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March 17, 2007

Hon. Charles E. Grassley
United States Senator
Senate Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

Re: NSL Information Request

Dear Senator Grassley:

Thank you for your letter dated March 16, 2007. In this letter you requested Mr. Bassem Youssef, the current Unit Chief for the Communications Analysis Unit ("CAU"), to provide your office with certain information and documents related to the Federal Bureau of Investigation's ("FBI") compliance with rules governing National Security Letters ("NSLs"). As counsel for Mr. Youssef, please accept this letter as his response to your requests.

In regard to your request for copies of "any and all unclassified e-mails related to the exigent letters issued by CAU," we hereby request that you obtain access to these documents directly from the U.S. Department of Justice ("DOJ"), the DOJ Office of Inspector General ("OIG") or the FBI. I understand from my client, that there are a number of e-mails which are highly relevant to your investigation. These emails are not classified. They have been fully vetted by the DOJ and FBI, and either the DOJ, OIG and/or FBI should be able to provide you with these documents within one day. These documents are critical in gaining a full understanding of what happened within the FBI concerning the use of exigent letters, and many (if not all) of these e-mails were provided to the OIG as part of their investigation. If it is asserted that any of the e-mails were deleted, the deleted e-mails can be easily retrieved from the FBI's Microsoft Outlook server in archive format.

Answers to the five questions you asked are set forth below:

1. *Whether Mr. Youssef signed any of the exigent letters:* All of the exigent letters are in the control and possession of either the FBI or the OIG. These documents are the best record of who signed what documents. At this time Mr. Youssef does not recall signing any such letter. However, when Mr. Youssef became Unit Chief of the Communications Analysis Unit (CAU), such letters were frequently issued, and the default printed signature was that of the Unit Chief. The common practice at that time was for a supervisor to author the letter and be the individual who actually signed the letter.

2. *How and when Mr. Youssef learned that there were problems with the way they were being issued:* In March-April 2005, the CAU's processing of the NSLs was noted by Mr. Youssef as a matter under his management that needed to be further reviewed. After a very informal "audit" conducted by Mr. Youssef shortly after being named Unit Chief he became aware that NSLs had not been issued concerning records that already had been obtained by the FBI from third parties. In this regard, a non-FBI employee of a company whose records were being searched, notified Mr. Youssef that he had not been provided NSLs for the records he had provided to the FBI. Thereafter, Mr. Youssef requested the third party companies to provide a list of all searches for which NSLs had not been provided. This audit/request for information enabled Mr. Youssef to compile a comprehensive list of the NSL deficiencies.

In regard to the "exigent letters," as used by the FBI prior to Mr. Youssef's tenure as Unit Chief in CAU, in practice these letters constituted what could be characterized as a "promissory note." That is, a letter from the FBI promising that legal documentation, specifically an NSL or a subpoena, would be forthcoming. Although these letters are regularly referred to as "exigent letters," they were not utilized in connection with an exigent circumstance [18 U.S.C. section 2702 (b)(8)].

Initially, Mr. Youssef's primary concern was the failure of the field offices and operational counterterrorism units to provide the required NSLs and/or to follow-up on their representations to CAU (and the third parties) that they would provide the NSLs for information they had already received.

Once it became apparent that the field offices and the operational counterterrorism units were not complying with their earlier representations, Mr. Youssef personally examined the contents of the "exigent letters." After reviewing the contents of the "exigent letters," which occurred sometime in or about late 2005, he discovered an additional problem. Specifically, Mr. Youssef learned that the exigent letters stated that a "subpoena" was forthcoming from a U.S. Attorneys office. Mr. Youssef knew, from his prior experience, that no such subpoena would ever be forthcoming. In other words, whoever drafted that language made representations that could never be fulfilled. Mr. Youssef instructed a supervisor to inform NSLB of this situation and further seek guidance on changing the contents of the letters for future circumstances.

3. *What steps Mr. Youssef took, if any, to notify others of the problems:* Mr. Youssef took the following steps:

Step 1: Mr. Youssef contacted all of the relevant third parties to gain an accurate assessment of the outstanding NSLs.

Step 2: Mr. Youssef discussed the issue with his Assistant Section Chief, who advised Mr. Youssef that there was no problem with the way CAU had used exigent letters. This Assistant Section Chief was the prior Unit Chief for CAU, and was fully aware of the practices used in obtaining the information from the third parties, without ever obtaining an NSL.¹

Step 3: Mr. Youssef instructed all of the CAU supervisory special agents to immediately contact the individual requestors from field offices and operational counterterrorism units. The representatives from field offices and operational units were asked to provide the NSLs or subpoenas which were used to justify the acquisition of the information obtained from third parties. Specifically, it was the responsibility of the field offices/operational units to provide the properly executed and materially accurate NSLs to the CAU.

Step 4: Upon the realization that the field and operational units were not being responsive with their obligation to provide legally required documentation for the searches that had been conducted, Mr. Youssef contacted an attorney within the FBI's Office of General Counsel ("OGC") National Security Law Branch ("NSLB"). Mr. Youssef requested that NSLB set up a meeting with representatives from ITOS I and II, with the express purpose of soliciting their support in making good on the prior representations that proper NSLs would be forthcoming.

Step 5: The meeting took place in September, 2005, and was attended by NSLB attorneys and the Assistant Section Chiefs from ITOS I and II. At this meeting the Assistant Section Chiefs vowed to support CAU's efforts to obtain the proper legal documentation from the field/operational units. At the meeting, it was fully understood by the representatives from NSLB and ITOS I and II that NSL letters should have been previously provided to the CAU from the field/operational units, whose executive managers had the authority to sign/approve the NSLs. NOTE: CAU did not have the authority to approve the NSLs but merely acted as a conduit between the field offices/operational units and the third parties.

Step 6: After the meeting, Mr. Youssef again instructed the CAU supervisors to obtain the necessary documentation from the field offices/operational units. However, despite the representations made in the September meeting, the documentation was not provided.

¹ Because the Assistant Section Chief had been personally involved in the prior practices of the CAU, he was hostile to the NSL-related issues raised by Mr. Youssef. Additionally, Mr. Youssef also raised this matter at a unit chiefs meeting attended by the Section Chief. The Section Chief was dismissive of the concern.

Step 7: Interaction between Mr. Youssef and NSLB continued after the September, 2005 meeting. In October, 2005, an NSLB attorney informed Mr. Youssef that “higher ups” had been made aware of the problem.

4. *What Steps did Mr. Youssef take to rectify the problems:* Information related to this question was set forth in response to questions number 2 and 3. In addition, Mr. Youssef continued, after September 2005, to work with NSLB in an attempt to obtain the necessary cooperation from the field/operational units. Mr. Youssef also discussed prospective ideas on how to fix the problem in the future. Mr. Youssef also instructed his unit personnel, on several occasions, that in non-exigent circumstances, NSLs were required prior to obtaining records from the third parties referenced above. In other words, the CAU personnel were instructed to make sure that the field offices and/or operational units provided CAU with the NSLs prior to CAU obtaining the requested information from the third parties. In a small number of cases in which exigent circumstances actually existed, Mr. Youssef ensured that the request for information was proper. Thereafter, in order to avoid any confusion, Mr. Youssef worked with NSLB to formulate a procedure to ensure the proper utilization of the exigent circumstance authority. *See*, 18 U.S.C. section 2702(b)(8).

5. *How timely, responsive and cooperative were others at the FBI in addressing any of the issues Mr. Youssef identified:* The time-line set forth above provides information responsive to this question. In summary, the Assistant Section Chief for the Communications Exploitation Section was hostile to Mr. Youssef’s identification of the matters identified above. The operational units and field offices were non-compliant with the requests for documentation. The NSLB’s attempt to have the operational units/field offices assistance in obtaining compliance with the documentation requests were ineffective. The contacts with “higher ups” identified by the NSLB were ineffective. At all times the NSLB and FBI OGC knew that the field offices and operational units were non-compliant in obtaining the legal documentation.

In mid-2006, Mr. Youssef was contacted by the DOJ OIG and was shown copies of various e-mails related to this matter. These e-mails, many of which speak for themselves, set forth an accurate record of how CAU managed the NSL matter during Mr. Youssef’s tenure. Based on the information in the possession of the OIG, it was clear that the OIG had been made aware of the NSL issues and was in fact investigating these matters. Mr. Youssef fully cooperated in that investigation. He was questioned twice under oath - both times without an attorney being present. He also had a number of informal telephonic contacts with the responsible OIG investigator.

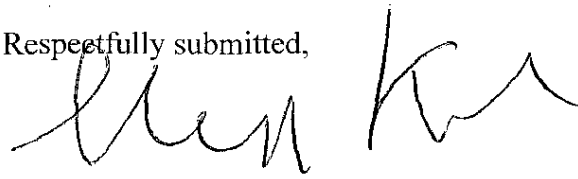
Finally, in February, 2007 the FBI counterterrorism executives sought Mr. Youssef’s counsel and recommendations on how to respond to the issues Mr. Youssef previously identified internally within the FBI, and which were further documented in a draft OIG report. Mr. Youssef fully cooperated with the executive management in developing various corrective actions and proposals.

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Based on information reported by in the press, and statements I have received from individuals in direct contact with FBI spokesmen, it is apparent that there is substantial confusion over the NSL/exigent letter issue. This confusion appears to be the result of two factors: (i) the scope and duration of the problem; (ii) the lack of direct first hand knowledge by the spokespersons. Consequently, upon advice of counsel, Mr. Youssef would be willing to comply with his constructional obligations and make himself reasonably and appropriately available to the Senate Judiciary Committee (or directly to Senator Grassley) to assist Congress in understanding precisely what happened in these matters.

Thank you in advance for your kind attention to this matter. If I can be of any further assistance, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Stephen M. Kohn', written in a cursive style.

Stephen M. Kohn

CC. The Hon. Alberto Gonzales
United States Attorney General

The Hon. Robert Mueller
Director, Federal Bureau of Investigation

Notification of Authority and Disclaimer

This letter is submitted under the authority granted by 5 U.S.C. 7211 and the First Amendment of the United States Constitution. Additionally, this letter constitutes activities protected under the opposition clause of Title VII of the Civil Rights Act of 1964, *as amended*, and 5 U.S.C. 2303, as codified in 28 C.F.R. Part 27. This letter does not represent the official position of the FBI.