



**NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE**
FORT GEORGE G. MEADE, MARYLAND 20755-6000

FOIA Case: 48109
24 August 2006

Mr. John L. Young
251 West 89th Street, Suite 6E
New York, NY 10024

Dear Mr. Young:

This responds to your Freedom of Information Act (FOIA) request submitted via the Internet on 20 January 2006, which was received by this office on 23 January 2006, for:

1. The procedure NSA follows for obtaining approval from the Foreign Intelligence Surveillance Court (FISC) for surveillance of foreign and United States targets;
2. Review and approval process NSA follows for making an application to the FISC, what conditions initiate an application, who is authorized to initiate it, who prepares it, who reviews it, and who grants final approval, who makes the application and what form the FISC approval takes;
3. The role of the NSA Counsel and the Counsel's office in FISC applications;
4. Names and dates of service for NSA Counsels from the first appointment to present time; and
5. Rules and regulations governing the NSA Counsel's office, and the office's duties and responsibilities.

Your request has been assigned Case Number 48109. For the purposes of this request and based on the information you provided in your letter, you are considered an "all other" requester. As such, you are allowed 2 hours of search and the duplication of 100 pages at no cost. Since processing fees were minimal, no fees were assessed.

In February 2006, you spoke with a member of my staff on several occasions and clarified items #1 and 2 of your request to be for the detailed procedures NSA follows for getting approval from the Foreign Intelligence

Surveillance Court. You also explained that you had seen the April 2000 briefing entitled "NSA/CSS Operates Under the Rule of Law" on the NSA Home page on the Internet, which provides "general" procedures of the process and did not want "general" procedures unless they had been updated. Lastly, you clarified item #5 of your request to be for office duties and responsibilities of the NSA Counsel's office as related to the FISA process.

Your request has been processed under the FOIA. Four documents (152 pages) were found to be responsive to your request and are enclosed as requested. Certain information, however, has been deleted from the enclosures.

Some of the information deleted from the documents was found to be currently and properly classified in accordance with Executive Order 12958, as amended. This information meets the criteria for classification as set forth in Subparagraphs (c) and (g) of Section 1.4 and remains classified CONFIDENTIAL and SECRET as provided in Section 1.2 of the Executive Order 12958, as amended. The information is classified because its disclosure could reasonably be expected to cause serious damage to the national security. Because the information is currently and properly classified, it is exempt from disclosure pursuant to the first exemption of the FOIA (5 U.S.C. Section 552(b)(1)).

In addition, this Agency is authorized by various statutes to protect certain information concerning its activities. We have determined that such information exists in these documents. Accordingly, those portions are exempt from disclosure pursuant to the third exemption of the FOIA, which provides for the withholding of information specifically protected from disclosure by statute. The specific statutes applicable in this case are Title 18 U.S. Code 798, Title 50 U.S. Code 403-1(i); and Section 6, Public Law 86-36 (50 U.S. Code 402 note).

Since these deletions may be construed as a partial denial of your request, you are hereby advised of this Agency's appeal procedures. You are hereby advised of this Agency's appeal procedures. Any person denied access to information may file an appeal to the NSA/CSS Freedom of Information Act Appeal Authority. The appeal must be postmarked no later than 60 calendar days from the date of the initial denial letter. The appeal shall be in writing addressed to the NSA/CSS FOIA Appeal Authority (DC34), National Security Agency, 9800 Savage Road STE 6248, Fort George G. Meade, MD 20755-6248. The appeal shall reference the initial denial of access and shall contain, in sufficient detail and particularity, the grounds upon which the requester believes release of the information is required. The NSA/CSS Appeal Authority

will endeavor to respond to the appeal within 20 working days after receipt, absent any unusual circumstances.

In addition, in reference to item #4 of your request, there were three General Counsels for whom we did not have a photograph: Mr. Sidney Smith, the first General Counsel (1953 – 1959), Mr. Roy Banner (1959 – 1978), and Mr. Robert Deitz (1998 to present).

Sincerely,

A handwritten signature in black ink, appearing to read "Louis F. Giles". The signature is written in a cursive style with a large initial "L" and "G".

LOUIS F. GILES
Director of Policy

Encls:
a/s

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NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
NSA/CSS POLICY 1-23



Issue Date: 11 March 2004

Revised:

**(U) PROCEDURES GOVERNING NSA/CSS ACTIVITIES
THAT AFFECT U.S. PERSONS**

(U) PURPOSE AND SCOPE

(U) This Policy is issued to comply with DoD Directive 5240.1 (Reference a), which implements Public Law 95-511 (the Foreign Intelligence Surveillance Act of 1978, as amended; Reference b), Part 2 of Executive Order (E.O.) 12333 (Reference c), and E.O. 12863 (Reference d). It establishes procedures and assigns responsibilities to ensure that the signals intelligence (*SIGINT*) and information assurance (IA) missions of the National Security Agency/Central Security Service (NSA/CSS) are conducted in a manner consistent with the privacy rights of *U.S. persons* and as required by law, executive orders, Department of Defense (DoD) policies and instructions, and internal NSA/CSS policy.

(U) This Policy applies to all NSA/CSS elements.

MICHAEL V. HAYDEN
Lieutenant General, USAF
Director, NSA/Chief, CSS

Endorsed by
Director of Policy

Encl:

(U) Annex – Classified Annex to DoD Procedures under Executive Order 12333

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(U) This Policy 1-23 supersedes Directive 10-30, dated 20 September 1990, and Change One thereto, dated June 1998.

(U) OPI: OGC (963-3121s)

(U) The compilation of the information contained in this document should be treated as SECRET//COMINT due to the classification of the Annex; upon removal of the Annex, this document may be downgraded to CONFIDENTIAL. No section of this document shall be released without approval from the Office of Policy and Records, DC3.

(U) POLICY

1. (U) NSA/CSS shall collect, process, retain, and disseminate information about U.S. persons only as prescribed in DoD Directive 5240.1 (Reference a), DoD Regulation 5240.1-R (Reference e) and the Classified Annex to DoD Procedures under Executive Order 12333 (hereafter referred to as the Classified Annex; Reference f).

(U) PROCEDURES

2. (U) Signals Intelligence. The signals intelligence (SIGINT) mission of the NSA/CSS is to collect, process, retain, and disseminate signals intelligence information for national foreign intelligence (and counterintelligence) purposes and in support of U.S. military operations. NSA/CSS shall intentionally collect only foreign communications. NSA/CSS shall not intentionally collect U.S. person communications. The Director, NSA/Chief, CSS may authorize exceptions only pursuant to the procedures contained in DoD Regulation 5240.1-R (Reference e) and the Classified Annex thereto (Reference f).

a. (U) Electronic surveillance, as defined in the Foreign Intelligence Surveillance Act of 1978, as amended (Reference b), requires a court order issued by a judge appointed pursuant to the Act or a certification of the Attorney General of the United States issued pursuant to Section 102(a) of the Act. The Director, NSA/Chief, CSS or Deputy Director, NSA must approve applications for a court order, which must be submitted through the DoD General Counsel to the Attorney General. The Director, NSA/Chief, CSS or Deputy Director, NSA may submit requests for Section 102(a) certifications directly to the Attorney General. The Director, NSA/Chief, CSS or Deputy Director, NSA may contact the Attorney General in an emergency and the Attorney General may approve the surveillance pending subsequent court proceedings.

b. (U) Electronic surveillance, as defined in Appendix A to DoD Regulation 5240.1-R (Reference e), directed against U.S. persons who are outside the U.S. requires approval of the Attorney General. The Director, NSA/Chief, CSS or the Deputy Director may request approval of such surveillances by forwarding a request to the Attorney General. In emergency situations, as described in Procedure 5, Part 2.D., of Reference e, the Director, NSA/Chief, CSS, Deputy Director, NSA or the Signals Intelligence Director, NSA, may authorize electronic surveillance, for no more than 72 hours,

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of U.S. persons who are outside the U.S. Such authorization is subject to the limitations of Procedure 5, Part 2.D. The DoD General Counsel shall be notified promptly of any such surveillance.

3. (U) Information Assurance. The information assurance (IA) mission assigned to NSA/CSS by National Security Directive (NSD) 42 (Reference g), Executive Order 12333 (Reference c), and other applicable law and policy direction includes the responsibility to examine national security systems, as that term is defined by 40 U.S.C. § 1452 (Reference h) and other applicable law, and evaluate their vulnerability to foreign interception and exploitation. In a manner consistent with the provisions of the Computer Security Act of 1987 (Reference i) and implementing procedures agreed to by NSA/CSS and the National Institute of Standards and Technology, the Agency is also authorized to provide IA support for non-national security systems. Any IA activities undertaken by the Agency, including those involving monitoring of official communications, shall be conducted in strict compliance with law, Executive Order and implementing procedures, and applicable Presidential directive. Any monitoring undertaken for communications security purposes ("COMSEC monitoring") shall be conducted in accordance with the provisions of National Telecommunications and Information Systems Security Directive (NTISSD) No. 600 (Reference j) or other special procedures approved by the Attorney General. In addition to the responsibility to conduct COMSEC monitoring and to examine national security systems for vulnerabilities to foreign exploitation, NSD 42 (Reference g) also requires NSA/CSS to disseminate information on threats to national security systems, regardless of the source of the threat. Title II of the Homeland Security Act of 2002 (Reference k) imposes similar requirements with respect to the protection of the United States' critical infrastructure. The Information Assurance Director is hereby designated to act for Director, NSA/Chief, CSS in the issuance of written approval to conduct the information assurance activities assigned to the Agency, to include the conduct of activities that may result in the collection of US person information as defined in DoD Regulation 5240.1-R (Reference e) and other applicable guidance.

(U) RESPONSIBILITIES

4. (U) The NSA General Counsel (GC) and Inspector General (IG) shall:

a. (U) Conduct appropriate oversight to prevent or detect violations of E.O. 12333, DoD Directive 5240.1 (References c and a), this Policy, and any directives and regulations issued thereunder.

b. (U) Forward to the Intelligence Oversight Board (IOB) of the President's Foreign Intelligence Advisory Board (PFIAB), through the Assistant to the Secretary of Defense (Intelligence Oversight (ATSD (IO))), reports of activities that they have reason to believe may be unlawful or contrary to Executive Order or Presidential Directive, and provide other reports or information that the IOB or ATSD (IO) requires.

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5. (U) The NSA Inspector General shall:

a. (U) Conduct regular inspections of NSA/CSS activities for compliance with the law, executive orders, and related directives.

(S)

b. (U/FOUO) Perform general oversight of the SIGINT activities of the [redacted] [redacted] for compliance with Executive Order 12333 (Reference c) and related laws and directives.

c. (U) Establish reporting procedures to be followed by the Directors, Associate Directors and Principal Directors, Chiefs of NSA/CSS Field Activities, and NSA/CSS Representatives regarding their activities and practices.

d. (U) Consult with the NSA General Counsel on matters involving interpretation or possible violations of law, executive orders, or directives.

e. (U) Submit, semiannually, a comprehensive report to the Director and Deputy Director on the results of the IG's oversight activities.

f. (U) Report, as required by E.O. 12333 and 12863 (References c and d) and other authorities, to the ATSD (IO) and the IOB.

6. (U) The NSA General Counsel shall:

a. (U) Provide legal advice and assistance to all NSA/CSS elements regarding the activities covered by this Policy.

b. (U) Assist NSA/CSS activities as requested in developing such guidelines and working aids as are necessary to ensure compliance with this Policy.

c. (U) Assist the NSA Inspector General in inspections and oversight of NSA/CSS activities, as required.

d. (U) Review and assess for legal implications, as requested by the Director NSA/Chief CSS, Deputy Director NSA, SIGINT Director, IA Director, Associate Directors, Principal Directors, or the Inspector General, all new major requirements and internally generated NSA/CSS activities.

e. (U) Advise the Director NSA/Chief CSS, Deputy Director NSA, SIGINT Director, IA Director, Inspector General, Principal Directors, and Associate Directors of new legislation and case law which may have an impact on NSA/CSS missions, functions, operations, activities, or practices.

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f. (U) Prepare and forward through DoD to the Attorney General any proposed changes to existing procedures or new procedures required by E.O. 12333 (Reference c) or Public Law 95-511 (Reference b).

g. (U) Report as required by E.O. 12333 and 12863 (References c and d) to the IOB and provide copies of such reports to the Director and affected NSA/CSS elements.

h. (U) Prepare and process applications for court orders or certifications for electronic surveillance pursuant to the Foreign Intelligence Surveillance Act (Reference b) in accordance with Procedure 5, Part 1, of DoD Regulation 5240.1-R (Reference e).

i. (U) Prepare and process requests to the Attorney General for electronic surveillance of unconsenting U.S. persons who are outside the U.S. in accordance with Procedure 5, Part 2 of DoD Regulation 5240.1-R (Reference e).

j. (U) Process requests from any DoD intelligence component, including NSA/CSS, for authority to use signals as described in Procedure 5, Part 5, of DoD Regulation 5240.1-R (Reference e), for periods in excess of 90 days in the development, test, or calibration of electronic equipment that can intercept communications and other electronic surveillance equipment. Forward processed requests to the Attorney General for approval when required.

7. (U) The SIGINT Director, IA Director, Associate Directors, the NSA/CSS Chief of Staff, Principal Directors and Chiefs of NSA/CSS Field Activities shall:

a. (U) Appoint an intelligence oversight coordinator or senior level official to oversee intelligence oversight within each major element.

b. (U) Provide training to all *employees* (including contractors and integrees) in order to maintain a high degree of sensitivity to, and understanding of, the laws and authorities referenced in this Policy. Such training shall include both core and advanced intelligence oversight training and refresher training with appropriate testing. All employees shall receive core training, and those with exposure to U.S. person information shall receive appropriate advanced training. Training shall be required at least annually (or more often commensurate with the level of exposure to U.S. person information by the employee). Newly hired employees and reassignees, including contractor personnel and integrees, must be trained upon assignment. Managers shall keep records of training for all employees. The training must cover: E.O. 12333 (Reference c); Procedures 1-4, 14 and 15 of DoD Regulation 5240.1-R (Reference e); other Procedures of the Regulation that apply to the assigned mission; and this policy. Employees involved in the SIGINT process must be familiar with U.S. SIGINT Directive 18 (USSID 18) (Reference l), and employees involved in COMSEC monitoring must be familiar with NTISSD 600 (Reference j).

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c. (U) Apply the provisions of this Policy to all activities under their cognizance and ensure that all publications (U.S. SIGINT Directives, National COMSEC Instructions, NSA/CSS Management and Administrative Publications, etc.) and instructions for which they are responsible are in compliance with this Policy.

d. (U) Conduct a periodic review of the activities and practices conducted in or under the cognizance of their respective organizations to ensure consistency with the laws and authorities listed in the References section of this Policy.

e. (U) Ensure that all new major requirements levied on NSA and the U.S. Cryptologic System or internally generated NSA/CSS activities are considered for review and approval by the General Counsel. All activities that may raise a question of law or regulation must be reviewed by the General Counsel prior to acceptance or execution.

f. (U) Ensure that necessary special security clearances and access authorizations are provided to the General Counsel and Inspector General to enable them to meet their assigned responsibilities.

g. (U) Report as required and otherwise assist the Inspector General and General Counsel in carrying out their responsibilities to include providing input to the Inspector General for preparation of the joint Inspector General/General Counsel/Director, NSA/CSS quarterly report to the Assistant to the Secretary of Defense (Intelligence Oversight) and the IOB.

h. (U) Develop, in coordination with the General Counsel and Inspector General as required, such specific guidelines and working aids as are necessary to ensure compliance with this Policy. Such guidelines and working aids should be available to employees at all times and must be reviewed by management with employees at least annually.

(U) REFERENCES

8. (U) References:

a. (U) DoD Directive 5240.1, DoD Intelligence Activities, dated: 25 April 1988. http://netinfo.si.nsa/ExternalNSA/www.dtic.mil/whs/directives/corres/pdf/d52401_042588/d52401p.pdf

b. (U) Foreign Intelligence Surveillance Act of 1978, Public Law No. 95-511 as amended, 50 U.S.C. 1801 et seq. <http://www.n.nsa/GC/practgrps/ops/ops.html>

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