~~SECRET~~ OIG - noted possible IOBs in 4 Field Offices

Improper Authorization

(S) [redacted]

(S) R [redacted] (2007 [redacted] C 1/23/06

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Improper Requests Under Pertinent National Security Letter Statute

Issuing national security letter for subject's [redacted] which constitutes prohibited content under ECPA

(S) R [redacted] (2007 [redacted] 600 periods more back to 2005

Issuing national security letter citing ECPA statute that requests RFPA financial records associated with e-mail accounts

(S) R [redacted] (Approval EC) (2007 [redacted] C 10/20/04 ~~more back to 2007~~ IOB 03/17/05 SUB ELA

Issuing national security letter for FCRAv consumer full credit report that included certification language for RFPA financial records NOR FCRAu

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[redacted] (2007 [redacted] (EC 11/11/06) none over 600 serials

Issuing national security letter requesting FCRAv consumer full credit report in a counterintelligence case

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

(S) R [redacted] (2007 [redacted] 06 none

(S) R [redacted] (2007 [redacted]

Issuing national security letter requesting FCRAv consumer full credit report when SAC approved national security letter for consumer identifying information or identity of financial institutions under FCRAu

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[redacted] or NSL Subfile) (2007 [redacted] 20/06 none

[redacted] or NSL Subfile) (2007 [redacted]

[redacted] or NSL Subfile) (2007 [redacted]

[redacted] (2007 [redacted] (EC 11/29/05 none

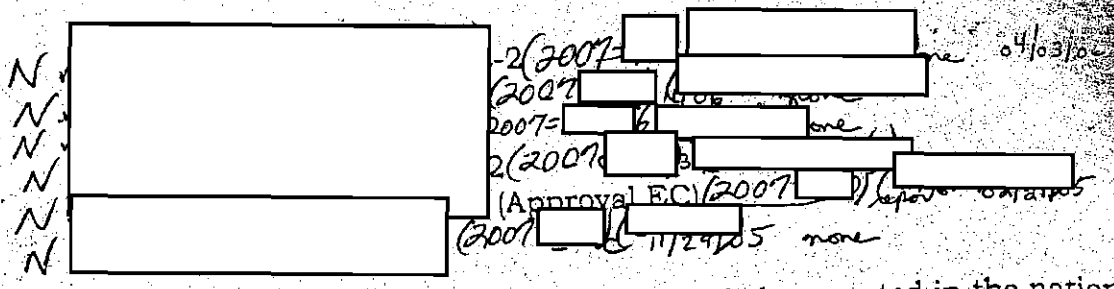
Unauthorized Collection (Third Party Error)

Obtaining information not relevant to an authorized national security investigation

~~SECRET~~

DATE: 07-24-2007
CLASSIFIED BY 65179/DMH/KSR/RW
REASON: 1.4 (c)
DECLASSIFY ON: 07-24-2032

(S)



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Obtaining information beyond the time period requested in the national security letter

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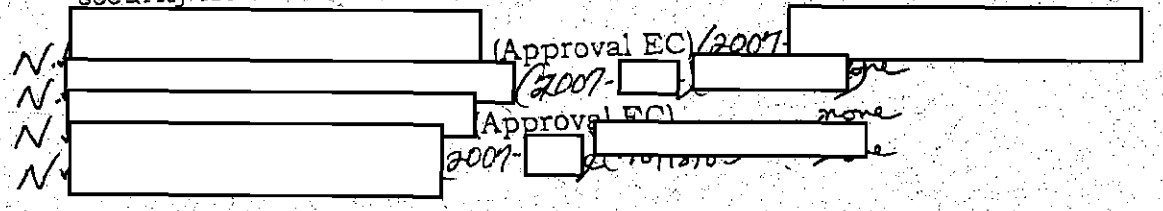

IOB # referenced on pp. 77-78 of 1-22-07 draft:

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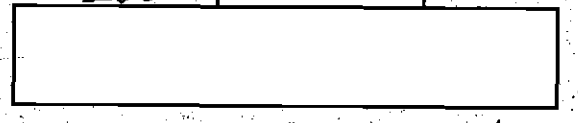

also 278-HQ-1425173, ser. 3 (10-22-2004)

As a result of the Department of Justice, Office of the Inspector General's recent report relating to the FBI's use of National Security Letters, the Inspection Division currently is auditing several field office regarding the FBI's use of NSLs. The Office of the General Counsel has been receiving many questions regarding whether errors identified during the audit should be reported to OGC as potential Intelligence Oversight Board (IOB) matters. In light of these questions, a copy of the November 16, 2006 "Revised Procedures for the Submission of Reports of Potential Intelligence Oversight Board Matters" is attached to this email for your convenience. Further, additional guidance is listed below. OGC is encouraging overreporting of errors as potential IOB matters. If you have any questions about OGC's guidance relating to IOB, please contact an Assistant General Counsel in the National Security Law Branch to discuss the issues.

In addition to the November 16, 2006 IOB guidance, OGC has highlighted the following issues.

The following incidents are reportable as potential IOBs matters:

- A carrier providing information beyond the scope of the NSL whether the information is relevant or not to the investigation. Examples of the carrier providing information outside the scope of the NSL include: (1) information provided beyond the date range; (2) information that we did not ask for (i.e., content); and (3) date of birth and social security number information for ECPA subscriber NSLs;
- ECs and/or NSLs internally inconsistent and cites two different authorities or no legal authorities;
- Substantive typographical errors that result in an overcollection, such as an incorrect telephone number;
- No SAC signature (Acting SACs cannot sign NSLs)
- If the EC does not cite the appropriate statute or if the EC and NSL cite different statutes;
- If the EC does not contain telephone number/account number; and
- If the NSL requests tolls and subscriber information on subject for period from 7/16/03 to present, and receives information on a third party during that time period who is not relevant to the investigation.

The following incidents are NOT reportable as potential IOBs matters. However, the error should be noted and corrected:

- USPER/non-USPER is not identified in the EC;
- Using an acronym without explaining it (i.e., saying ECPA instead of the Electronic Communications Privacy Act);
- The CDC or ASAC did not review the EC or NSL. As long as the EC or NSL was signed by the SAC then it is not reportable as a potential IOB matter;
- There are no NSL or NSL results in file:

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DATE: 07-27-2007
CLASSIFIED BY 65179/DMH/KSR/RW
REASON: 1.4 (c)
DECLASSIFY ON: 07-27-2032

As described by [illegible]	Facts as reported for PIOB – Valerie's [illegible]	Instance #	Case ID	NSLB's [illegible]	Did ADC/ CDC review NSL?	Should it have been reported as a potential IOB [illegible]?	Is it reportable to the IOB?	Was it sequestered? LIMIT ANSWERS TO: Yes, No, N/A
[redacted]								
Issuing NSL	~~Complicated history~~ [redacted] ~~was at time NSL issued.~~ Violation [redacted] due to drafter's error.	1 out of 1		[redacted] – drafter that issued NSL was confused on multiple dates in the case file. Case had actually expired at the time the NSL was issued. Even though no documents were sent by the party that was served, the issuance of an NSL on an expired case is a reportable matter.	Yes	Yes If they would have realized the case was expired.	Yes	N/A
Issuing NSL seeking full credit report in CI case	Occurred - we issued 1681v instead of 1681u NSL.	1 out of 2		[redacted] – on these two NSLs, issued a CT NSL on a CI case. The FBI requested a full credit report, which was not an option.	Yes	Yes	Yes	Yes
		2 out of 2		[redacted]	Yes	Yes	Yes	Yes

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DATE: 07-26-2007
CLASSIFIED BY 65179/DMH/KSR/RW
REASON: 1.4 (c)
DECLASSIFY ON: 07-26-2032

As described by IG	Facts as reported for PIOB – Valerie's notes	Instance #	Case ID	NSLB's comments	Did ADC/ CDC review NSL?	Should it have been reported as a potential IOB matter?	Is it reportable to the IOB?	Was it sequestered? LIMIT ANSWERS TO: Yes, No, N/A.
Issuing NSL seeking full credit report (1681v) when EC authorizes only limited data (1681u)	B/c SAC signed the NSL for broader info, quarrel with idea it was not authorized. Sloppy paperwork. NSLs were good asking for 1681v, EC asked for 1681u (was wrong).	1 out of 3		- issued three proper NSLs in a CT case requesting full credit reports. The cover EC used the language for a CI case. This was an oversight, or typo mistake on the part of the drafter of the EC. The FBI was entitled to the information provided pursuant to the NSL.	Yes		No	N/A
		2 out of 3			Yes		No	N/A
		3 out of 3			Yes		No	N/A

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As described by IG	Facts as reported for PIOB – Valerie's notes	Instance #	Case ID	NSLB's comments	Did ADC/ CDC review NSL?	Should it have been reported as a potential IOB matter?	Is it reportable to the IOB?	Was it sequestered? LIMIT ANSWERS TO: Yes, No, N/A.
(S) Received irrelevant info in response to NSL	Info was relevant, but exceeded time period we requested; third party error.	1 out of 1		– an NSL was issued for toll records for a select time period. The company sent the records, but included additional weeks that were not requested.	Yes	Yes	No	Yes
(S) Overcollection of relevant info in response to NSL	Relevant info for time that exceeded what we requested.	1 out of 1		– an NSL was issued for email information. The company provided records for a longer time period than that which was requested.	Yes	Yes	No	Yes

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As described by IG	Facts as reported for PIOB – Valerie's notes	Instance #	Case ID	NSLB's comments	Did ADC/ CDC review NSL?	Should it have been reported as a potential IOB matter?	Is it reportable to the IOB?	Was it sequestered? LIMIT ANSWERS TO: Yes, No, N/A.
Issuing NSL for [redacted]	Illegality of this is unclear; no date actually obtained.	1 out of 1	[redacted]	[redacted] - *This is being reported out of an abundance of caution.* [redacted] *and the agent got the approval of* [redacted] *legal counsel. But we are sending this through because we can not definitely say that this was not content information.*	Yes	Yes	Yes	
ECPA NSL seeking what IG believes are financial records requiring RFPA NSL		1 out of 1		[redacted] - *EC citation was in error (ECPA not RFPA) and did not describe supporting facts, NSL was reference ECPA and RFPA in part..*	Yes	Yes	Yes	

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As described by IG	Facts as reported for PIOB – Valerie's notes	Instance #	Case ID	NSLB's comments	Did ADC/ CDC review NSL?	Should it have been reported as a potential IOB matter?	Is it reportable to the IOB?	Was it sequestered? LIMIT ANSWERS TO: Yes, No, N/A.
FCRA NSL uses certification language from RFPA	Actual language differences are minor; no individual rights affected.	1 out of 3	[redacted]	[redacted] *NSL was issued under 1681v but certification used RFPA language (which allows for NSL in both IT and CI case); since case was IT, the RFPA language citing both IT and CI had no legal impact. Further (and this was the mistake that the IOB EC picked upon, which OIG had not; the IOB EC does NOT reflect the mistake that the OIG found), EC synopsis stated NSL was issued under RFPA but rest of EC was accurate and reflected IT nature of the case and the request for a 1681v NSL.*	YES		NO	~~NO~~ N/A

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As described by IG	Facts as reported for PIOB – Valerie's notes	Instance #	Case ID	NSLB's comments	Did ADC/ CDC review NSL?	Should it have been reported as a potential IOB matter?	Is it reportable to the IOB?	Was it sequestered? LIMIT ANSWERS TO: Yes, No, N/A.
(S) [redacted] 2007		2 out of 3		[redacted] - *NSL was issued under 1681v but certification used RFPA language (which allows for NSL in both IT and CI case); since case was IT, the RFPA language citing both IT and CI had no legal impact. The EC reflected the IT nature of the case.*	YES		NO	~~NO~~ N/A
(S) [redacted] 2007		3 out of 3		[redacted] - *NSL was issued under 1681v but certification used RFPA language (which allows for NSL in both IT and CI case); since case was IT, the RFPA language citing both IT and CI had no legal impact. The EC reflected the IT nature of the case.*	YES		NO	~~NO~~ N/A

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As described by IG	Facts as reported for PIOB – Valerie's notes	Instance #	Case ID	NSLB's comments	Did ADC/ CDC review NSL?	Should it have been reported as a potential IOB matter?	Is it reportable to the IOB?	Was it sequestered? LIMIT ANSWERS TO: Yes, No, N/A.
(S) Received irrelevant info in response to NSL 2007	Mischaracterized as irrelevant; info was relevant and promptly covered with a new NSL.	1 out of 1		*mistakenly cited one NSL as source for subscriber information pertaining to a particular telephone number in an EC to file, when in fact a second NSL was the source for the subscriber information. Both NSL's were properly issued and there is no IOB violation.*			No.	N/A
(S) Overcollection of relevant info in response to NSL 2007		1 out of 2		*received from the provider information that covered two weeks prior to the beginning of the request. That period was consistent with the billing cycle. OIG had stated in report that overruns due to the billing cycle did not even need to be reported as PIOBs. Carrier error/choice involved; not FBI error.*	YES	NO	NO	NO

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As described by IG	Facts as reported for PIOB – Valerie's notes	Instance #	Case ID	NSLB's comments	Did ADC/ CDC review NSL?	Should it have been reported as a potential IOB matter?	Is it reportable to the IOB?	Was it sequestered? LIMIT ANSWERS TO: Yes, No, N/A.
(S) [redacted] 2007		2 out of 2		[redacted] *received from the provider information that covered two months prior to the beginning of the request.* [redacted] *had issued an earlier NSL which covered more than a month of the overrun. Carrier error involved, not FBI error.*	YES	YES	NO	NO
[redacted]								
Issuing NSL seeking full credit report (1681v) when EC authorizes only limited data (1681u)	B/c SAC signed the NSL for broader info, quarrel with idea it was not authorized. Sloppy paperwork.	1 out of 1		[redacted] *- Although EC citation was in error, records were properly described and FCRAv was referenced in NSL which was also signed by the SAC.*			NO	N/A

(S) [redacted] 2007

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As described by IG	Facts as reported for PIOB – Valerie's notes	Instance #	Case ID	[redacted] ents	Did ADC/ CDC review NSL?	Should it have been reported as a potential IOB matter?	Is it reportable to the IOB?	Was it sequestered? LIMIT ANSWERS TO: Yes, No, N/A.
(S) Received irrelevant info in response to NSL		1 out of 2		[redacted] *requested toll billing information from* [redacted] *and received information for an associated number. Both the requested number and the associated number were subscribed to by the same individual. This is why the associated number was provided. The NSL was properly issued and there is no IOB violation.*	YES	NO	NO	N/A

2007 [redacted]

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As described by IG	Facts as reported for PIOB – Valerie's notes	Instance #	Case ID	NSLB's comments	Did ADC/ CDC review NSL?	Should it have been reported as a potential IOB matter?	Is it reportable to the IOB?	Was it sequestered? LIMIT ANSWERS TO: Yes, No, N/A.
(S) [redacted] 2007		2 out of 2		[redacted] - *NSL served upon provider contained two correct telephone numbers. Authorizing EC contained typographical error with respect to one of the numbers. Not reportable: the fact that the authorizing EC contained an apparent typographical error neither resulted in the issuance of an erroneous NSL, nor an unauthorized collection in violation of the NSIG and ECPA.*	Yes	No	No	No N/A
(S) [redacted] 2007 Overcollection of relevant info in response to NSL		1 out of 1		[redacted] *received records beyond the scope of the NSL, but since it was carrier mistake, it is not reportable*	Yes	Yes	No	No

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As described by IG	Facts as reported for PIOB – Valerie's notes	Instance #	Case ID	NSLB's comments	Did ADC/ CDC review NSL?	Should it have been reported as a potential IOB matter?	Is it reportable to the IOB?	Was it sequestered? LIMIT ANSWERS TO: Yes, No, N/A.
Received irrelevant info in response to NSL	CDC/ADC reviewed; matter should not have been reported; matter was not an IOB.	1 out of 2		[redacted] *requested subscriber information from* [redacted] *and received a number that was not assigned to an individual, but was an internet access number. The NSL was properly issued and there is no IOB violation.*			No.	N/A
Received information outside the scope of the NSL request/		2 out of 2		[redacted] requested specific financial information from [redacted] financial and received information that was outside the scope of the request from [redacted] The NSL was properly issued, however at the time of the overcollection there would have been an IOB violation.	Yes	Yes	No.	No?

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Case Number	Claimed Infraction	Reportable or Non Report.	Brief Description
(S)	Improper Authorization		
	Improper Request under Pertinent NSL-seekin	Reportable	This is being reported out of an abundance of caution. and the agent got the approval o legal counsel. But we are sending this through because we can not definitely say that this was not content information..
	citing ECPA but requesting RFPA	Non Reportable	although EC citation was in error, records were properly described and RFPA referenced in NSL
	citing FCRA including RFPA certification	Non Reportable	NSL was issued under 1681v but certification used RFPA language (which allows for NSL in both IT and CI case); since case was IT, the RFPA language citing both IT and CI had no legal impact. Further (and this was the mistake that the IOB EC picked upon, which OIG had not; the IOB EC does NOT reflect the mistake that the OIG found), EC synopsis stated NSL was issued under RFPA but rest of EC was accurate and reflected IT nature of the case and the request for a 1681v NSL.

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DATE: 07-26-2007
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REASON: 1.4 (c)
DECLASSIFY ON: 07-26-2032

(S)

citing FCRA including RFPA certification	Non Reportable	NSL was issued under 1681v but certification used RFPA language (which allows for NSL in both IT and CI case); since case was IT, the RFPA language citing both IT and CI had no legal impact. The EC reflected the IT nature of the case.
citing FCRA including RFPA certification	Non Reportable	NSL was issued under 1681v but certification used RFPA language (which allows for NSL in both IT and CI case); since case was IT, the RFPA language citing both IT and CI had no legal impact. The EC reflected the IT nature of the case.
seeking FCRA 1681v in CD case		
seeking FCRA 1681v in CD case		
seeking FCRAv when SAC approved only FCRA 1681u		
seeking FCRAv when SAC approved only FCRA 1681u		
seeking FCRAv when SAC approved only FCRA 1681u		
seeking FCRAv when SAC approved only FCRA 1681u	Non reportable.	Although EC citation was in error, records were properly described and FCRAv was referenced in NSL which was also signed by the SAC.

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	3d Party Error Obtaining info not relevant to authorized investigation	not reportable	[redacted] mistakenly cited one NSL as source for subscriber information pertaining to a particular telephone number in an EC to file, when in fact a second NSL was the source for the subscriber information. Both NSL's were properly issued and there is no IOB violation.
	3d Party Error Obtaining info not relevant to authorized investigation	not reportable	[redacted] requested subscriber information from [redacted] and received a number that was not assigned to an individual, but was an internet access number. The NSL was properly issued and there is no IOB violation.
	3d Party Error Obtaining info not relevant to authorized investigation		
	3d Party Error Obtaining info not relevant to authorized investigation		
	3d Party Error Obtaining info not relevant to authorized investigation	not reportable	[redacted] requested toll billing information from [redacted] and received information for a number that was not requested in the NSL . The NSL was properly issued and there is no IOB violation.

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	3d Party Error Obtaining info not relevant to authorized investigation	Not Reportable	NSL served upon provider contained two correct telephone numbers. Authorizing EC contained typographical error with respect to one of the numbers. Not reportable: the fact that the authorizing EC contained an apparent typographical error neither resulted in the issuance of an erroneous NSL, nor an unauthorized collection in violation of the NSIG and ECPA.
	results exceed date scope of request	Not Reportable	[redacted] received from the provider information that covered two weeks prior to the beginning of the request. That period was consistent with the billing cycle. OIG had stated in report that overruns due to the billing cycle did not even need to be reported as PIOBs. Carrier error/choice involved; not FBI error.
	results exceed date scope of request	Not Reportable	[redacted] received from the provider information that covered two months prior to the beginning of the request. [redacted] had issued an earlier NSL which covered more than a month of the overrun. Carrier error involved, not FBI error.
	results exceed date scope of request		
	results exceed date scope of request	Not Reportable	[redacted] received records beyond the scope of the NSL, but since it was carrier mistake, it is not reportable.

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TALKING POINTS - NSL + 215 Reports

'I non-reportable to Charlie Steele

- 215 - [redacted]
  - improper use
  - delays
  - [redacted] - PISAMS
  - IOBs
- NSL → classified
  - findings + recs
  - 22 potential IOBs → top priority this week
  - statistics → focus on problems how many NSLs issued from 4 field offices
  - short + to the point
  - include ~~stat~~ classified stats
- Thursday → What would questions?

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DATE 07-26-2007 BY 65179/DMH/KSR/RW

I am President's Privacy Board
1 pm. Calls from [redacted] GC

F Press Conf. w/ Director

F GC + Pistole briefing Congress

- briefings of EPIC, ACLU, etc.

As described by IG	Facts as reported for PIOB – Valerie's notes	Instance #	Case ID	NSLB's comments	Did ADC/ CDC review NSL?	Should it have been reported as a potential IOB matter?	Is it reportable to the PIOB?
(S) Issuing NSL when [redacted] expired	~~Complicated history on extensions [redacted] was open at time NSL issued~~ Violation [redacted] had expired due to drafter's error.	1 out of 1 (S)					
Issuing NSL seeking full credit report in CI case	Occurred - we issued 1681v instead of 1681u NSL.	1 out of 2					
		2 out of 2					

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DECLASSIFY ON: 07-26-2032

(S)

As described by IG	Facts as reported for PIOB – Valerie's notes	Instance #	Case ID	NSLB's comments	Did ADC/ CDC review NSL?	Should it have been reported as a potential IOB matter?	Is it reportable to the PIOB?
Issuing NSL seeking full credit report (1681v) when EC authorizes only limited data (1681u)	B/c SAC signed the NSL for broader info, quarrel with idea it was not authorized. Sloppy paperwork. NSLs were good asking for 1681v, EC asked for 1681u (was wrong).	1 out of 3					
		2 out of 3					
		3 out of 3					

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As described by IG	Facts as reported for PIOB – Valerie's notes	Instance #	Case ID	NSLB's comments	Did ADC/ CDC review NSL?	Should it have been reported as a potential IOB matter?	Is it reportable to the PIOB?
(S) Received irrelevant info in response to NSL	Info was relevant, but exceeded time period we requested; third party error.	1 out of 1					
Overcollection of relevant info in response to NSL	Relevant info for time that exceeded what we requested.	1 out of 1					
[redacted]							
Issuing NSL fo[redacted] (S)	Illegality of this is unclear; no date actually obtained.	1 out of 1 b1 b2 b7E		*This is being reported out of an abundance of caution.* [redacted] *and the agent got the approval of* [redacted] *legal counsel. But we are sending this through because we can not definitely say that this was not content information.*	Yes b5	Yes	Yes

As described by IG	Facts as reported for PIOB – Valerie's notes	Instance #	Case ID	NSLB's comments	Did ADC/ CDC review NSL?	Should it have been reported as a potential IOB matter?	Is it reportable to the PIOB?
(S) ECPA NSL seeking what IG believes are financial records requiring RFPA NSL		1 out of 1		*EC citation was in error (ECPA not RFPA) and did not describe supporting facts, NSL was reference ECPA and RFPA in part..*	Yes	Yes	Yes
FCRA NSL uses certification language from RFPA	Actual language differences are minor; no individual rights affected.	1 out of 3		*NSL was issued under 1681v but certification used RFPA language (which allows for NSL in both IT and CI case); since case was IT, the RFPA language citing both IT and CI had no legal impact. Further (and this was the mistake that the IOB EC picked upon, which OIG had not; the IOB EC does NOT reflect the mistake that the OIG found), EC synopsis stated NSL was issued under RFPA but rest of EC was accurate and reflected IT nature of the case and the request for a 1681v NSL.*			

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As described by IG	Facts as reported for PIOB – Valerie's notes	Instance #	Case ID	NSLB's comments	Did ADC/ CDC review NSL?	Should it have been reported as a potential IOB matter?	Is it reportable to the PIOB?
(S)		2 out of 3		*NSL was issued under 1681v but certification used RFPA language (which allows for NSL in both IT and CI case); since case was IT, the RFPA language citing both IT and CI had no legal impact. The EC reflected the IT nature of the case.*			
		3 out of 3		*NSL was issued under 1681v but certification used RFPA language (which allows for NSL in both IT and CI case); since case was IT, the RFPA language citing both IT and CI had no legal impact. The EC reflected the IT nature of the case.*			
Received irrelevant info in response to NSL	Mischaracterized as irrelevant; info was relevant and promptly covered with a new NSL.	1 out of 1		[redacted] *mistakenly cited one NSL as source for subscriber information pertaining to a particular telephone number in an EC to file, when in fact a second NSL was the source for the subscriber information. Both NSL's were properly issued and there is no IOB violation.*			

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As described by IG	Facts as reported for PIOB – Valerie's notes	Instance #	Case ID	NSLB's comments	Did ADC/ CDC review NSL?	Should it have been reported as a potential IOB matter?	Is it reportable to the PIOB?
(S) Overcollection of relevant info in response to NSL		1 out of 2		[redacted] *received from the provider information that covered two weeks prior to the beginning of the request. That period was consistent with the billing cycle. OIG had stated in report that overruns due to the billing cycle did not even need to be reported as PIOBs. Carrier error/choice involved; not FBI error.*			
	b2 b7E b1	2 out of 2		[redacted] *received from the provider information that covered two months prior to the beginning of the request.* [redacted] *had issued an earlier NSL which covered more than a month of the overrun. Carrier error involved, not FBI error.*			
[redacted]							

As described by IG	Facts as reported for PIOB – Valerie's notes	Instance #	Case ID	NSLB's comments	Did ADC/ CDC review NSL?	Should it have been reported as a potential IOB matter?	Is it reportable to the PIOB?
(S) Issuing NSL seeking full credit report (1681v) when EC authorizes only limited data (1681u)	B/c SAC signed the NSL for broader info, quarrel with idea it was not authorized. Sloppy paperwork.	1 out of 1		*Although EC citation was in error, records were properly described and FCRAv was referenced in NSL which was also signed by the SAC.*			
Received irrelevant info in response to NSL		1 out of 2		*[redacted] requested toll billing information from [redacted] and received information for an associated number. Both the requested number and the associated number were subscribed to by the same individual. This is why the associated number was provided. The NSL was properly issued and there is no IOB violation.*	YES	YES	NO

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As described by IG	Facts as reported for PIOB – Valerie's notes	Instance #	Case ID	NSLB's comments	Did ADC/ CDC review NSL?	Should it have been reported as a potential IOB matter?	Is it reportable to the PIOB?
(S)		2 out of 2		*NSL served upon provider contained two correct telephone numbers. Authorizing EC contained typographical error with respect to one of the numbers. Not reportable: the fact that the authorizing EC contained an apparent typographical error neither resulted in the issuance of an erroneous NSL, nor an unauthorized collection in violation of the NSIG and ECPA.*	Yes	No	No
Overcollection of relevant info in response to NSL		1 out of 1 b2 b7E b1		*received records beyond the scope of the NSL, but since it was carrier mistake, it is not reportable*			

As described by IG	Facts as reported for PIOB – Valerie's notes	Instance #	Case ID	NSLB's comments	Did ADC/ CDC review NSL?	Should it have been reported as a potential IOB matter?	Is it reportable to the PIOB?
(S) Received irrelevant info in response to NSL	CDC/ADC reviewed ; matter should not have been reported; matter was not an IOB.	1 out of 2		*requested subscriber information from and received a number that was not assigned to an individual, but was an internet access number. The NSL was properly issued and there is no IOB violation.*			
		2 out of 2					

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U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

March 28, 2007

Ms. Darlene Connelly, General Counsel
President's Foreign Intelligence Advisory Board
New Executive Office Building - Room 5020
725 17th Street NW
Washington, DC 20503

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DATE 07-26-2007 BY 65179/DMH/KSR/RW

Dear Ms. Connelly:

As you know, in March 2007, the Department of Justice, Office of the Inspector General (OIG) issued a report entitled, A Review of the Federal Bureau of Investigation's Use of National Security Letters. In Chapter Six of this report, the OIG identified 22 potential Intelligence Oversight Board (IOB) matters relating to national security letters (NSLs) in its review of a sample of investigative files in four FBI field offices. Enclosed, you will find five (5) summaries of reportable IOB matters. The Office of the General Counsel (OGC) has determined that the other 17 matters are not reportable. As always, the FBI will retain copies of those decisions for your review upon request.

The OIG divided the 22 potential IOB matters into three categories: improper authorization (1), improper requests under the pertinent NSL statutes (11), and unauthorized collections (10).

Improper authorization: OGC has determined that the one instance of improper authorization should be reported as an IOB matter. Please see enclosed summary for IOB Matter 2007-[redacted]

Improper requests under pertinent NSL statutes: OGC has determined that four of the instances noted by the OIG should be reported as IOB matters. Please see enclosed summaries for IOB Matters, 2007-[redacted] (issuing an NSL for [redacted]; 2007-[redacted] (issuing an NSL requesting financial records but citing the Electronic Communications Privacy Act (ECPA), among other administrative errors); and 2007-[redacted] (issuing NSLs for full credit reports in counterintelligence cases (2 instances)).

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OGC has determined that the other seven instances are not reportable IOB matters. In three instances, the FBI field

office issued an NSL requesting a full credit report under the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681v, however, certification language from the Right to Financial Privacy Act (RFPA), 12 U.S.C. 3414(a)(5)(A) was used later in the NSL. All three are international terrorism cases, and therefore, the FBI was lawfully authorized to request and obtain the full credit reports. As the RFPA applies to both international terrorism and countintelligence cases, citing the certification language from that statute had no legal impact. The information provided in response to these NSLs was not sequestered because the FBI had issued lawful NSLs for that information.

In the remaining four instances, the FBI field office issued an NSL requesting a full credit report under FCRA, 15 U.S.C. 1681v, but the accompanying electronic communication (EC) mistakenly included language requesting consumer identifying information, 15 U.S.C. 1681u, instead. The mistake in the EC, though sloppy, did not alter the investigation in any way, and this scrivener's error, citing 1681u rather than 1681v, did not violate any law. As these were all international terrorism cases, the FBI field office had the proper legal authority to request full credit reports, and, therefore, this information was not sequestered.

Unauthorized collections: OGC has determined that none of the ten instances noted by the OIG are reportable IOB matters. Six of these instances involved third-party errors in which the carrier provided information beyond the scope of what was asked for in the NSL. Five times, the carrier provided information beyond the date range requested in the NSL, presumably to comply its own billing cycle. In one instance, the carrier, a financial services provider, provided information beyond the names/addresses of financial institutions as requested by the NSL. By letter dated 11/13/2006, the Counsel to the IOB agreed that these third-party errors in the collection of information pursuant to an NSL are not reportable to the IOB.

In one instance, in an internal EC documenting the results of NSL requests, the FBI field office mistakenly cited an NSL issued on 12/21/2004 as the source of the subscriber information in the file when, in fact, that information came from an NSL issued on 12/29/2004. As both NSLs were lawfully issued, there was no unauthorized collection. The mistake, if any, was a scrivener's error in documenting the information in the file.

In another scrivener's error, the accompanying EC contained a typographical error with respect to one of the phone numbers being requested in the NSL. The NSL actually served on the provider contained two correct phone numbers, therefore, there was no unauthorized collection.

One FBI field office served an NSL requesting subscriber information for a particular phone number that was associated with the target of an authorized investigation. In response, the provider indicated that the number was actually an Internet Access Platform used to log on to the internet. When the NSL was sent, the number was relevant to an authorized investigation. The fact that it turned out to be something else does not make this an unauthorized collection (or any error at all).

Finally, one FBI field office requested toll billing records "associated" with a particular phone number. In response, they received information for an associated number. Both the requested number and the associated number were subscribed to by the same individual. The plain language of ECPA and the legislative history support the position that the FBI is permitted to request and acquire information on associated numbers attributable to the same account. Therefore, the NSL was lawfully issued and the results should not be considered an unauthorized collection.

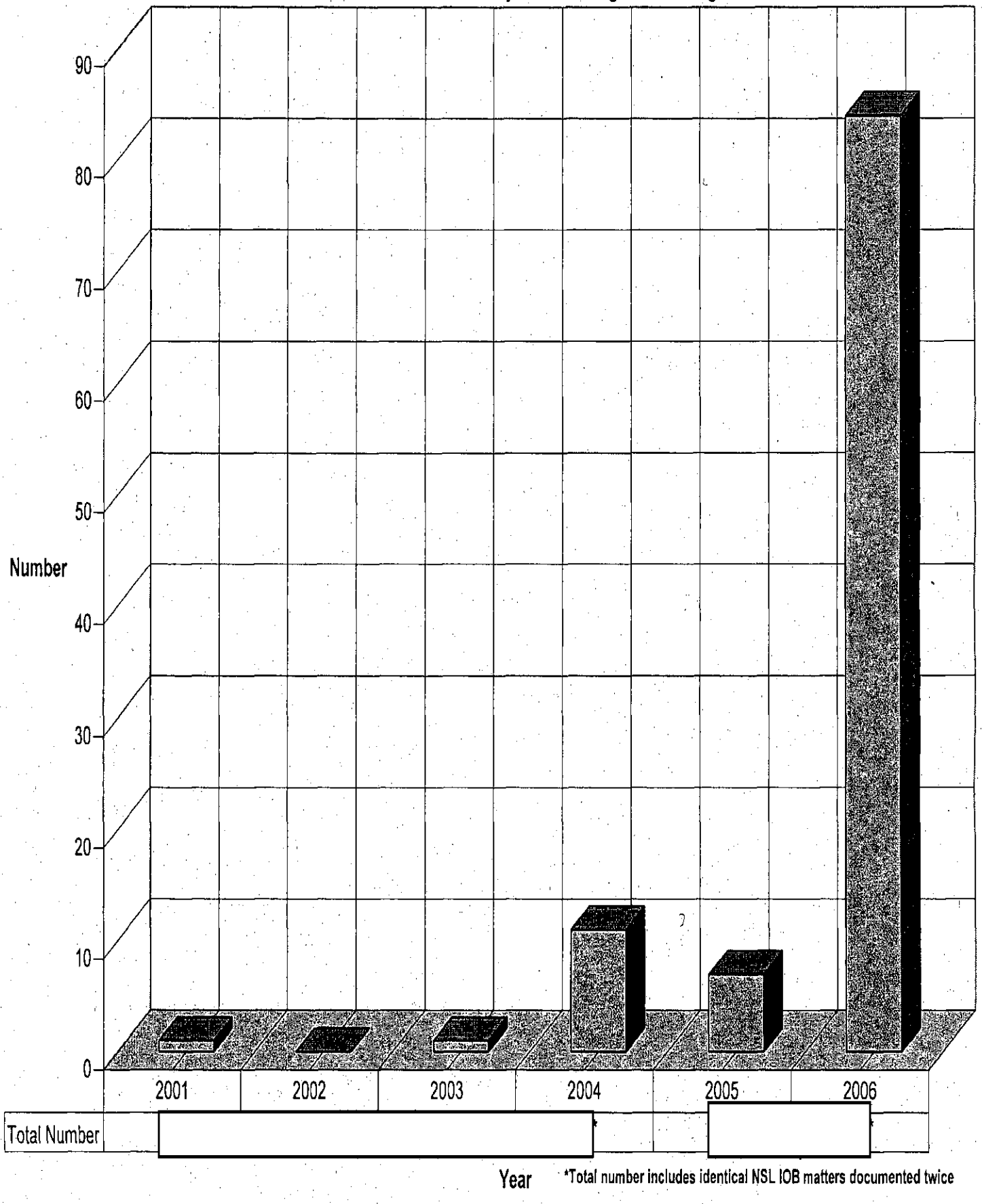
Please find enclosed summaries of the five IOB matters identified by the OIG report that OGC has determined are, indeed, reportable. Hopefully, the brief explanations above will satisfy you that the remained of the 17 potential IOB matter identified by the OIG report were not, in fact, reportable. The FBI has, however, retained copies of those decisions if you choose to review them.

Please don't hesitate to contact me if you have questions about any of these IOB matters.

Sincerely

Julie F. Thomas
Deputy General Counsel
National Security Law Branch

Total Number of FBI National Security Letter Intelligence Oversight Board Matters



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*Total number includes identical NSL IOB matters documented twice

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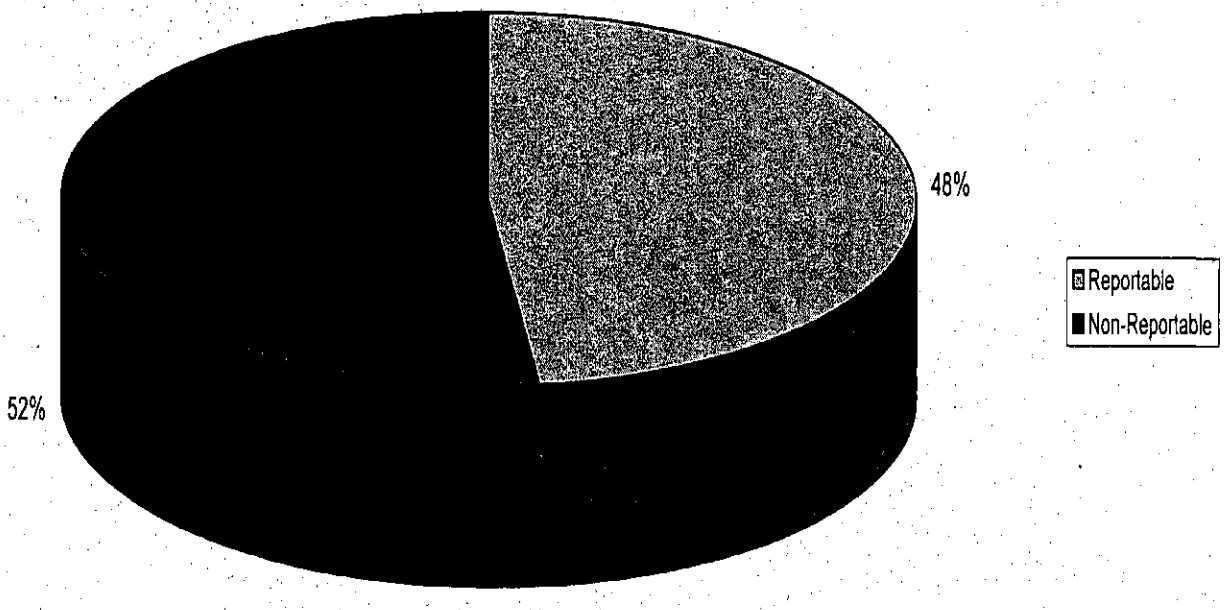
Percentage of Reportable vs. Non-Reportable
FBI NSL IOB Matters (2001-2006)



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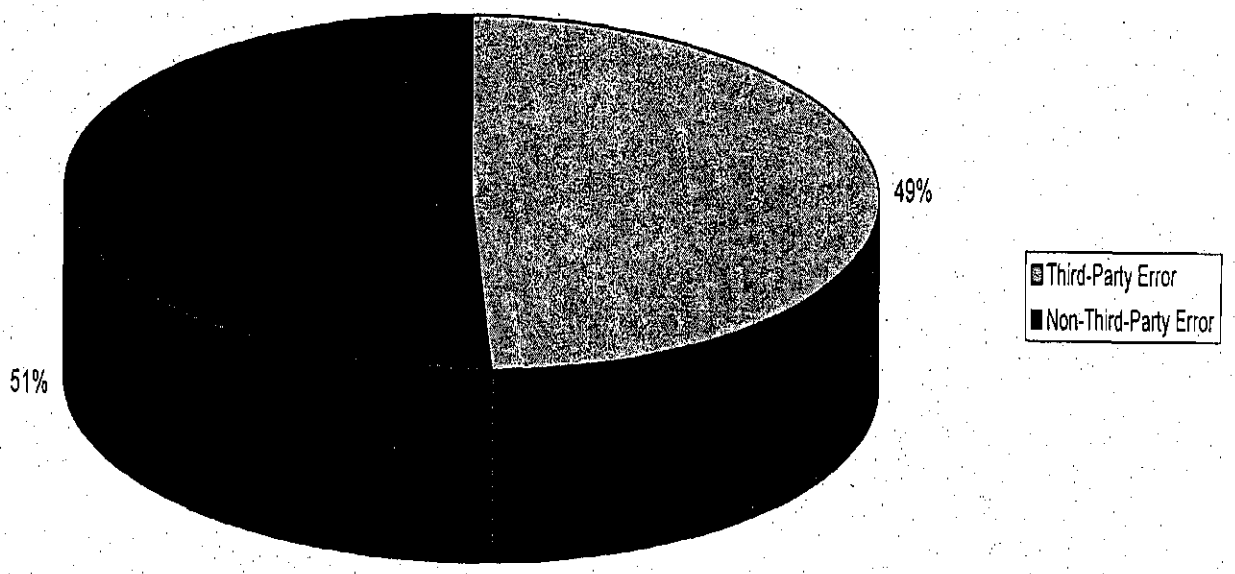
Percentage of Third-Party Errors vs. Non-Third-Party Errors
FBI NSL IOB Matters (2001-2006)



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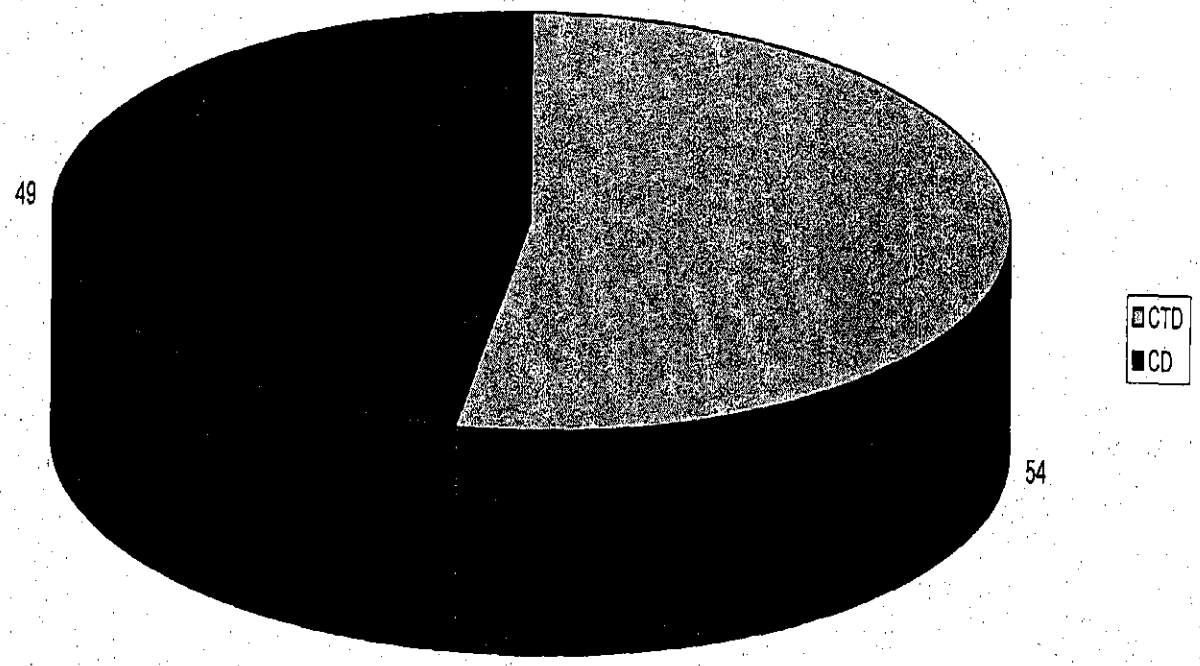
Number of FBI National Security Letter Intelligence Oversight Board Matters By Program (2001-2006)



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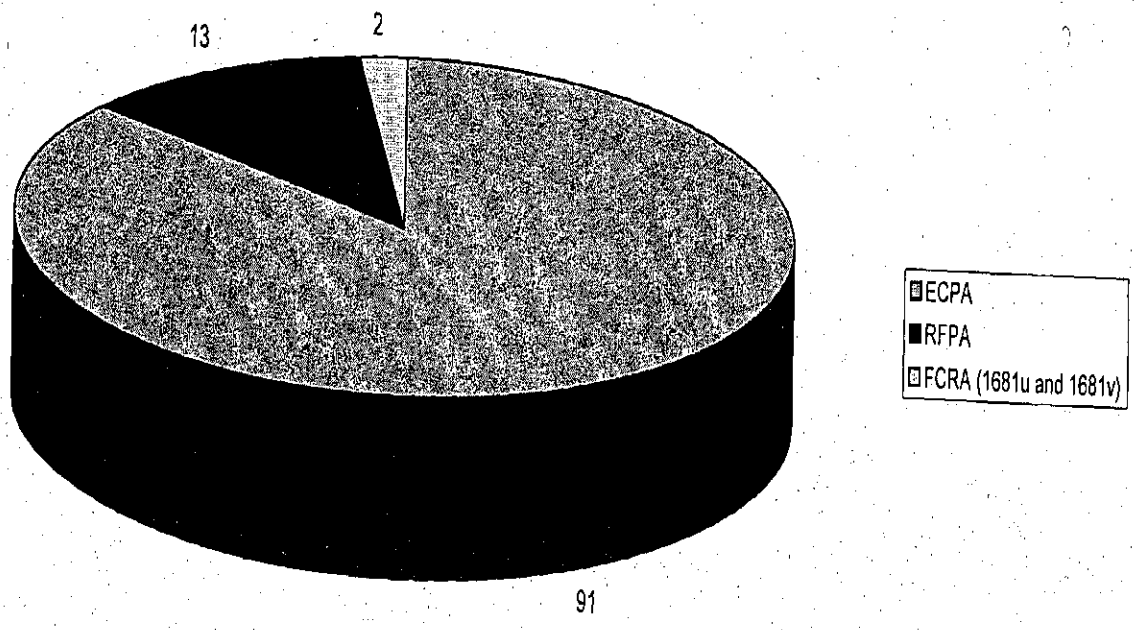
Number of FBI National Security Letters Requested Pursuant to Each Statute (2001-2006)



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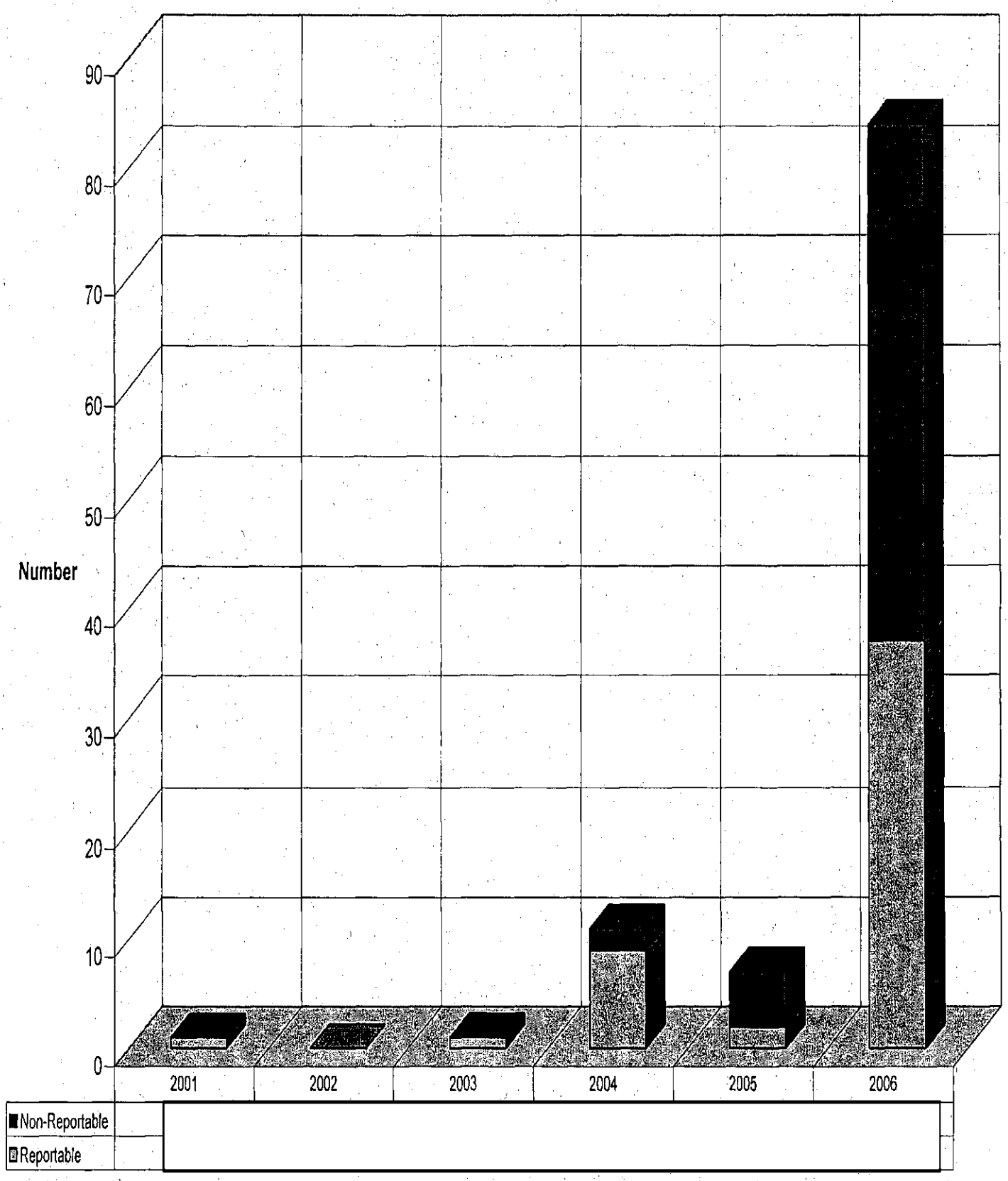
Total Number of FBI National Security Letter Intelligence Oversight Board Matters



*Total number includes identical NSL IOB matters documented twice

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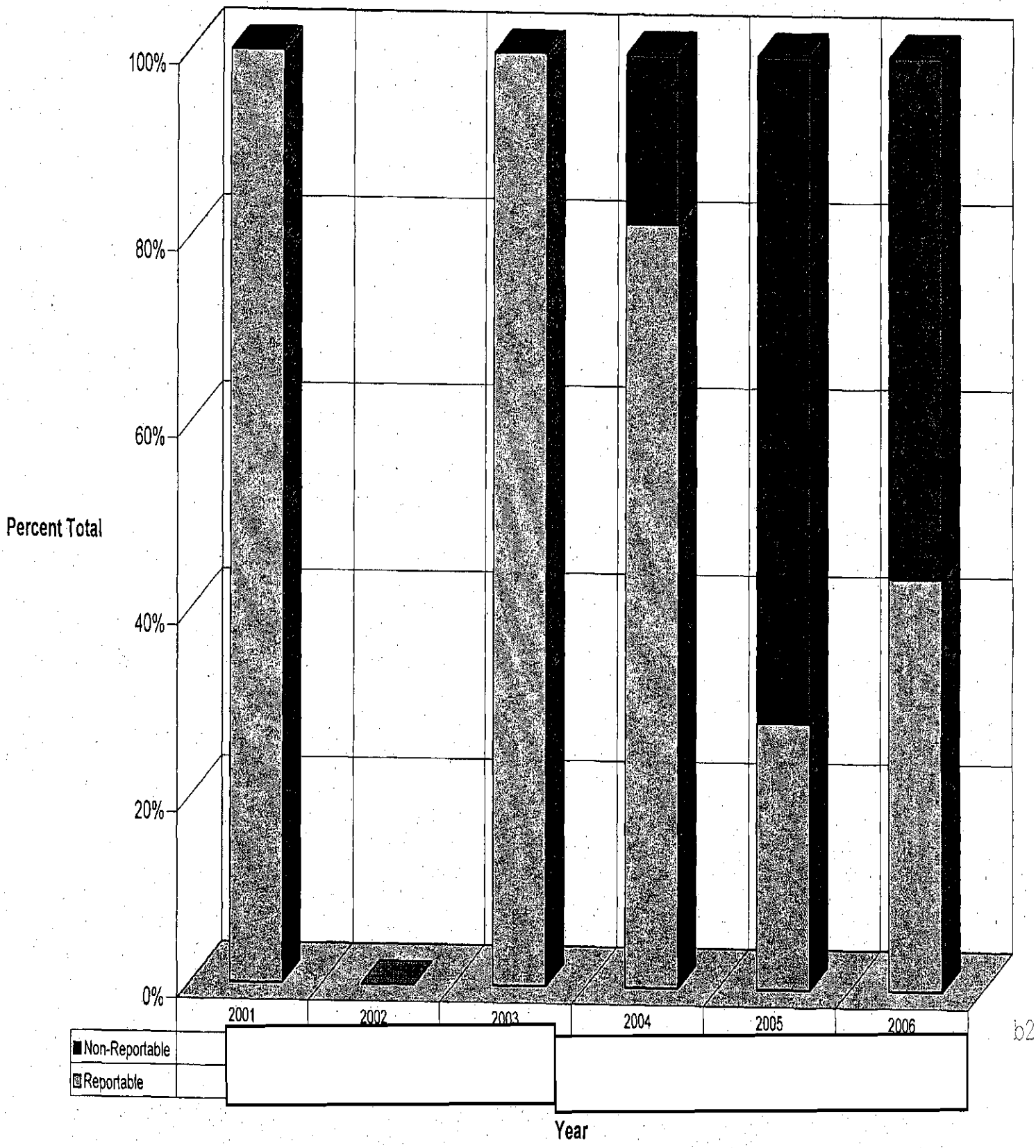
Percent Total of FBI National Security Letter Intelligence Oversight Board Matters



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*Total number includes identical NSL IOB matters documented twice

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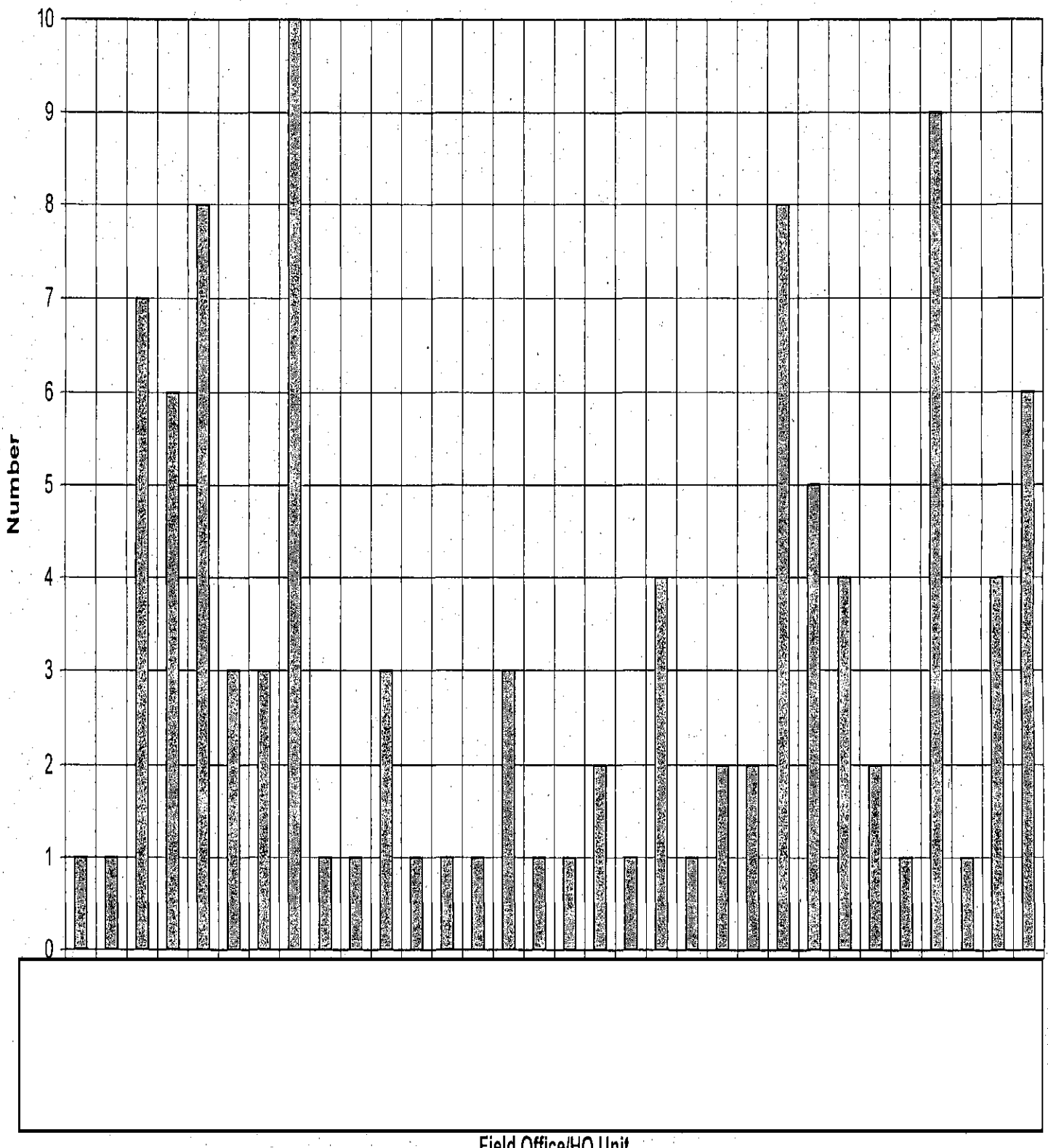
Total Number of FBI National Security Letter Intelligence Oversight Board Matters
(Field Office/HQ Unit)



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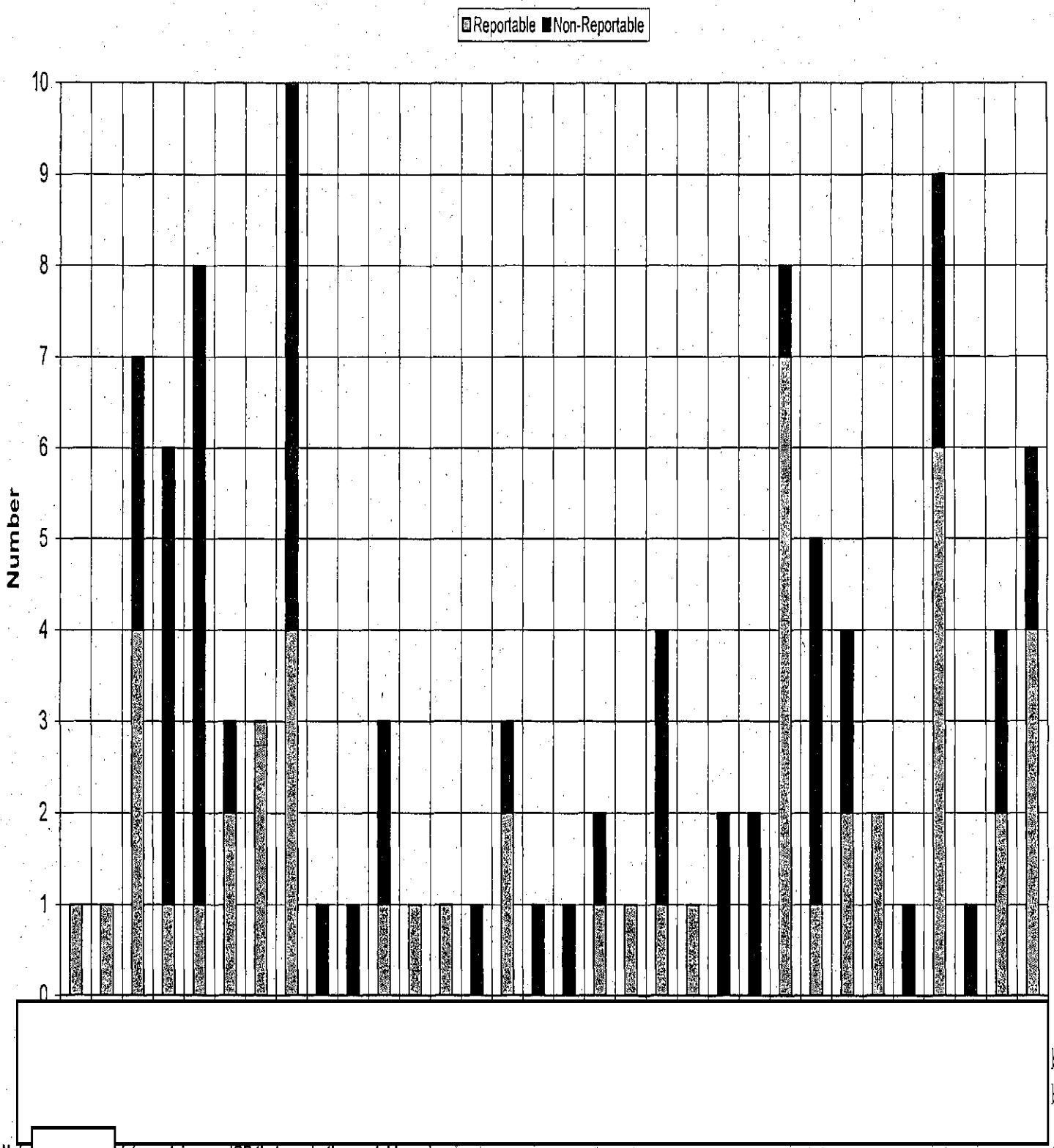
Total Number of FBI National Security Letter Intelligence Oversight Board Matters
(Field Office/HQ Unit)



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Note: data contains one IOB that was both reportable and non-reportable.

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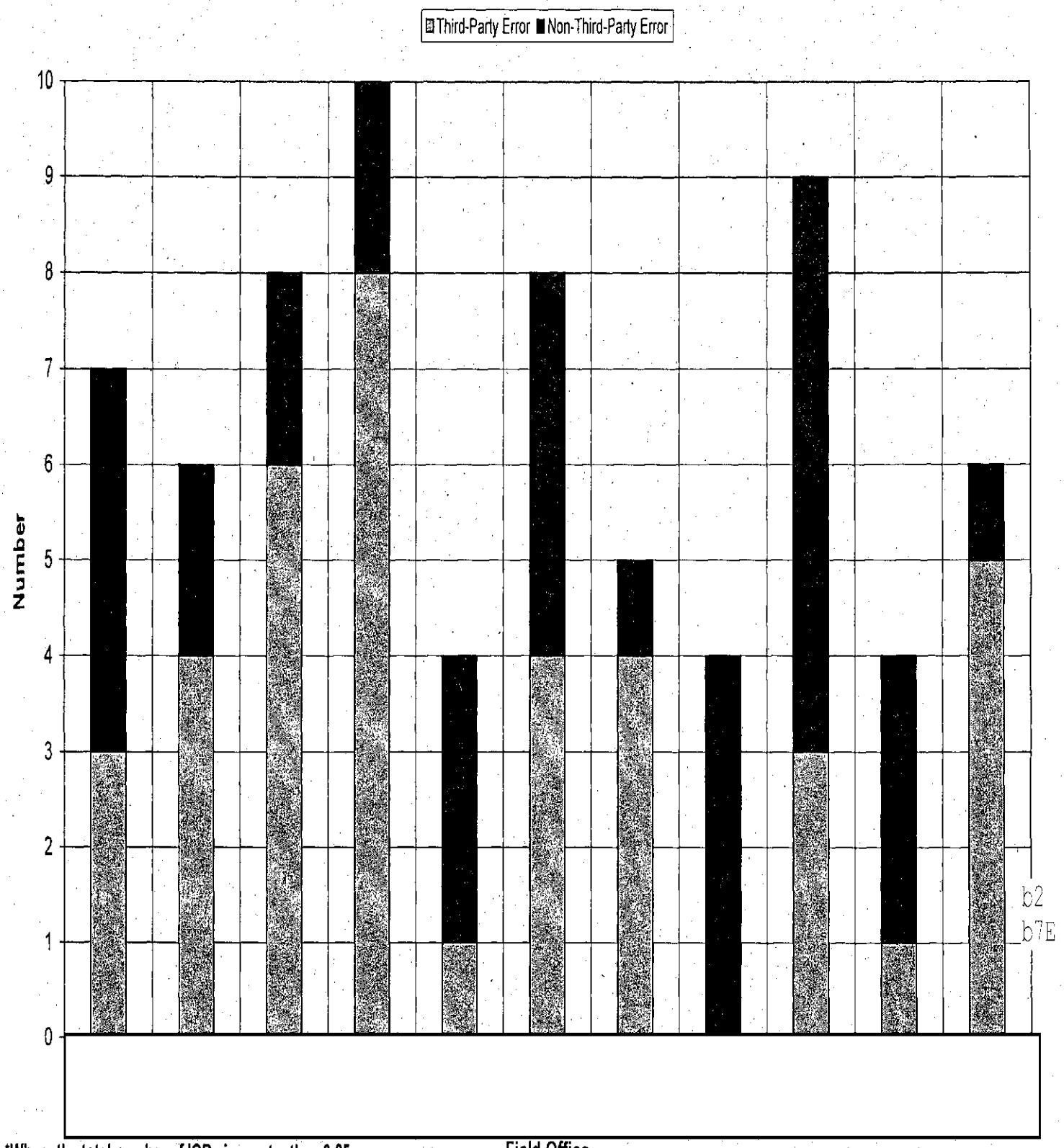
Total Number of FBI National Security Letter Intelligence Oversight Board Matters
(Field Offices with Above-Average Number of IOBs*)



*Where the total number of IOBs is greater than 3.25

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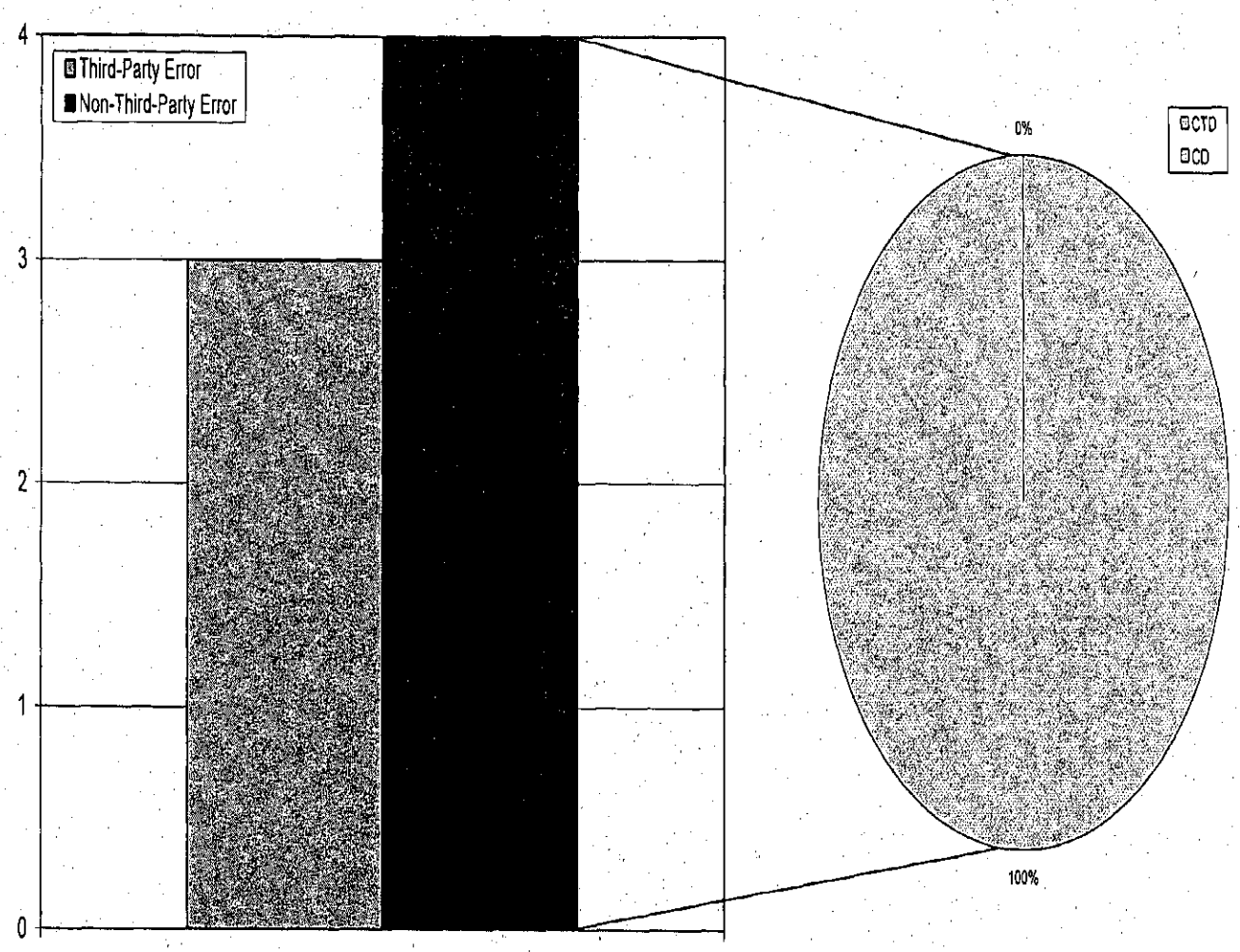
Total Number of FBI [redacted] National Security Letter Intelligence Oversight Board Matters
Non-Third-Party Errors Attributable to Program Type
(2001-2006)



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FBI National Security Letter Intelligence Oversight Board Matters (2001-2006)

OB #	Year	FoSquad/ HQ Division	Program	NSL-Reportable	NSL-Non Reportable	Act	Violation Subject	CDC/ADC Review	Sequestered	Reason/Remedy	Misc. Notes
	2001		CTD	1		RFPA	Incorrect form used to request information	Unknown		Training regarding difference in forms; CDC review for proper use guaranteed prior to issuance	NSL form rather than SAC request form used to obtain information
	2003		CD	1		ECPA	Information provided by source without NSL (when one was necessary)	Unknown		NSL training provided and related NSL issued for information	Case agent obtained information from source rather than utilizing NSL
	2004		CTD	1		ECPA/ RFPA	NSLs issued after [redacted] expired	Unknown			NSLs issued after [redacted] expired
	2004		CTD	1		ECPA	NSL drafting error	Unknown		Records were not uploaded into ACS	Incorrect identifiers used within NSL
	2004		CD	1		ECPA	Incorrect information provided	Unknown	x	Recorded forwarded to ADC	Third-party error
	2004		CD	1		ECPA	NSL drafting error	Unknown	x	Records forwarded to FBIHQ	Typographical error within NSL
	2004		CD	1		ECPA	NSL drafting error	Unknown	x	Records sealed	Typographical error within NSL
	2004		CTD	1		ECPA	Incorrect information provided		x	Records forwarded to FBIHQ	Third-party error
	2004		CD	1		FCRA (1681v)	Incorrect request for information	Unknown	x	Records sealed and forwarded to FBIHQ	NSLs issued using incorrect section (1681v used rather than 1681u)
	2004		CTD		1	ECPA	NSL received after [redacted] closed (third party late)	Unknown	x	Records sealed and archived	NSL information received after [redacted] closed
	2004		CTD		1	ECPA	NSL received after [redacted] closed (third party late)	Unknown	x	Records sealed and archived	NSL information received after [redacted] closed
	2004		CD	1		RFPA	Information obtained prior to NSL drafting	Unknown		Case agent verbally counseled	Case agent utilized electronic surveillance methods to obtain information (rather than NSL)

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FBI National Security Letter Intelligence Oversight Board Matters (2001-2006)

IOB #	Year	FoSquad/ HQ Division	Program	NSL-Reportable	NSL-Non-Reportable	Act	Violation Subject	CDC/ADC Review	Sequestered	Reason/Remedy	Misc. Notes
	2004		CTD	1		ECPA	Incorrect information provided	Unknown		Sought additional guidance from FBIHQ	Third-party error (case classified as Cyber with threat)
	2005		CTD	1		ECPA	Incorrect information provided	Unknown			Third-party error
	2005		CTD		1	ECPA	Incorrect subscriber information	Unknown	x	Records forwarded to FBIHQ for destruction	Reporting source error
	2005		CD		1	ECPA/RFPA	Concern regarding collecting NSL information without an official investigation	Unknown			NSL information collected under official investigations (lawful)
	2005		CD		1	ECPA	[redacted] not requested using proper AG Guidelines; NSL information could not be used	Unknown	x	Records secured	[redacted] not requested using proper AG Guidelines; NSL information could not be used
	2005		CD		1	ECPA	NSLs received afte[redacted] (third-party late)	Unknown			[redacted] NSLs received thereafter (third-party error)
	2005		CD		1	ECPA	NSLs received afte[redacted] (third-party late)	Unknown			[redacted] NSLs received thereafter (third-party error)
	2005		CTD	1		ECPA	NSL drafting error	Unknown	x	Records sealed and forwarded to FBIHQ	Telephone numbers appended into incorrect NSL number
	2006		CTD	1		ECPA	Telephone records requested under FA	Unknown	x	Records destroyed	
	2006		CTD	1		ECPA	Incorrect information provided	Unknown	x	Record CD and hard copies of excess information were sealed and sequestered	Third-party error

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FBI National Security Letter Intelligence Oversight Board Matters (2001-2006)

IOB #	Year	FoSquad/ HQ Division	Program	NSL-Reportable	NSL-Non Reportable	Act	Violation Subject	CDC/ADC Review	Sequestered	Reason/Remedy	Misc. Notes
	2006		CTD	1		ECPA	Incorrect information provided	Unknown	x	Record CD and hard copies of excess information were sealed and sequestered	Third-party error
	2006		CTD		1	ECPA	Information found to be unassociated with subject or terrorism activity	Unknown	x	Records sealed and not uploaded	Telehopne number not associated with subject or terrorism activity
	2006		CTD		1	ECPA	NSL issued after [redacted]	Unknown			Administrative oversight [redacted] case agent unaware and served NSLs)
	2006		CTD		1	ECPA	Improper dissemination of information	Unknown			Third-party error. Carrier forwarded information to wrong location
	2006		CTD	1		RFPA	[redacted]	Unknown			Request for [redacted] was sent to wrong division at HQ
	2006		CD	1		ECPA	Incorrect information provided	Unknown	x	Records sealed	Third-party error
	2006		CD		1	ECPA	Incorrect information provided	Unknown	x	Record CD containing excess information remains in CDC safe	Third-party error
	2006		CD		1	ECPA	Incorrect information provided	Unknown	x	Records sealed	Third-party error

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FBI National Security Letter Intelligence Oversight Board Matters (2001-2006)

IOB #	Year	FoSquad/ HQ Division	Program	NSL-Reportable	NSL-Non Reportable	Act	Violation Subject	CDC/ADC Review	Sequestered	Reason/Remedy	Misc. Notes
	2006		CTD		1	ECPA	Incorrect information provided	Unknown			Third-party error. Not necessary to sequester records because the excess information provided by the carrier was within the scope of the NSL
	2006		CTD		1	ECPA	Incorrect telephone subscriber	Unknown	x	Records set aside and were not used.	
	2006		CTD		1	ECPA	Incorrect request for information	Unknown			NSL Drafting error
	2006		CD	1		ECPA	Incorrect information provided	Unknown	x	CDC holding information in safe	Third-party error
	2006		CD		1	ECPA	Incorrect information provided	Unknown	x	Records were destroyed	Third-party error
	2006		CD		1	ECPA	Incorrect request for information	Unknown	x		Incorrect NSL served (post USA Patriot IRA)
	2006		CTD		1	ECPA	Incorrect telephone subscriber	Unknown	x	Records sealed and forwarded to ADC	Subscriber cancelled telephone service
	2006		CTD		1	RFPA	Incorrect information provided	Unknown	x	Excess records were segregated and sealed in Springfield RA	Third-party error
	2006		CD	1		ECPA	Incorrect request for information	Unknown	x	Record CD was destroyed	NSL Drafting error
	2006		CD	1		ECPA	Incorrect information provided	Unknown			Third-party error but information provided still falls within investigative time frame and FO plans to re-issue an NSL
	2006		CD		1	ECPA	Incorrect telephone subscriber	Unknown	x	Records were destroyed	Third-party error

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FBI National Security Letter Intelligence Oversight Board Matters (2001-2006)

IOB #	Year	FoSquad/HQ Division	Program	NSL-Reportable	NSL-Non Reportable	Act	Violation Subject	CDC/ADC Review	Sequestered	Reason/Remedy	Misc. Notes
	2006		CD	1		ECPA	Incorrect information provided	Unknown	x	Records secured by CDC	Numbers transposed by third party
	2006		CD	1		RFPA	Extraneous information provided	Unknown	x	Records secured by CDC	Third-party error
	2006		CD		1	RFPA	Incorrect information provided	Unknown	x	CDC holding information in safe	Third-party error
	2006		CTD	1		ECPA	Incorrect information provided	Unknown	x	Records sealed and forwarded to CDC	Third-party error
	2006		CTD	1		ECPA	Incorrect information provided	Unknown	x	Record sealed and forwarded to CDC	Third-party error
	2006		CTD	1		ECPA	Incorrect request for information	Unknown	x	Record sealed and forwarded by CDC	NSL Drafting error
	2006		CTD	1		ECPA	Incorrect request for information	Unknown	x	Records were sealed by CDC and deleted from ACS	NSL Drafting error
	2006		CTD		1	ECPA	Incorrect information provided	Unknown	x	CDC holding information in safe	Third-party error
	2006		CTD		1	ECPA	Incorrect information provided	Unknown	x	CDC holding information in safe/uploaded records permanentley charged out	Third-party error
	2006		CTD		1	ECPA	Incorrect information provided	Unknown	x	CDC holding information in safe	Third-party error
	2006		CTD		1	ECPA	Incorrect information provided	Unknown	x	CDC holding information in safe	Third-party error
	2006		CTD		1	ECPA	Incorrect information provided	Unknown	x	CDC holidng information in safe	Third-party error
	2006		CD		1	ECPA	Outstanding NSL [redacted]	Unknown			Case agent change caused [redacted] before NSL served

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FBI National Security Letter Intelligence Oversight Board Matters (2001-2006)

IOB #	Year	FoSquad/ HQ Division	Program	NSL-Reportable	NSL-Non Reportable	Act	Violation Subject	CDC/ADC Review	Sequestered	Reason/Remedy	Misc. Notes
	2006		CD		1	FCRA (1681u)	Incorrect information provided	Unknown	x	CDC holding information in safe	Third-party error
	2006		CD	1		ECPA	Incorrect telephone number				OGC recommended records to be sequestered
	2006		CD		1	ECPA	Incorrect telephone subscriber	Unknown			Not necessary to sequester information because records were publicly available
	2006		CTD	1		ECPA	[redacted] not linked with subject or terrorism activities	Unknown	x		[redacted] not linked with subject or terrorism activities
	2006		CTD	1		RFPA	[redacted]	Unknown	x	Records forwarded to OGC	
	2006		CD	1	1	ECPA	[redacted]	Unknown	x	Results of erroneous NSL were not reviewed and were sequestered in CDC safe	Multiple NSL's were requested, and only one of the violations was reportable
	2006		CTD	1		ECPA	Case not opened/converted to 315 matter	Unknown			
	2006		CTD		1	ECPA	Incorrect telephone subscriber	Unknown	x	Records set aside and were not used	Third-party error
	2006		CTD	1		ECPA	Incorrect telephone number	Unknown	x	Records forwarded to HQ/ITOS II	
	2006		CTD	1		ECPA	FBI quality control error resulting in incorrect information provided	Unknown			Electronic record information was removed, but unknown if hard copy record was sequestered and/or destroyed
	2006		CTD		1	ECPA	Incorrect information provided	Unknown			Third-party error

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FBI National Security Letter Intelligence Oversight Board Matters (2001-2006)

IOB #	Year	FoSquad/HQ Division	Program	NSL Reportable	NSL Non Reportable	Act	Violation Subject	CDC/ADC Review	Sequestered	Reason/Remedy	Misc. Notes
	2006		CTD		1	ECPA	Incorrect telephone subscriber	Unknown	x	Records not utilized or uploaded	Subscribers changed during time period considered
	2006		CTD		1	ECPA	Incorrect telephone subscribers	Unknown	x		Subscribers changed during time period considered
	2006		CD	1		ECPA	Incorrect request for information	Unknown			Improper altercation of NSL to obtain information. OGC recommended records to be sequestered
	2006		CD	1		ECPA	Incorrect information provided	Unknown	x	CDC holding information in safe	Third-party error
	2006		CD	1		ECPA	Incorrect information provided	Unknown	x	CDC holding information in safe	Third-party error
	2006		CD	1		ECPA	Incorrect request for information	Unknown	x	Record CD containing excess information remains in CDC safe	NSL Drafting error
	2006		CD	1		ECPA	Incorrect information provided	Unknown	x	Records sealed and forwarded to CDC	Third-party error
	2006		CD	1		ECPA	Incorrect [redacted]	Unknown	x	ADC holding information in safe	ADC contacted upon notification of violation
	2006		CD		1	ECPA	Case closed before NSLs returned	Unknown	x	CDC holidng information in safe	[redacted] expired; related NSL results sequestered
	2006		CD	1		ECPA	Incorrect telephone number	Unknown	x	CDC holding information in safe	CDC contacted upon notification of violation
	2006		CTD	1		ECPA	Administrative oversight regarding [redacted] and NSLs served	Unknown	x	Records sealed and forwarded to CDC	Administrative oversight [redacted] case agent unaware and served NSLs)

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FBI National Security Letter Intelligence Oversight Board Matters (2001-2006)

IOB #	Year	FoSquad/ HQ Division	Program	NSL-Reportable	NSL-Non Reportable	Act	Violation Subject	CDC/ADC Review	Sequestered	Reason/Remedy	Misc. Notes
	2006		CTD		1	ECPA	Incorrect information provided	Unknown	x		Third-party error
	2006		CTD		1	ECPA	Incorrect telephone subscriber	Unknown	x	CDC holding information in safe	Third-party error
	2006		CTD		1	ECPA	Extraneous information provided	Unknown	x		Third-party error
	2006		CD	1		ECPA	Incorrect request for information	Unknown	x	Records were destroyed	NSL Drafting error
	2006		CD		1	ECPA	Incorrect telephone subscriber	Unknown	x		Subscribers changed during time period considered
	2006		CTD	1		ECPA	Incorrect telephone number	Unknown	x	Records destroyed/permanently charged out of ACS	
	2006		CTD		1	ECPA/RFP	NSL issued afte [redacted]	Unknown	x		Administrative oversigh [redacted] case agent unaware and served NSLs)
	2006		CTD	1		ECPA	Incorrect request for information	Unknown	x	Records forwarded to FBIHQ for appropriate action/uploaded records permanently charged out	NSL drafting error
	2006		CD		1	ECPA	Incorrect information provided	Unknown			Incorrect telephone number acquired and used within NSL
	2006		CD	1		ECPA	Incorrect request for information	Unknown	x	Records were destroyed	
	2006		CTD	1		ECPA	Incorrect request for information	Unknown			NSL drafting error

b2
b7E

FBI National Security Letter Intelligence Oversight Board Matters (2001-2006)

IOB #	Year	FoSquad/ HQ Division	Program	NSL Reportable	NSL Non Reportable	Act	Violation Subject	CDC/ADC Review?	Sequestered	Reason/Remedy	Misc. Notes
	2006		CTD		1	ECPA	Incorrect information provided	Unknown	x	Records were destroyed	Third-party error
	2006		CTD		1	ECPA	Extraneous information provided	Unknown	x		Third-party error
	2006		CTD		1	RFPA	NSL issued afte	Unknown			Administrative oversight case agent unaware and served NSLs)
	2006		CTD		1	ECPA	Incorrect request for information		x	Awaiting guidance from carrier	Telephone number obtained from source was incorrect. OGC recommended
	2006		CD	1		RFPA	Incorrect information provided	Unknown	x	Records sealed and forwarded to CDC	Third-party error
	2006		CD	1		ECPA	Incorrect information provided	Unknown	x	Excess records were placed in safe	Third-party error
	2006		CD	1		ECPA	Incorrect information provided	Unknown	x	Excess records were placed in safe	Third-party error
	2006		CD		1	ECPA	Incorrect information provided	Unknown	x	Records placed in safe	Third-party error
	2006		CD		1	RFPA	Incorrect information provided	Unknown	x	Awaiting guidance from carrier	Third-party error
	2007		CD		1	ECPA	Incorrect information provided	Unknown	x		Third-party error
	2007		CD		1	ECPA	Incorrect information provided	Unknown	x	CD of records was sequestered with the CDC	Third-party error

b2
b7E

FBI National Security Letter Intelligence Oversight Board Matters (2001-2006)

IOB #	Year	FoSquad/ HQ Division	Program	NSL-Reportable	NSL-Non Reportable	Act	Violation Subject	CDC/ADC Review	Sequestered	Reason/Remedy	Misc. Notes
	2007		CD		1	ECPA	Incorrect information provided	Unknown			Third-party error
	2007		CTD		1	ECPA	Incorrect information provided	Unknown	x		Third-party error
	2007		CD		1	ECPA	Incorrect information provided	Unknown	x	Records returned to provider	Third-party error
	2007		CD		1	ECPA	Incorrect information provided	Unknown	x		Third-party error
	2007		CTD		1	ECPA	Incorrect information provided	Unknown	x	Records destroyed	Third-party error

b2
b7E

[redacted] (OGC) (FBI)

b6
b7C

From: [redacted] (OGC) (FBI)
Sent: Thursday, March 29, 2007 1:31 PM
To: [redacted] (OGC) (FBI)
Cc: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); THOMAS, JULIE F. (OGC) (FBI)
Subject: These are the outstanding issues that I can remember

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Issues -

1) overcollection covered by an NSL [redacted]

2) can [redacted]

3) what rules apply [redacted] Per email to Julie re [redacted]

[redacted]

b5

4) can similar PIOBs be reported in one EC; our response can be one EC if the same response or multiple responses if not similarly handled. Inspection talked to [redacted] about this today and they are okay with one PIOB and one response when all similar issues (they will still count these as multiple PIOBs and will make copies of our responses, so there will not be any issue as to accurately reporting the extent of the problem.)

b6
b7C
b2
b7E

5) do we need to revisit [redacted]

[redacted]

6) this is one she hasn't seen but came to me today and that I sent to you, [redacted]

[redacted]

7) confirm [redacted]

[redacted]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 07-26-2007 BY 65179/DMH/KSR/RW

SENSITIVE BUT UNCLASSIFIED

NSL VIO-24587

FEDERAL BUREAU OF INVESTIGATION
FOIPA
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No Duplication Fees are charged for Deleted Page Information Sheet(s).

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