

**AFOSI Manual 71-119 (Approved draft, dtd 11 Feb 02)**  
**National Security Letters Exerpt**

**3.4. (U) National Security Letters (NSL)**

3.4.1. (U) NSLs are issued to obtain telephone and electronic communications records from telephone companies and Internet Service Providers (pursuant to the Electronic Communications Privacy Act), records from financial institutions (pursuant to the Right to Financial Privacy Act), and information from credit bureaus (pursuant to the Fair Credit Reporting Act), each as amended by the USA Patriot Act. The previous law permitted government access to such records upon a showing of relevance and that the consumer is an agent of a foreign power. The USA Patriot Act removes the "agent of a foreign power" requirement, providing government access to a multitude of private records upon the FBI's certification that "the information sought is relevant to an authorized foreign counterintelligence investigation."

3.4.1.1. (U) All three NSLs are available when the information sought "is relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a US person is not conducted solely on the basis of activities protected by the First Amendment.

3.4.1.2. (U) An NSL is not limited to seeking information on the subject of an investigation. Because an NSL is available when the information sought is "relevant" to an investigation, information concerning apparent associates of, or individuals in contact with, the subject of an investigation may also be obtained if relevant to the investigation.

3.4.2. (U) NSLs are generally obtained through the FBI. NSL authority is delegated within the FBI to Assistant Directors, Deputy Assistant Directors at FBI HQ and to the LA, NY, and Washington Field Offices.

3.4.2.1. (U) NSLs issued pursuant to the Electronic Communications Privacy Act and the Fair Credit Reporting Act must be issued through the FBI.

3.4.2.2. (U) An NSL requesting information pursuant to the Right to Financial Privacy Act (attachment 3 and 4) may be issued by AFOSI/CC pursuant to his authority to conduct counterintelligence activities. However, an AFOSI NSL is merely a request. The financial institution can refuse to comply. A request from the FBI pursuant to any of these three Acts is compulsory.

3.4.3. (U) Additional Authorities:

3.4.3.1. (U) Section 156 of the USA Patriot Act grants the government the authority to "by administrative subpoena, require the production of any tangible things (including books, records, papers, documents, and other items) that are relevant" to an intelligence or terrorism investigation.

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3.4.3.2. (U) Likewise, Section 158 amends the Federal Education Rights and Privacy Act (FERPA) to permit access to educational records in the investigation of domestic or international terrorism, or national security. The prior law prohibited the release of personally identifying information about students from education records without the consent of the student or parents, subject to limited exceptions.

**3.5. (U) Sharing Information**

3.5.1. (U) Cooperating with Law Enforcement. Consistent with the limitations contained in DoD Directive 5525.5, DoD intelligence components are authorized to cooperate with law enforcement authorities for the purpose of:

3.5.1.1. (U) Investigating or preventing clandestine intelligence activities by foreign powers, international narcotics activities, or international terrorist activities,

3.5.1.2. (U) Protecting DoD employees, information, property, and facilities, or

3.5.1.3. (U) Preventing, detecting, or investigating other violations of law.

3.5.2. (U) DoD intelligence components may provide law enforcement authorities incidentally acquired information reasonably believed to indicate a violation of law in accordance with DoD 5240.1-R, Procedure 12.

3.5.3. (U) Law Enforcement Cooperation with Intelligence. The USA PATRIOT Act expands the scope of criminal investigative information that may be shared with the intelligence community. This authority is subject to a sunset provision described in Section 224 of the Act. This authority will expire on December 31, 2005 if Congress does not re-authorize the provision.

3.5.3.1. (U) Section 203 of the Act says that “notwithstanding any other law” it is lawful for criminal investigators to share foreign intelligence information obtained in the course of a criminal investigation with any other Federal law enforcement, intelligence, protective, immigration, national defense, or national security official in order to assist the official receiving that information in the performance of his official duties.

3.5.3.2. (U) Federal Rule of Criminal Procedure 6(e) has been amended to permit the same sort of disclosure for grand jury information involving intelligence information.

3.5.3.3. (U) The Federal wiretap law (Title III) has been amended to allow the same sort of disclosure when the matters involve foreign intelligence.

3.5.3.4 (U) Sharing of Rule 6(e) information and wiretap information must be accomplished in accordance with Guidelines to be drafted by the Attorney General.

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3.5.3.5 (U) See para 3.3.1.5 regarding the continuing application of intelligence oversight requirements.

**3.6. (U) Coordination.** Any AFOSI investigative activity conducted in conjunction with NSL's or a FISA must be coordinated through HQ AFOSI/XOQI and HQ AFOSI/SJA prior to the activity.