

FEDERAL BUREAU OF INVESTIGATION

Precedence: PRIORITY

Date: 11/03/2004

To: All Divisions

Attn: ADIC
AD
SAC
CDC
FBIHQ, Manuals Desk

From: General Counsel
National Security Law Branch
Contact: AGC [redacted]

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Approved By: Caproni Valerie E

[redacted signature box]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 08-18-2009 BY 65179 DMH/STW

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Drafted By: [redacted]:rm
[redacted]:djf

Case ID #: 66F-HQ-C1384970

Title: REQUESTS FROM MILITARY
CRIMINAL INVESTIGATIVE SERVICES
TO INTERVIEW FBI PERSONNEL

Synopsis: To provide guidance regarding requests received from military criminal investigative services to interview FBI personnel regarding observations made while interacting with military personnel overseas (e.g., Iraq, Afghanistan, Cuba).

Details: Several field offices have received requests from military criminal investigative services to interview FBI personnel regarding observations made while interacting with military personnel overseas (e.g., Iraq, Afghanistan, Cuba). Topics of requested interviews to date include detainee abuse and criminal misconduct by military personnel. These are significant and serious investigations and, as a matter of policy, it is imperative that the FBI cooperate fully to the extent permitted by law and operational or security considerations.

At the same time, military investigators may be seeking information from FBI agents which is both sensitive and critical to an FBI international terrorism, foreign intelligence, or counterintelligence investigation--the disclosure of which could conceivably compromise the FBI investigation. To ensure full cooperation and, at the same time, to protect sensitive

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investigative information from inappropriate disclosure, the following guidance is provided by the Office of the General Counsel (OGC):

FBI personnel receiving such requests should immediately contact the Chief Division Counsel (CDC) for their Field Division. The CDC should then refer the request to the Office of General Counsel (OGC), National Security Law Branch (NSLB) at FBI Headquarters. The NSLB point of contact (POC) will be responsible for coordinating the requests with the CDC in the field as well as components of OGC, Inspection Division, and the responsible substantive unit at FBIHQ when necessary.

Although the requests thus far have been to interview agents for investigative purposes, the potential exists that these matters may result in criminal proceedings. To determine the nature of the request, NSLB will contact the requesting agency to determine the scope of the interview and request that the agency provide a written request outlining the information sought. A copy of this letter will be given to the interviewee well in advance of the interview and filed accordingly. If time is of the essence, the request will be handled verbally with a written follow-up. The NSLB POC and the CDC will work together to ensure that the anticipated release of information is consistent with all applicable laws and regulations to include the Classified Information Procedures Act, Rule 6(e) of the Federal Rules of Criminal Procedure regarding Grand Jury Secrecy, 28 C.F.R. §16.26, and the Privacy Act of 1974.¹

The following general principles apply:

- The interviewee will be advised of the scope of the interview as described in the letter produced by the requesting agency or through conversation(s) between the CDC, NSLB and the requesting agency.

¹ Blanket Routine Use #1 for all FBI records systems allows disclosures of information about individuals in FBI records if the records on their face, or in conjunction with other information, indicate a violation or potential violation of law (civil or criminal), regulation, rule, order, or contract, if disclosure is made to the entity charged with investigating, prosecuting and/or enforcing such law, regulation, rule, order, or contract. In addition, a Routine Use for the FBI's Central Records System allows disclosure of information about individuals in FBI records to any Federal agency where the purpose in making the disclosure is compatible with the law enforcement purpose for which it was collected, e.g., to assist the recipient agency in conducting a lawful criminal or intelligence investigation, to assist the recipient agency in making a determination concerning an individual's suitability for employment and/or trustworthiness for employment and/or trustworthiness for access clearance purposes, or to assist the recipient agency in the performance of any authorized function where access to records in this system is declared by the recipient agency to be relevant to that function.

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- The interviewee should review the request by the other agency and collect/review any documents which are pertinent to the issues raised. Copies of the documents should be provided to the CDC and the POC for the NSLB.
- The interviewee is not authorized to disclose any information beyond the scope of the interview as described in the letter without the appropriate authorization. This would include the disclosure of grand jury information, classified information, the identity of a law enforcement source, and/or sensitive law enforcement techniques. FBI counsel should review the issues and records with the interviewee to identify any information that appears to be outside the approved scope of the interview and could not be released without seeking further authorization.
- In those circumstances where the potential exists that the interview may address unauthorized or sensitive information or because the permissible boundaries of the interview are unclear, FBI counsel will attend the interview. FBI counsel is present to protect FBI interests and address concerns regarding the integrity/disclosure of its information.²
- Requests for documents should be referred to NSLB.

Any personnel receiving a request for interview by a military criminal investigative service should immediately notify their CDC. The CDC should contact NSLB POC who is Assistant General Counsel [redacted] office telephone [redacted]

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²The ABA Model Code of Professional Ethics Rules 1.7 (Conflicts of Interest), 1.13 (Organization as Client), 2.3 (Evaluation for use by third persons), and 4.3 (Transactions with persons other than clients) would suggest that an attorney's purpose be made clear to the interviewee.

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LEAD(s):

Set Lead 1: (Action)

ALL RECEIVING OFFICES

Ensure requests for interview of FBI personnel by military criminal investigative services are handled in accordance with the above.

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