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DIOG Section 3: Supervisor Roles and Responsibilities

Assessment Justification/File Reviews:

- Conducted for every 30 day period for Type 1 and 2 Assessments
 - (with 10 additional days to complete and document)
- Conducted for every 90 day period for Type 3, 4, and 6 Assessments
 - (with 30 additional days to complete and document)
- Supervisor Must:
 - Evaluate progress made toward the achievement of authorized purpose and objective
 - Ensure activities that occurred during prior period were appropriate
 - Determine whether it is reasonably likely that information may be obtained that is relevant to the authorized objective – thus warranting an extension for another 30/90 day period
 - Determine whether adequate predication has been developed to open a predicated investigation
 - Determine whether the assessment should be terminated

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Teaching Points: DIOG Section 5 details file review requirements.



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DIOG Section 3: Supervisor Roles and Responsibilities

Predicated (Preliminary and Full) Investigation File Reviews:

- Conducted for every 90 day period
 - (with 30 additional days to complete and document)
- Supervisor Must:
 - Evaluate progress made toward the achievement of authorized purpose and objective
 - Ensure activities that occurred during prior period were appropriate
 - Determine whether it is reasonably likely that information may be obtained that is relevant to the authorized objective – thus warranting an extension for another 90 day period
 - Determine whether adequate predication has been developed to open/or continues to justify a predicated investigation

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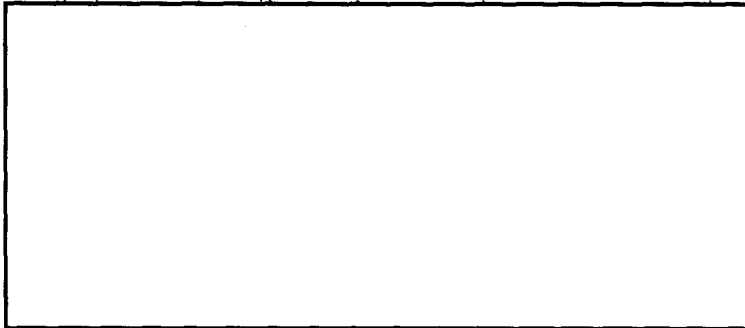
Teaching Points: Probationary Agent File reviews conducted at least every 60 days, recommend 30 days



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DIOG Section 3: Unaddressed Work

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Note: the FD-71 provides a new mechanism to
assign an Assessment to an electronic Unaddressed Work File
in the appropriate classification

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DIOG Section 3: CDC's Role and Responsibilities

CDC's Role and Responsibilities:

1. Must review all Assessments, Preliminary Investigations (PI) and Full Investigations (FI) that involve a "Sensitive Investigative Matter" (SIM)
2. Must review particular investigative methods as mandated by DIOG Section 5 and 11
3. Requirements imposed on the CDC may be performed by an Associate Division Counsel, Legal Advisor, or designated Acting CDC. All delegations must be in writing and retained appropriately.

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DIOG Section 3: CDC Roles and Responsibilities

CDC Determinations:

The primary purpose of the CDC's review is to ensure the legality of the actions proposed. In this context, the review includes a determination that the:

- Investigative activity is not legally objectionable (can be overruled by OGC)
 - Activity is not based solely on the exercise of 1st Amendment rights or on the race, ethnicity, national origin or religion of the subject
- The investigation is founded upon an "authorized purpose" (Assessments) or have adequate factual predication (Preliminary and Full)
- Advise as to the "wisdom" of the proposed action

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DIOG Section 3: CDC Roles and Responsibilities

Continued: CDC Determinations

The CDC's determination is based on facts known at the time of the review and recommendation.

The CDC may require additional reviews or provide guidance as to monitoring the results of investigative activity to ensure that the authorized purpose and/or factual predication remain intact after additional facts are developed.

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DIOG Section 3: OGC Roles and Responsibilities

OGC Role: In coordination with the DOJ NSD, the OGC is responsible for conducting regular reviews of all aspects of FBI national security and foreign intelligence activities.

The primary purpose of the OGC's review is to ensure the legality of the actions proposed. These reviews, conducted in the field offices and in HQ Units, broadly examine such activities for compliance with the AGG-Dom and other requirements. In this context, the review includes a determination that the:

- Investigative activity is not legally objectionable (Activity is not based solely on the exercise of 1st Amendment rights or on the race, ethnicity, national origin or religion of the subject)
- The investigation is founded upon an "authorized purpose" (Assessments) or have adequate factual predication (Preliminary and Full) and meets the standards in the DIOG
- Advise as to the "wisdom" of the proposed action

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DIOG Section 3: OGC Roles and Responsibilities

Continued: OGC Determinations

- The OGC's determination above is based on facts known at the time of the review and recommendation.
- The OGC may require additional reviews or provide guidance as to monitoring the results of investigative activity to ensure that the authorized purpose and/or factual predication remain in tact after facts are developed

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DIOG Section 3: Other Roles and Responsibilities

CPO = Corporate Policy Office: Oversight and Implementation of the DIOG; Report compliance risks to OIC (DIOG Section 3.7)

OIC = Office of Integrity and Compliance: Identify compliance risk areas, adequacy of policy and training programs, monitor DIOG compliance (DIOG Section 3.8)

DCO = Division Compliance Officer: One identified in each Field Office to assist the OIC to identify potential non-compliance risk areas and report them to proper authority and OIC (DIOG Section 3.10)

PM = Program Manager: HQ entity that identifies, prioritizes, and analyzes compliance risks and takes appropriate corrective action (DIOG Section 3.9)

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DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

- Responsibility to protect the American public, not only from crime and terrorism, but also from incursions into their constitutional rights; accordingly, all investigative activities must fully adhere to the Constitution and the principles of civil liberty and privacy.
- Provisions of the AGG-Dom, other AG guidelines, and oversight from DOJ components, are designed to ensure FBI's activities are lawful, appropriate, and ethical, as well as effective in protecting civil liberties and privacy.
- DOJ and FBI's Inspection Division, Office of Integrity and Compliance, the OGC, other Bureau components, and **you** share responsibility for ensuring the FBI meets these goals.

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Teaching Point:

The FBI is a very important agency with dedicated, highly professional, greatly disciplined Government servants. These words, uttered in 1975 by then Attorney General Levi, are just as true today – if not more so – than they were 34 years ago. But when these words were spoken, it was in the context of Senate hearings on the intelligence function of the FBI and the substantial concerns expressed by a parade of witnesses that for the purpose of protecting the national security and preventing violence, the Bureau was engaging in activities that “tread[] on forbidden ground.”

Fashioning investigative activities that navigate between Constitutional requirements and the imperatives of protecting the nation is often a difficult balancing act and one of the hardest issues that an agent or analyst can face is whether and under what circumstances a particular investigative activity is appropriate. The rewards when we find the right balance often go unnoticed by the general public, but the criticism when we don't can be heard far and wide.

The Attorney General Guidelines for Domestic Activities and the Implementing Domestic Investigations Operations Guide are built on a history of attempting to fashion the proper balance between investigating crimes and collecting intelligence while protecting the civil liberties of our people. You are sitting here today because it is your job to help educate your colleagues on how to strike the right balance.



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DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

- No investigation or assessment can be commenced based solely on race, ethnicity, national origin, religion of the subject or the exercise of First Amendment rights.
- Corollary to this AGG requirement is the Privacy Act, which states that each agency that maintains a system of records shall "maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or **unless pertinent to and within the scope of an authorized law enforcement activity.** 5 U.S.C. 552a(e)(7).

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Teaching Point:


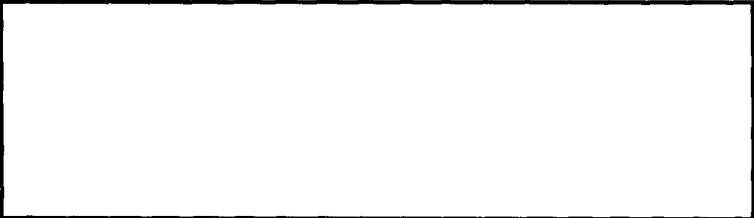
The first two conditions in the Privacy Act are fairly simply and not typical. If Congress says we can collect and maintain records about how an individual exercises First Amendment rights or if the subject of the record consents, there's no problem – and any resultant records would not be based solely on First Amendment activities.

The purpose of (e)(7) of the Privacy Act, as articulated in the limited legislative history that we have, is to prevent the "collection of protected information not immediately needed, about law-abiding Americans, on the off-chance that Government or the particular agency might possibly have to deal with them in the future." The Act does not define an "authorized law enforcement activity," but the courts have been generous in finding a law enforcement purpose for FBI activities.

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DIOG Section 4 Scenario


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- What can you do with this information?
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Questions continue on next slide

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DIOG Section 4 Scenario

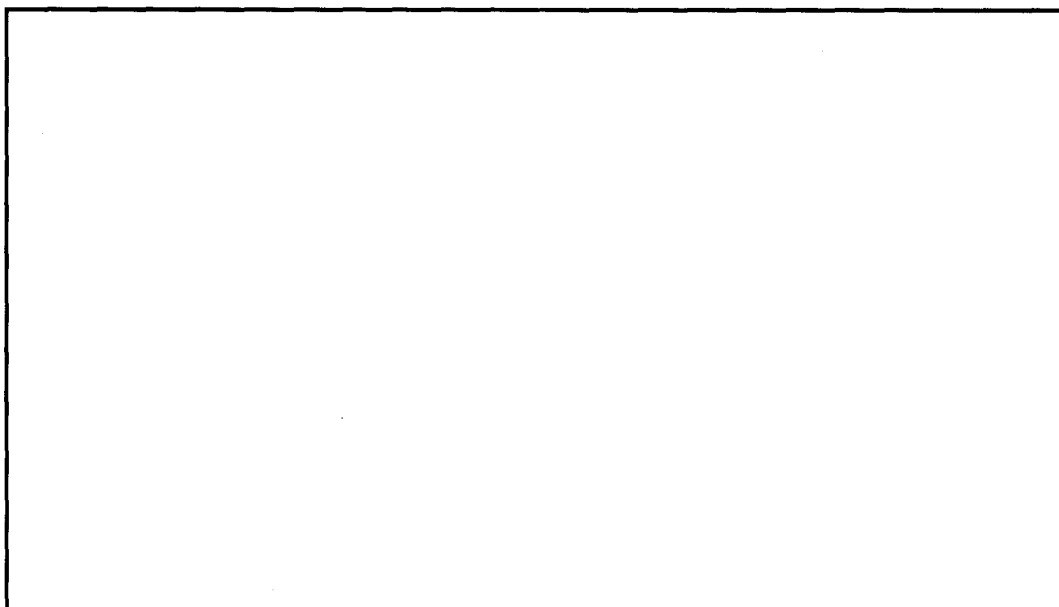
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Teaching Point:

These are difficult issues, but it is important to understand not only what is permissible, but how to document what action is taken.



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DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

FIRST AMENDMENT RIGHTS:

Individuals or groups who communicate with each other or with members of the public in any form in pursuit of social or political causes—such as opposing war or foreign policy, protesting government actions, promoting certain religious beliefs, championing particular local, national, or international causes, or a change in government through non-criminal means, and actively recruit others to join their causes—have a fundamental constitutional right to do so. An assessment may not be initiated based solely on the exercise of these First Amendment rights. If, however, a group exercising its First Amendment rights also threatens or advocates violence or destruction of property, an assessment would be appropriate

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DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

FIRST AMENDMENT RIGHTS (cont.):

- No investigative activity, including assessments, may be taken solely on the basis of activities that are protected by the First Amendment or on the race, ethnicity, national origin or religion of the subject.
- If an assessment or predicated investigation touches on or is partially motivated by First Amendment activities, race, ethnicity, national origin or religion, it is particularly important to identify and document the basis for the assessment with clarity

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DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

All activities must be consistent with the Attorney General's 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies (forbids the use of racial profiling and requires activities involving the investigation or prevention of threats to the national security to comply with the Constitution and laws of the United States)

The DIOG stresses several points in each section:

- No investigation or assessment can be commenced based solely on race, ethnicity, national origin, religion, or exercise of First Amendment rights
- The FBI must use the least intrusive method that is feasible under the circumstances
- In connection with Foreign Intelligence collection, agents must operate openly and consensually with U.S. Persons, to the extent practicable
- All investigative activities must have an "authorized purpose"

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DIOG Section 4: Use of Race or Ethnicity

DIOG Guidance on use of Race or Ethnicity

As to Individuals:

1. Permits the consideration of ethnic and racial identity information based on specific reporting;
2. The race or ethnicity of suspected members, associates, or supporters of an ethnic-based gang or criminal enterprise may be collected when gathering information about or investigating the organization; or
3. Ethnicity may be considered in evaluating whether a subject is—or is not—a possible associate of a criminal or terrorist group that is known to be comprised of members of the same ethnic grouping—as long as it is not the dominant factor for focusing on a particular person

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DIOG Section 4: Use of Race or Ethnicity

DIOG Guidance on use of Race or Ethnicity

As to a community:

1. Collecting and analyzing demographics – if these locations will reasonably aid the analysis of potential threats and vulnerabilities, and, overall, assist domain awareness
2. Geo-Mapping ethnic/racial demographics – if properly collected
3. General ethnic/racial behavior – cannot be collected, unless it bears a rational relationship to a valid investigative or analytical need
4. Specific and relevant ethnic behavior
5. Exploitive ethnic behavior – by criminal or terrorist groups

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Teaching Point:

Specific and relevant ethnic behavior: Intelligence analysis or investigative experience may show that individuals associated with an ethnic based terrorist group or criminal organization conduct activities in certain ways. For example, they may conduct their finances using certain systems, work in certain jobs, come from certain parts of the country that has links to terrorist activities. These are characteristics that can be used when investigating the group or assessing whether there is a terrorist or criminal presence.

Exploitive ethnic behavior: We can collect information that is behavioral or culturally oriented about ethnic or racial communities that is reasonably likely to be exploited by terrorist or criminal groups who hide within those communities in order to engage in their illegal or illicit activities undetected. For example, a cultural tradition of using informal money transfer systems to move money overseas may be exploited by criminal organizations or terrorists.



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DIOG Section 4: Least Intrusive Investigative Method

The AGG-DOM and the DIOG require that the "least intrusive" means or method be considered and, if operationally sound and effective, used to obtain intelligence or evidence in lieu of a more intrusive method

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Teaching Point: there is a component of efficiency in being "effective".

In some instances, a more intrusive method, i.e. use of a CHS, may be more operationally sound and effective for resolving an outstanding investigative need, than a less intrusive method such as acquiring financial records or business records. The totality of the circumstances surrounding the investigative activity plays an important role in considering the use of the least intrusive alternative for obtaining intelligence or evidence. It is a balancing test.



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DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

**By emphasizing the use of less intrusive
means, employees will be able to balance:**

Our need for evidence/intelligence

vs.

**Mitigating potential negative impact on the privacy and civil
liberties of people/public**

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DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

Primary factor in determining "intrusiveness":

- The degree of procedural protection that the law and the AGG-DOM provide for the use of the particular method.
 - Examples of "more intrusive" methods: Search Warrants, wiretaps, UCOs
 - Examples of "less intrusive" methods: checks of government databases, state or local criminal record checks, commercial databases, interviews

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DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

Items to consider when determining the relative intrusiveness of an investigative method:

- Is method permitted prior to the initiation of an assessment?
- Is the method relevant to the assessment or investigation?
- Will the information collected or obtained likely further the investigative objective?
- What alternatives exist for gathering the same information?
- Are those alternatives relatively less intrusive?
- What time span is involved in using the investigative method (days, weeks, months)?
- What confidence level is associated with the information gathered using the investigative method?
- Will the method resolve a pending investigative issue quickly?

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DIOG Section 4: Least Intrusive Investigative Method

Factors to Determine "Intrusiveness":

1. Nature of the information sought
2. Scope of the information sought
3. Scope of the use of the investigative method
4. Source of the information sought
5. Risk of public exposure

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As of February 20, 2009

DIOG Section 5 & 11: Investigative Methods

Guidelines and Methods for Assessments and the Department of Justice
Indicates methods used under a particular operational activity; 5 indicates methods of a case.

Obtain publicly available information

Access and examine FBI and other DOJ records, and obtain information from any FBI or DOJ personnel

Access and examine records maintained by, and request information from, other federal, state, local, tribal, or foreign governmental entities or agencies

Use online services and resources (whether nonprofit or commercial)

Use and recruit human sources in conformity with AG Guidelines Regarding the Use of FBI Confidential Human Sources

Interview or request information from members of the public and private entities [includes pretextual interviews]

Accept information voluntarily provided by governmental or private entities

Engage in observation or surveillance not requiring a court order

Mail covers

Physical searches of personal or real property where a warrant or court order is not legally required because there is no reasonable expectation of privacy (e.g., trash covers)

Consensual monitoring of communications, including consensual computer monitoring, is subject to legal review by the CDC or the FBI OGC. Where a sensitive monitoring circumstance is involved, monitoring must be approved by the Criminal Division or, if the investigation concerns foreign intelligence or a threat to the national security, by the National Security Division

Use of closed-circuit television, direction finders, and other monitoring devices, subject to legal review by the CDC or FBI OGC

Polygraph examinations

Undercover operations

Compulsory process as authorized by law, including Federal Grand Jury and other subpoenas and National Security Letters (Federal Grand Jury subpoenas for telephone and electronic mail subscriber records can be used during type 1 and 2 Assessments only)

Accessing stored wire and electronic communications and transactional records

Use of pen registers and trap and trace devices

Electronic surveillance

Foreign intelligence collection under Title VII of FISA

Physical searches, including mail openings, where a warrant or court order is legally required because there is an expectation of privacy

Assessments
Preliminary
Investigations
Full
Investigations



Investigative Methods/Approvals Chart

Authorized Method and DIOG Reviewer ^a		Approval Levels for Assessments and Predicted Investigations		
		Assessments	Predicted	Foreign Intelligence
1	5.9A Obtain publicly available information	None Required	None Required	None Required
	Testing a UJCE to attend a religious service	Not Permitted	SSA Approval	SSA Approval
	Physical surveillance of a person or group			
	Conduct the DIOG for identified photo and video surveillance with no reasonable expectation of capture	DIOG for requirements	None Required	None Required
2	5.9B			
			ASAC Approval	ASAC Approval
		ASAC Approval	ASAC Approval	ASAC Approval
3	5.9C Access and examine FBI and other Department of Justice (DOJ) records, and obtain information from any FBI or other DOJ personnel	None Required	None Required	None Required
4	5.9D Access and examine records maintained by, or obtain information from, any federal, state, local, or tribal, or foreign governmental entity or agencies	None (Unless such approval is required by MOU or other agreements)	None (Unless such approval is required by MOU or other agreements)	None (Unless such approval is required by MOU or other agreements)
5	5.9E Use online services and resources (whether nonprofit or commercial)	None Required	None Required	None Required
6	5.9F Interview or request information from members of the public and private entities	None Required except for contact with representative persons, members of U.S. Congress, or their staffs, White House personnel, or other substantive division requirements	None Required except for contact with representative persons, members of U.S. Congress, or their staffs, White House personnel, or other substantive division requirements	None Required except for contact with representative persons, members of U.S. Congress, or their staffs, White House personnel, or other substantive division requirements
7	5.9G Accept information voluntarily provided by governmental or private entities	None Required	None Required	None Required
8	5.9H Use and recruit Human Sources	None Required (within [redacted])	None Required (within Delta)	None Required (within Delta)
	Testing a CHS to attend a religious service	SSA Approval	SSA Approval	SSA Approval
9	5.9I Federal Grand Jury subpoenas for telephone or electronic mail indicator information	US Attorney Office Approval (Type 1 and 2 Assessments Only)	US Attorney Office Approval	Not Permitted
10	5.9C Pattern Based Data Mining	SORC	SORC	SORC

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Teaching Points:

1. **Obtain Physical Available Information:** Supervisory approval is not required for use of this method, except as to information gathered at a religious service. Notwithstanding any other policy, leaving a CHS or UCE to attend a religious service during a predicted investigation, whether open to the public or not, requires SAS approval. Telling a CHS to attend a religious service, whether open to the public or not, during an assessment requires SAC approval.
2. **Engage in observation or surveillance not requiring a court order:** Use of mechanical devices operated by a user (e.g., binoculars; hand-held cameras; radiation, chemical or biological detectors) is authorized in physical surveillance provided the device is not used to collect information in which a person has a reasonable expectation of privacy (e.g., equipment such as a portable microphone or a video device that would intercept a private conversation or device that is not used to observe). Supervisory approval is not required.
- Physical Surveillance:** For assessments, surveillance begins as stated in the plan at the initiation of surveillance. Requires SAS or SIA approval. SAS or SIA authorized to approve physical surveillance requests in incremental periods. FBI employees cannot submit multiple requests for one time approval. No limitation on use of fixed or moving physical surveillance. For predicted investigations: no limitation on use.
- [redacted] ASAC can delegate approval to SAS or SIA. Must be in writing and appropriately filed.
- [redacted] ASAC can delegate approval to SAS or SIA. Must be in writing and appropriately filed.
3. **Access and Examine FBI and other DOJ Records, and Obtain Information from any FBI or other DOJ Personnel:** Supervisory approval is not required to use this method during assessments or predicted investigations, except that if the use of records constitutes pattern-based data mining under the Federal Data Mining Reporting Act of 2007, it must be reviewed by the SOIC and the FBI must report the pattern-based data mining to Congress.
- Pattern-Based Data Mining Defined:** Use of one or more data bases to search for persons who fit a set of group characteristics or patterns of behavior (e.g., the known characteristics of a particular terrorist organization).
4. **Use Online Services and Resources (whether non-profit or commercial):** Subscribing to or purchasing any new service must be done pursuant to FBI contracting procedures.
5. **Interview Defined:** Questioning of (and include the subject) designed to gather information from the person being interviewed that is accurate, pertinent to, and within the scope of an authorized assessment or predicted investigation.
- In normal course of interview, FBI should divulge employee's affiliation with FBI and true purpose of interview. If person being interviewed expresses desire not to provide information, FBI employee may not state or imply in any way that the interviewee is compelled to provide information or that adverse consequences may follow. If interviewee indicates he or she wishes to consult an attorney, the interview must immediately stop.
- Custodial interview with Miranda warnings are required to be given prior to custodial interviews if the subject is significantly restricted in his/her freedom of action to a degree normally associated with arrest. (See FBI Legal Handbook for Special Agents.)
- Interviews that require supervisory approval:
- (i) contact with represented persons requires CDC review.
- (ii) Members of U.S. Congress and Staff: Generally, FBI employees may take information received just as they would from other sources, and they may act upon it accordingly. However, prior CDC review, SAC and appropriate FBIHQ AD approval and prior notice to the AD Office of Congressional Affairs are required if FBI employee seeks to establish a formal relationship or interview a member of Congress or Congressional staff in connection with an ongoing case, ongoing intelligence and/or public corruption matter.
- (iii) White House Personnel: CDC review, SAC and appropriate FBIHQ AD approval are required before interviewing White House personnel. CDC review, SAC approval and appropriate FBIHQ Chief Counsel approval are also required to conducting an interview of a member of the White House.

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6. **Accept Information Voluntarily Provided By Governmental or Private Entities:** Voluntarily provided information includes, but is not limited to: oral as well as documentary evidence and physical evidence such as a computer hard drive or other electronic media that contains information, paper documents containing information, or physical objects (e.g., handgun or narcotics). FBI employees may not request nor knowingly accept information where disclosure would be prohibited by federal law (e.g., communications records).

7. Access and Examine Records Maintained by, and Request Information From, Other Federal, State, Local, Tribal, or Foreign Governmental Entities or Agencies: When requesting information using this authority, care must be taken to ensure the entity concerned understands that it is not compelled to provide such information or create a new record.
8. Grand Jury Subpoenas for Testimony or Electronic Mail Subpoenas for Information: Used only during a type 1 or 2 assessment.

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Investigative Methods/Approvals Chart

Authorized Method and DIOG Reference		Approval Levels for Domestic and Foreign Intelligence Investigations		
		All Elements	Domestic	Foreign Intelligence
11	11.2 Mail covers			
12	11.4 Physical searches of personnel or real property where a warrant or court order is not legally required (includes searches and monitoring of persons in a vehicle)			
13	11.6 Consensual monitoring of communications, including consensual computer monitoring	Not Permitted	ODG or ODG Review SSA Approval	ODG or ODG Review SSA Approval
14	11.8 Consensual monitoring of communications, including consensual computer monitoring, with a sensitive national circumstance	Not Permitted	ODG or ODG Review, SAC Approval, DOJ Counsel or DOJ HSB Approval	ODG or ODG Review, SAC Approval, DOJ Counsel or DOJ HSB Approval
15	11.9 Use of closed-circuit television, closed-circuit, and other monitoring devices			
16	11.7 Polygraph examinations	Not Permitted	SSA Approval	SSA Approval
17	11.9 Undercover operations, Group II		ODG Review, SAC or ASAC with delegated authority; National Security Letter also requires NSL Unit Approval	ODG Review, SAC or ASAC with delegated authority; NSL-Abolition Approval
18	11.9 Undercover operations, Group I		ODG Review, SAC, and AD and ODGIC or LCRG (EAD/DG or SAC) Approval	ODG Review, SAC and AD and LCRG (EAD/DG or SAC) Approval
19	11.8 Computer process not authorized by law, Federal Criminal Law and the Subpoena		US Attorney's Office Approval	
20	11.8 Administrative Subpoenas, Drugs		SAC, ASAC, SSA, or Drug Squad SSA	
20	11.8 Administrative Subpoenas, Sexual Exploitation	Not Permitted		Not Permitted
20	11.8 Administrative Subpoenas, Healthcare Fraud		U.S. Attorney's Office Approval	
21	11.9 National Security Letters	Not Permitted	Field Office, ODG Review, ADG or SAC Approval HQ, HSB Review, OD or EAD-ASAC or AD & DAD-CT/CD/Cyber or OD or Deputy OD/ASAC Approval	Not Permitted
22	11.10 Monitoring stored wire and electronic communications and electronic copies	Not Permitted	Attitude/Outlet Order, Consent DIOG	Not Permitted
23	11.11 Use of pen registers and trap and trace devices	Not Permitted	FISA Court or District Court Order	Only Administrative Subpoena by FISA Court Order
24	11.12 Electronic surveillance			
25	11.13 Physical searches, where there is reasonable suspicion of privacy, including mail openings			
26	11.14 Acquisition of foreign intelligence information in connection with Title 18 of the Foreign Intelligence Surveillance Act		FISA Court Order	FISA Court Order

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Teaching Points:

- 1. Mail Covers:** The DIOG currently states that for national security mail covers, "after being approved by the SSA, the Field Office must transmit the mail cover letter request by EC, with the draft letter as an attachment, to the National Security Law Branch (NSLB) for legal review and concurrence. Upon review and concurrence, the NSLB must transmit the letter request for signature to the EAD, National Security Branch, or, in his or her absence, to the Director.
- 2. Consensual Monitoring:** [redacted] Field Office must ensure that the individual who approves OIA is so authorized. For example, if the SAC has delegated authority to approve OIA for consensual monitoring to the SSA, upon CDC review, the SSA can approve the consensual monitoring and OIA. If OIA authority was not delegated to SSA, appropriate supervisory authority must expressly approve OIA.
- 3. Administrative Subpoenas:** Within the FBI, the authority to issue administrative subpoenas is limited to those positions holding the delegated authority from the Attorney General; that authority may not be redelegated. [redacted]

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Three Types of Administrative Subpoenas Authorized: (i) drug program investigations; (ii) child sexual exploitation and abuse investigations; (iii) health care fraud investigations.

- 4. National Security Letters:** Authority to sign NSLs has been delegated to the Deputy Director, EAD and Assistant EAD for NSB; ADs and all DADs for CT/CD/Cyber; General Counsel; DGC for NSLB; ADICs in NY, DC and LA; and all SACs. Every NSL must be reviewed and approved by a CDC or NSLB attorney.