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UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

IN RE APPLICATION OF THE
FEDERAL BUREAU OF INVESTIGATION
FOR AN ORDER REQUIRING THE
PRODUCTION OF TANGIBLE THINGS
FROM (b) (1)

Docket No.: BR 10-82

SUPPLEMENTAL ORDER

In granting the application in this matter, the Court has concluded that the Right to Financial Privacy Act, 12 U.S.C. §§ 3401-3422 (RFP), does not preclude the issuance of an order requiring the production of financial records to the Federal Bureau of Investigation (FBI) pursuant to the FISA business records provision, 50 U.S.C. § 1861. This Supplemental Order briefly memorializes the Court's reasons for reaching that conclusion and addresses a separate issue regarding minimization.

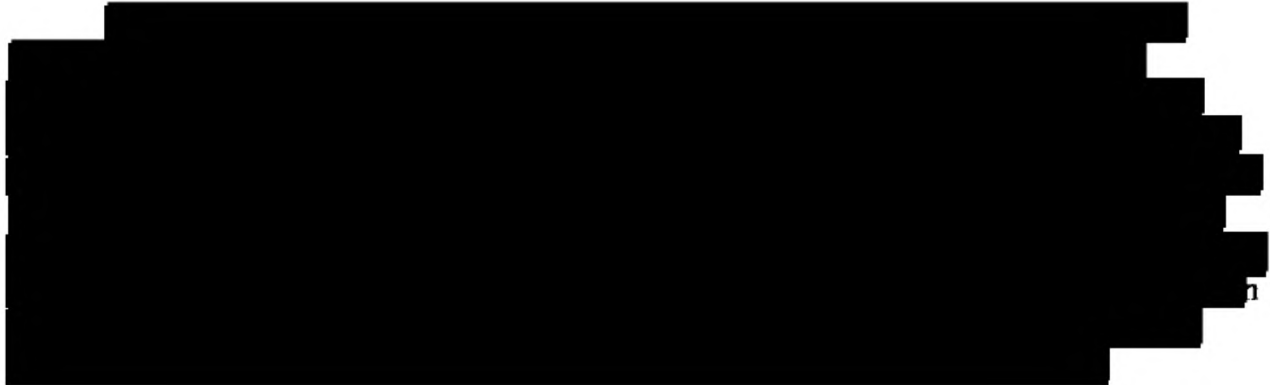
The RFP generally provides that "no Government authority" may obtain "financial records" from a "financial institution" unless one of several exceptions applies. See 12 U.S.C. § 3402; see also id. § 3403. Under one of those exceptions, the FBI may, without prior judicial review, compel a financial institution to produce financial records, provided that a designated FBI official has certified that the records are relevant to an authorized foreign intelligence investigation. See 50 U.S.C. § 3414(a)(5)(A). Pursuant to Section 1861, the government may request, and this Court may grant, "an order requiring the production of any tangible things (including books, records, papers, documents, and other items)." 50 U.S.C. § 1861(a)(1) (emphasis added). Section 1861 requires the government to provide the Court with a "statement of facts showing that there are reasonable grounds to believe that the tangible things sought are relevant" to a foreign intelligence investigation, id. § 1861(b)(2)(A), and the Court to determine that the application satisfies this requirement, see id. § 1861(c)(1), before records are ordered to be produced.

Although the RFP contains no provision explicitly allowing the production of financial records pursuant to a Section 1861 order, the Court agrees with the government that it would have been anomalous for Congress to have deemed the FBI's application of a "relevance" standard, without prior judicial review, sufficient to obtain records subject to the RFP, but to have deemed this Court's application of a closely similar "relevance" standard insufficient for the same purpose. The anomaly is avoided by interpreting the RFP as permitting the production of

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records pursuant to a Section 1861 order. See Docket No. BR 08-13, December 12, 2008 Supplemental Opinion (relying on similar reasoning in holding that 18 U.S.C. §§ 2702 and 2703 implicitly permit the production of call detail records pursuant to an order issued under Section 1861).¹



Issued this 23rd day of November, 2010.

A handwritten signature in black ink, appearing to read "J. D. Bates", is written over a horizontal line.

JOHN D. BATES
Judge, United States Foreign
Intelligence Surveillance Court

¹ In granting the application in this matter, the Court did not rely upon 12 U.S.C. § 3413(d), a separate exception to the RFOIA that the government also argued is applicable.
(b) (6), (b) (7)(C)

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