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FEDERAL BUREAU OF INVESTIGATION

OVERALL CLASSIFICATION:  
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# FBIHQ DIOG Training Session A



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## Course Overview

### **Overall Training Objective:**

Provide an instructional foundation on the DIOG and then apply the knowledge gained by using hypothetical examples and scenarios. Upon completing this course of instruction you should have a firm grasp of the concepts and principles underpinning the DIOG.



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## Course Overview

### **Participation Standards:**

Questions are welcome; however, if your question is about a specific set of facts that may divert the training objective, please direct your question to one of the Training team members at a break for a response.

During the scenario exercises, participants will be called upon to provide their response to particular facts or circumstances. Each Unit/Section should select a representative to speak for the Unit/Section and rotate that responsibility among the group. The scenarios are meant to prompt discussion, but the presenters must keep the scenario moving forward. Please understand that everyone may not be able to voice their perspective in the group setting. Keep in mind there may be several avenues to reach the same justified conclusion. You may use your handouts and training aids to inform your decision.

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## Course Overview

### Course Completion:

- You must complete the entire mandatory 16.5 hours of training. You must score an 80% or higher to pass. You will be notified of your score via e-mail. If you do not pass the first time, you will be permitted to take the test again.
- Please annotate on the attendance sheet your presence at the training if you pre-registered. If you did not pre-register, please print your name, division, and the items requested on the attendance roster.
- After the course is complete, you will be receiving a survey e-mail containing questions that will test your knowledge and understanding of the material presented. The test is open book.

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## AGG-Dom: Overview

- Provides ability to FBI authorities to be more proactive and preventative, and the flexibility to deal with complex threats that do not fall neatly into individual programs
- Provides clarity and improves compliance by combining several sets of guidelines into one consistent set of guidelines

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**Teaching Point:** Removes discrepancies, sets uniform rules for criminal, national security, and foreign intelligence collection cases. Each program will have a program-specific policy guide (PG)



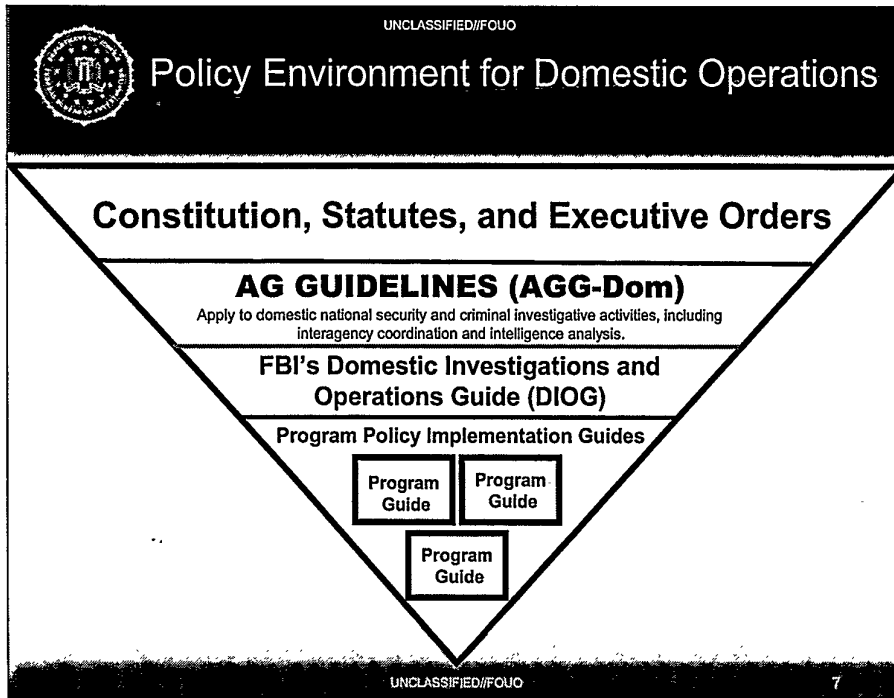
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## AGG-Dom: Overview

- Reduces reporting requirements, particularly in the national security area
- Recognizes Special Events and Domain Management as part of the FBI's mission
- Recognizes the FBI's obligation to provide investigative assistance and joint operational support to other agencies, including the U.S. intelligence community
- Creates a new category outside of predicated investigations named "Assessments"

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**Teaching Point:**

FBIHQ Division Program Policy Implementation Guides (PG):

- Cannot be less restrictive than the DIOG
- Must comply with the policy contained in the DIOG
- Requests for program policy deviations from the DIOG must be reviewed by the OGC and approved by the Deputy Director



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## DIOG: Table of Contents

1. Scope and Purpose	10. Sensitive Investigative Matter
2. General Authorities and Principles	11. Investigative Methods
3. Core Values, Roles and Responsibilities	12. Assistance to Other Agencies
4. Privacy and Civil Liberties, and Least Intrusive Methods	13. Extraterritorial Provisions
5. Assessments	14. Retention and Sharing of Information
6. Preliminary Investigations	15. Intelligence Analysis and Planning
7. Full Investigations	16. Undisclosed Participation
8. Enterprise Investigations	17. Otherwise Illegal Activity
9. Foreign Intelligence	Appendices

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## DIOG Section 1: Scope & Purpose

- **DIOG applies to all investigative and intelligence collection activities conducted by the FBI**
  - within the United States
  - in the United States territories
  - outside the territories of all countries
- **DIOG does not apply to investigative and intelligence collection activities of the FBI in foreign countries**
  - governed by AGGs for Extraterritorial FBI Operations (national security and criminal)

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## DIOG Section 1: Scope & Purpose

- The primary purpose of the AGG-DOM and the DIOG is to standardize policy so that criminal, national security and foreign intelligence investigative activities are performed in a legal and consistent manner
- The DIOG replaces numerous FBI manuals, electronic communications, letterhead memoranda and other policy documents. The DIOG is located on the Corporate policy Office (CPO) Policy and Guidance Library web site
- The changes implemented by the DIOG better equip you to protect the people of the United States against crime and threats to the national security
- The DIOG stresses the importance of oversight and self-regulation to ensure compliance

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## DIOG Section 2: General Authorities & Principles

- **The AGG-Dom replaces six guidelines:**
  - The Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations (May 30, 2002)
  - The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (October 31, 2003) \*
  - The Attorney General's Supplemental Guidelines for Collection, Retention, and Dissemination of Foreign Intelligence (November 29, 2006)

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## DIOG Section 2: General Authorities & Principles

- **The AGG-Dom also replaces:**
  - The Attorney General Procedure for Reporting and Use of Information Concerning Violations of Law and Authorization for Participation in Otherwise Illegal Activity in FBI Foreign Intelligence, Counterintelligence or International Terrorism Intelligence Investigations (August 8, 1988) \*
  - The Attorney General's Guidelines for Reporting on Civil Disorders and Demonstrations Involving a Federal Interest (April 5, 1976)
  - The Attorney General's Procedures for Lawful, Warrantless Monitoring of Verbal Communications (May 30, 2002) (only portion applicable to FBI)

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## DIOG Section 2: General Authorities & Principles

**Note:** Regarding Extraterritorial FBI's Operations, the AGG-Dom did not repeal or supersede certain portions of the prior guidelines (marked \* in prior slides). These national security extraterritorial portions continue to remain in effect pending the approval of new Attorney General's Guidelines for Extraterritorial FBI Operations for both national security and criminal investigations. Additionally, the classified Attorney General Guidelines for Extraterritorial FBI Operations and Criminal Investigations (1993) continue to remain in effect pending approval of the new guidelines.

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# Comparison of Prior and New Attorney General Guidelines

## General Comparison

### Prior AGG

#### Investigative Guidelines and Compliance Rules

- The six guidelines governing investigative and intelligence gathering replaced/superseded by the new AGG:
  - The Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations;
  - The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection
  - The Attorney General's Supplemental Guidelines for Collection, Retention, and Dissemination of Foreign Intelligence
  - The Attorney General Procedure for Reporting and Use of Information Concerning Violations of Law and Authorization for Participation in Otherwise Illegal Activity in FBI Foreign Intelligence, Counterintelligence or International Terrorist Intelligence Investigations
  - The Attorney General's Guidelines for Reporting on Civil Disorders and Demonstrations Involving a Federal Interest
  - The Attorney General's Procedures for Lawful, Warrantless Monitoring of Verbal Communications (superseded, as to the FBI)
- Numerous and different guidelines used for compliance
- Different rules for national security and criminal investigations

### New AGG

#### Investigative Guidelines and Compliance Rules

- The Attorney General's Guidelines (AGG) for Domestic FBI Operations govern all FBI investigative and intelligence gathering activities conducted in the United States or outside the territories of all other countries replaces five guidelines and supersedes one
- One standardized guideline used for compliance
- One set of rules for national security and criminal investigations

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# Comparison of Prior and New Attorney General Guidelines

## Assessments

### Prior AGG (Threat Assessments)

#### Authorized Methods

- Obtain publicly available information
- Access and examine FBI/DOJ records, and obtain information from any FBI/DOJ personnel
- Check other federal, state, and local records
- Use online services and resources
- Interview previously established Human Sources (not including new tasking of such sources)
- Interview or request information from members of the public and private entities (other than pretext interviews or requests)
- Accept voluntarily information

#### Reporting Requirements

- None

### New AGG (Assessments)

#### Authorized Methods

- Obtain publicly available information
- Access and examine FBI and other DOJ records, and obtain information from any FBI or DOJ personnel
- Access and examine records maintained by, and request information from, other federal, state, local, tribal, or foreign government or agencies
- Use online services and resources
- Use and recruit human sources in conformity with AG Guidelines Regarding the Use of FBI Confidential Human Sources
- Interview or request information from members of the public and private entities
- Accept information voluntarily provided by governmental or private entities
- Engage in observation or surveillance not requiring a court order
- Federal Grand Jury subpoenas for telephone and electronic mail - subscriber records only

#### Reporting Requirements

- None

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# Comparison of Prior and New Attorney General Guidelines

## Preliminary Investigations

### Prior AGG

#### Authorized Methods

- All Threat Assessment techniques
- Interviews (including pretext) of subject and others
- Recruitment of new human sources & tasking of existing sources
- Inquiry of foreign law enforcement, intelligence, or security agencies
- Mail covers
- Consensual monitoring of communications
- Closed circuit TV, direction finders, and monitoring devices
- Undercover operations
- Physical, photo, and video surveillance
- [REDACTED]
- Polygraph examinations
- National Security Letters
- Accessing stored wire/electronic communications
- Pen registers/Trap & Trace
- Obtain business records
- Grand Jury subpoenas

#### Reporting Requirements

- Field notification of Initiation to FBIHQ (10 Days)
- FBIHQ notification to DOJ-OI of Initiation (10 Days)
- FBIHQ notify DAG if Initiation is disapproved

### New AGG

#### Authorized Methods

- All Assessment Methods
- Mail covers
- Physical searches of personal or real property where a warrant or court order is not legally required because there is no reasonable expectation of privacy
- Consensual monitoring of communications (including consensual computer monitoring)
- Closed circuit TV, direction finders, and monitoring devices
- Polygraph examinations
- Undercover operations
- Compulsory process as authorized by law; Federal Grand Jury and other subpoenas and National Security Letters
- Accessing store wire and electronic communications and transactional records
- Use of pen registers and trap and trace devices

#### Reporting Requirements

- Only if sensitive investigative matter - Notify FBIHQ and DOJ/U.S. Attorney - Notify NSD if sensitive matter is a national security threat (NLT 30 Days)
- FBIHQ notify the DAG if Initiation is disapproved based on insufficient predication for national security matters

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## Comparison of Prior and New Attorney General Guidelines

### Full Investigations

#### Prior AGG

##### Authorized Methods

- All Threat Assessment techniques
- All preliminary investigation techniques
- Electronic Surveillance
- Physical searches and Mail openings

##### Reporting Requirements

- Field notification of initiation to FBIHQ (10 Days)
- FBIHQ notification to DOJ-OI of initiation (10 Days)
- FBIHQ notify DAG if initiation is disapproved
- Annual summary submitted to DOJ-OI

#### New AGG

##### Authorized Methods

- All Assessment Methods
- All Preliminary Investigation Methods
- Electronic Surveillance
- Foreign Intelligence collection under Title VII of FISA
- Physical searches and Mail openings

##### Reporting Requirements

- Notify FBIHQ and DOJ/U.S. Attorney sensitive investigative matter - Notify NSD if sensitive matter is a national security threat (NLT 30 Days)
- FBIHQ notification to DOJ-NSD (NLT 30 Days) only if:
  - Initiation on U.S. person relating to a national security threat
  - Initiation based on foreign intelligence requirement
- FBIHQ notify the DAG if initiation is disapproved based on insufficient predication for national security matters

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## DIOG Section 2: General Authorities & Principles

### **The FBI is authorized to:**

- Conduct investigations and collect evidence (criminal and national security) and collect foreign intelligence (AGG-Dom, Part II)
- Provide investigative assistance to federal, state, local, tribal, and foreign agencies (AGG-Dom, Part III) and (DIOG Section 12)
- Collect information necessary for and conduct intelligence analysis & planning (AGG-Dom, Part II & IV) and (DIOG Section 15)
- Retain and share information (AGG-Dom, Part VI) and (DIOG Section 14)

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## DIOG Section 2: General Authorities & Principles

**The word "Assessment" has two distinct meanings:**

- The AGG-Dom authorizes as an investigative activity an "assessment" which requires an authorized purpose and objective as discussed in DIOG Section 5.
- The U.S. intelligence community uses the word "assessment" to describe written intelligence products as discussed in DIOG Section 15.7.B.



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## DIOG Section 2: General Authorities & Principles

- **The FBI is an intelligence agency as well as a law enforcement agency**
- **The FBI is authorized to engage in intelligence analysis and planning, using all lawful sources of information:**
  - development of overviews and analysis
  - research and analysis to produce reports and assessments
  - operate intelligence systems that facilitate and support investigations through ongoing compilation and analysis of data and information

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## DIOG Section 2: General Authorities & Principles

- **The FBI is the “lead federal agency” in the following areas:**
  - Federal Crimes of Terrorism (listed in DIOG Section 2.4.C)
  - Other non-Terrorism federal crimes (listed in DIOG Section 2.4.D)
  - Counterintelligence and Espionage (listed in DIOG Section 2.4.F)
  - Criminal Investigations (some listed in DIOG Section 2.4.G; see also CID PGs)

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## DIOG Section 2: General Authorities & Principles

### **Departures from the AGG – Dom:**

**In Advance:** FBI Director, Deputy Director, or EAD (NSB or Criminal Cyber Response and Services Branch) must approve with notice to the General Counsel.

**In Emergency:** Approving authority who authorizes the departure must give notice as soon thereafter as practical to Director, Deputy Director or EAD with notice to General Counsel – OGC must keep records of all departures to advise DOJ, as required.

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## DIOG Section 2: General Authorities & Principles

### Departures from the DIOG:

**In Advance:** Appropriate substantive AD or DAD must approve with notice to the General Counsel or appropriate Deputy General Counsel (DGC).

**In Emergency:** Approving authority who authorizes the departure must give notice as soon thereafter as practical; SAC or HQ Section Chief must provide written notice to appropriate substantive AD and the General Counsel.

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## DIOG Section 2: General Authorities & Principles

**The AGG-Dom and DIOG apply to all FBI domestic investigations and operations conducted by “FBI employees” – defined as:**

- applicable support personnel
- intelligence analysts
- special agents
- task force officers (TFO)
- detailees
- FBI contractors
- confidential human sources (CHS)

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## DIOG Section 2: General Authorities & Principles

### **FBIHQ Division Program Policy Implementation Guides (PG):**

- Cannot be less restrictive than the DIOG
- Must comply with the policy contained in the DIOG
  - requests for program policy deviations from the DIOG must be reviewed by the OGC and approved by the Deputy Director

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## DIOG Section 2: General Authorities & Principles

### **Authorities of an FBI Special Agent:**

1. Investigate violations of the laws, including the criminal drug laws, of the United States (21 U.S.C. § 871; 28 U.S.C. §§ 533, 534 and 535; 28 C.F.R. § 0.85)
2. Collect evidence in cases in which the United States is or may be a party in interest (28 C.F.R. § 0.85 [a]) as redelegated through exercise of the authority contained in 28 C.F.R. § 0.138 to direct personnel in the FBI
3. Make arrests (18 U.S.C. §§ 3052 and 3062)
4. Serve and execute arrest warrants and seize property under warrant; issue and/or serve administrative subpoenas; serve subpoenas issued by other proper authority; and make civil investigative demands (18 U.S.C. §§ 3052, 3107; 21 U.S.C. § 876; 15 U.S.C. § 1312)

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## DIOG Section 2: General Authorities & Principles

### **Authorities of an FBI Special Agent (cont.):**

5. Carry firearms (18 U.S.C. § 3052)
6. Administer oaths to witnesses attending to testify or depose in the course of investigations of frauds on or attempts to defraud the United States or irregularities or misconduct of employees or agents of the United States (5 U.S.C. § 303)
7. Seize property subject to seizure under the criminal and civil forfeiture laws of the United States (e.g., 18 U.S.C. §§ 981 and 982)
8. Perform other duties imposed by law

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## DIOG Section 2: General Authorities & Principles

**The AGG-Dom did not limit other authorized FBI activities, such as:**

- Conducting background checks and inquires concerning applicants and employees under federal personnel security programs
- Maintenance and operation of national criminal records systems and preparation of national crime statistics
- Forensic assistance and administration functions of the FBI Laboratory

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## DIOG Section 3: FBI's Core Values

### The FBI's Core Values are:

- Rigorous obedience to the U.S. Constitution
- Respect for the dignity of all those we protect
- Compassion
- Fairness
- Uncompromising personal integrity and institutional integrity
- Accountability by accepting responsibility for our actions and decisions and their consequences
- Leadership, by example, both personal and professional

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### Teaching Points: DIOG Section 3.1:

1. Core values must be fully understood, practice, shared, vigorously defended and preserved.
2. By observing core values – FBI will achieve a high level of excellence in performing both our national security and criminal missions.
3. Information for reporting violations is available from the Office of Integrity and Compliance (OIC).



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## DIOG Section 3: Compliance

### **Everyone's Responsibility:**

- To learn and understand the laws, rules and regulations that govern their activities
- To fully comply with all laws, rules and regulations governing investigations, operations, programs and activities
- To report to proper authority any known or suspected failures to adhere to the law, rules or regulations

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### **Teaching Point: DIOG Section 3.1:**

1. DIOG compliance applies to all FBI employees, task force officers, contractor's etc.
2. May not disregard the law, rule, etc. for sake of expediency.
3. Information for reporting.



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## DIOG Section 3: Deputy Director Roles and Responsibilities

### DIOG Section 3.2:

- DD is the proponent of the DIOG and subordinate implementing procedural directives and specific policy implementation guides (PGs)
- DD has oversight of DIOG compliance, monitoring and auditing processes
- DD has responsibility for DIOG training
- DD, through the Corporate Policy Office (CPO), will ensure the DIOG is updated one year from implementation, and every three years thereafter

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**Teaching Point:** DD, through the CPO, will review the Program Guides (PGs) for all divisions to ensure compliance with DIOG standards.



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### **DIOG Section 3: Special Agent, Intelligence Analyst, Task Force Officer, FBI Contractor, and Others - Roles and Responsibilities**

#### **DIOG Section 3.3:**

- Comply with AGG-Dom and DIOG standards for initiation, conducting, and closing investigative activity; collection activity; or use of an investigative method
- Obtain training on DIOG standards relevant to their position and perform activities consistent with those standards
- Ensure all investigative activity complies with all laws and policy
- Identify victims, offer FBI assistance, and furnish information to the FBI Victim Specialist

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#### **Teaching Point:**

1. Laws/policy include the Constitution, federal law, Executive Orders, Presidential Directives, AGG-Dom, other AGGs, Treaties, MOAs/MOUs, DIOG and other policy. When in doubt – consult their Supervisor, the CDC or OGC.
2. Victims include those who have suffered direct physical, emotional, or financial harm as a result of the commission of federal crimes.





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### **DIOG Section 3: Special Agent, Intelligence Analyst, Task Force Officer, FBI Contractor, and Others - Roles and Responsibilities**

#### **(Continued – DIOG Section 3.3)**

- Ensure civil liberties and privacy are protected throughout the assessment or investigative process
- Conduct no investigative activity solely on the basis of activities protected by the 1<sup>st</sup> Amendment or solely on the basis of race, ethnicity, national origin or religion of the subject
- Report non-compliance to the proper authority

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## DIOG Section 3: Supervisor Roles and Responsibilities

### **DIOG Section 3.4.A – Supervisor Defined:**

- Field Office or FBIHQ personnel, including: SIA, SSA, SSRA, UC, ASAC, ASC, SAC, DAD, AD, ADIC, and EAD

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## DIOG Section 3: Supervisor Roles and Responsibilities

### **DIOG Section 3.4.B - Supervisor Responsibilities:**

- Determine whether the DIOG standards are satisfied for initiating, approving, conducting and closing an investigative activity, collection activity, or investigative method
- Ensure all investigative activity complies with all laws and policy
- Obtain training on DIOG standards relevant to their position and conform their decisions to those standards
- Ensure civil liberties and privacy are protected throughout the assessment or investigative process

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## DIOG Section 3: Supervisor Roles and Responsibilities

### **Continued DIOG Section 3.4.B - Supervisor Responsibilities:**

- If encountering a practice that does not comply with the law, rules, or regulations, the supervisor must:
  - 1. report that compliance concern to the proper authority
  - 2. take action to maintain compliance, when necessary
- Ensure no retaliation or adverse action is taken against persons who raise compliance concerns

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### **Teaching Points:**

1. Should report non-compliance to immediate Supervisor and/or OIC.
2. OIC non-retaliation policy located in the CPO policy and guidance library.



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## DIOG Section 3: Supervisor Roles and Responsibilities

### DIOG Section 3.4.C - Supervisory Delegation:

- Any DIOG requirement imposed on a Supervisor may be delegated/performed by a designated Acting, Primary, or Secondary Relief supervisor as indicated below, unless specified otherwise by federal statute, EO, PD, AGG, FBI Policy or any other regulation.
  - Supervisor may delegate authority to a supervisor one level junior to himself/herself (e.g. SAC to ASAC; or SC to Assistant/SC)
    - Must identify the task delegated
    - Must identify the supervisory position given approval authority
    - Must be in writing
    - Must be retained appropriately
  - Higher level Supervisors in the same chain-of-command as the original supervisor may approve a particular activity without written delegation documentation

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**Teaching Points:** Question – Can SSA or SIA delegate? No, but an appropriately designated Acting or Relief Supervisor can assume the responsibilities in the absence of the SSA.

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## DIOG Section 3: Supervisor Roles and Responsibilities

### **DIOG Section 3.4.D - Investigative File Reviews:**

- Conducted by full-time supervisors or primary relief supervisors with subordinates
  - (other relief supervisors must have written SAC authority to conduct)
- Conducted with all Agents, Resident Agents, TFOs, analysts, detailees, and FBI contractors, as appropriate
- Conducted in-person or by telephone when necessary
- Conducted in private
- Documented/noted on ACS ICMC report, FD-71 or Guardian
- Conducted at least every 60 days for Probationary Agents, recommended every 30 days

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**Teaching Points:** ACS Investigative Case management Case Review report.



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## DIOG Section 3: Supervisor Roles and Responsibilities

### Assessment Justification/File Reviews:

- Conducted for every 30 day period for Type 1 and 2 Assessments
  - (with 10 additional days to complete and document)
- Conducted for every 90 day period for Type 3, 4, and 6 Assessments
  - (with 30 additional days to complete and document)
- Supervisor Must:
  - Evaluate progress made toward the achievement of authorized purpose and objective
  - Ensure activities that occurred during prior period were appropriate
  - Determine whether it is reasonably likely that information may be obtained that is relevant to the authorized objective – thus warranting an extension for another 30/90 day period
  - Determine whether adequate predication has been developed to open a predicated investigation
  - Determine whether the assessment should be terminated

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**Teaching Points:** DIOG Section 5 details file review requirements.



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## DIOG Section 3: Supervisor Roles and Responsibilities

### **Predicated (Preliminary and Full) Investigation File Reviews:**

- Conducted for every 90 day period
  - (with 30 additional days to complete and document)
- Supervisor Must:
  - Evaluate progress made toward the achievement of authorized purpose and objective
  - Ensure activities that occurred during prior period were appropriate
  - Determine whether it is reasonably likely that information may be obtained that is relevant to the authorized objective – thus warranting an extension for another 90 day period
  - Determine whether adequate predication has been developed to open/or continues to justify a predicated investigation

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**Teaching Points:** Probationary Agent File reviews conducted at least every 60 days, recommend 30 days





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## DIOG Section 3: Unaddressed Work

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Note: the FD-71 provides a new mechanism to assign an Assessment to an electronic Unaddressed Work File in the appropriate classification

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## DIOG Section 3: CDC's Role and Responsibilities

### **CDC's Role and Responsibilities:**

1. Must review all Assessments, Preliminary Investigations (PI) and Full Investigations (FI) that involve a "Sensitive Investigative Matter" (SIM)
2. Must review particular investigative methods as mandated by DIOG Section 5 and 11
3. Requirements imposed on the CDC may be performed by an Associate Division Counsel, Legal Advisor, or designated Acting CDC. All delegations must be in writing and retained appropriately.

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## DIOG Section 3: CDC Roles and Responsibilities

### **CDC Determinations:**

**The primary purpose of the CDC's review is to ensure the legality of the actions proposed. In this context, the review includes a determination that the:**

- Investigative activity is not legally objectionable (can be overruled by OGC)
  - Activity is not based solely on the exercise of 1<sup>st</sup> Amendment rights or on the race, ethnicity, national origin or religion of the subject
- The investigation is founded upon an "authorized purpose" (Assessments) or have adequate factual predication (Preliminary and Full)
- Advise as to the "wisdom" of the proposed action

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## DIOG Section 3: CDC Roles and Responsibilities

### **Continued: CDC Determinations**

The CDC's determination is based on facts known at the time of the review and recommendation.

The CDC may require additional reviews or provide guidance as to monitoring the results of investigative activity to ensure that the authorized purpose and/or factual predication remain intact after additional facts are developed.

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## DIOG Section 3: OGC Roles and Responsibilities

**OGC Role:** In coordination with the DOJ NSD, the OGC is responsible for conducting regular reviews of all aspects of FBI national security and foreign intelligence activities.

The primary purpose of the OGC's review is to ensure the legality of the actions proposed. These reviews, conducted in the field offices and in HQ Units, broadly examine such activities for compliance with the AGG-Dom and other requirements. In this context, the review includes a determination that the:

- Investigative activity is not legally objectionable (Activity is not based solely on the exercise of 1<sup>st</sup> Amendment rights or on the race, ethnicity, national origin or religion of the subject)
- The investigation is founded upon an "authorized purpose" (Assessments) or have adequate factual predication (Preliminary and Full) and meets the standards in the DIOG
- Advise as to the "wisdom" of the proposed action

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## DIOG Section 3: OGC Roles and Responsibilities

### **Continued: OGC Determinations**

- The OGC's determination above is based on facts known at the time of the review and recommendation.
- The OGC may require additional reviews or provide guidance as to monitoring the results of investigative activity to ensure that the authorized purpose and/or factual predication remain in tact after facts are developed

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## DIOG Section 3: Other Roles and Responsibilities

CPO = Corporate Policy Office: Oversight and Implementation of the DIOG; Report compliance risks to OIC (DIOG Section 3.7)

OIC = Office of Integrity and Compliance: Identify compliance risk areas, adequacy of policy and training programs, monitor DIOG compliance (DIOG Section 3.8)

DCO = Division Compliance Officer: One identified in each Field Office to assist the OIC to identify potential non-compliance risk areas and report them to proper authority and OIC (DIOG Section 3.10)

PM = Program Manager: HQ entity that identifies, prioritizes, and analyzes compliance risks and takes appropriate corrective action (DIOG Section 3.9)

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## DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

- Responsibility to protect the American public, not only from crime and terrorism, but also from incursions into their constitutional rights; accordingly, all investigative activities must fully adhere to the Constitution and the principles of civil liberty and privacy.
- Provisions of the AGG-Dom, other AG guidelines, and oversight from DOJ components, are designed to ensure FBI's activities are lawful, appropriate, and ethical, as well as effective in protecting civil liberties and privacy.
- DOJ and FBI's Inspection Division, Office of Integrity and Compliance, the OGC, other Bureau components, and **you** share responsibility for ensuring the FBI meets these goals.

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### Teaching Point:

The FBI is a very important agency with dedicated, highly professional, greatly disciplined Government servants. These words, uttered in 1975 by then Attorney General Levi, are just as true today – if not more so – than they were 34 years ago. But when these words were spoken, it was in the context of Senate hearings on the intelligence function of the FBI and the substantial concerns expressed by a parade of witnesses that for the purpose of protecting the national security and preventing violence, the Bureau was engaging in activities that “tread[] on forbidden ground.”

Fashioning investigative activities that navigate between Constitutional requirements and the imperatives of protecting the nation is often a difficult balancing act and one of the hardest issues that an agent or analyst can face is whether and under what circumstances a particular investigative activity is appropriate. The rewards when we find the right balance often go unnoticed by the general public, but the criticism when we don't can be heard far and wide.

The Attorney General Guidelines for Domestic Activities and the implementing Domestic Investigations Operations Guide are built on a history of attempting to fashion the proper balance between investigating crimes and collecting intelligence while protecting the civil liberties of our people. You are sitting here today because it is your job to help educate your colleagues on how to strike the right balance.





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## DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

- No investigation or assessment can be commenced based solely on race, ethnicity, national origin, religion of the subject or the exercise of First Amendment rights.
- Corollary to this AGG requirement is the Privacy Act, which states that each agency that maintains a system of records shall “maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or **unless pertinent to and within the scope of an authorized law enforcement activity.** 5 U.S.C. 552a(e)(7).

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### Teaching Point:

The first two conditions in the Privacy Act are fairly simple and not typical. If Congress says we can collect and maintain records about how an individual exercises First Amendment rights or if the subject of the record consents, there's no problem – and any resultant records would not be based solely on First Amendment activities.

The purpose of (e)(7) of the Privacy Act, as articulated in the limited legislative history that we have, is to prevent the “collection of protected information not immediately needed, about law-abiding Americans, on the off-chance that Government or the particular agency might possibly have to deal with them in the future.” The Act does not define an “authorized law enforcement activity,” but the courts have been generous in finding a law enforcement purpose for FBI activities.



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## DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

- The test is whether the collection of information is relevant to a law enforcement activity.
- Consider the following cases:
  - Patterson v. FBI, 893 F.2d 595 (3d Cir. 1990).
  - Bassiouni v. FBI, 436 F.3d 712 (7<sup>th</sup> Cir. 2006).

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### Teaching Point:

Cases interpreting this section of the Privacy Act have approved:

1. The first cases involved the FBI's maintenance of records describing a 6<sup>th</sup> grader's letters, written as part of a school project, to a large number of foreign embassies. The return address on the letters was his father's business and the resultant records not only examined the company, but also the 6<sup>th</sup> grader. The court found that maintenance of records about the 6<sup>th</sup> grader was relevant to a law enforcement activity. Interestingly, the investigation in this case was undertaken pursuant to the then existing AG Guidelines.
2. In the second case, we argued that the plaintiff's records were relevant to current FBI "investigative interests" because the investigation of terrorism is a top FBI priority and the records concerned the plaintiff's contacts with, and activities concerning, the Middle East. The court agreed. We also argued that we needed to keep the records for contextual reasons, if we received new information about the plaintiff, and also to evaluate the credibility and veracity of FBI sources. The court found all these reasons for maintenance of the records persuasive and consistent with an authorized law enforcement activity.



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## DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

- The AGG-Dom says that any activity undertaken pursuant to the Guidelines is an authorized law enforcement activity for purposes of the Privacy Act.
- Is this enough?

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### Teaching Point:

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## DIOG Section 4 Scenario

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- What can you do with this information?

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Questions continue on next slide

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# DIOG Section 4 Scenario

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**Teaching Point:**

These are difficult issues, but it is important to understand not only what is permissible, but how to document what action is taken.

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## DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

### **FIRST AMENDMENT RIGHTS:**

Individuals or groups who communicate with each other or with members of the public in any form in pursuit of social or political causes—such as opposing war or foreign policy, protesting government actions, promoting certain religious beliefs, championing particular local, national, or international causes, or a change in government through non-criminal means, and actively recruit others to join their causes—have a fundamental constitutional right to do so. An assessment may not be initiated based solely on the exercise of these First Amendment rights. If, however, a group exercising its First Amendment rights also threatens or advocates violence or destruction of property, an assessment would be appropriate

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## DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

### **FIRST AMENDMENT RIGHTS (cont.):**

- No investigative activity, including assessments, may be taken solely on the basis of activities that are protected by the First Amendment or on the race, ethnicity, national origin or religion of the subject.
- If an assessment or predicated investigation touches on or is partially motivated by First Amendment activities, race, ethnicity, national origin or religion, it is particularly important to identify and document the basis for the assessment with clarity

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## DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

All activities must be consistent with the Attorney General's 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies (forbids the use of racial profiling and requires activities involving the investigation or prevention of threats to the national security to comply with the Constitution and laws of the United States)

The DIOG stresses several points in each section:

- No investigation or assessment can be commenced based solely on race, ethnicity, national origin, religion, or exercise of First Amendment rights
- The FBI must use the least intrusive method that is feasible under the circumstances
- In connection with Foreign Intelligence collection, agents must operate openly and consensually with U.S. Persons, to the extent practicable
- All investigative activities must have an "authorized purpose"

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## DIOG Section 4: Use of Race or Ethnicity

### DIOG Guidance on use of Race or Ethnicity

#### As to individuals:

1. Permits the consideration of ethnic and racial identity information based on specific reporting;
2. The race or ethnicity of suspected members, associates, or supporters of an ethnic-based gang or criminal enterprise may be collected when gathering information about or investigating the organization; or
3. Ethnicity may be considered in evaluating whether a subject is—or is not—a possible associate of a criminal or terrorist group that is known to be comprised of members of the same ethnic grouping—as long as it is not the dominant factor for focusing on a particular person

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## DIOG Section 4: Use of Race or Ethnicity

### DIOG Guidance on use of Race or Ethnicity

#### As to a community:

1. Collecting and analyzing demographics – if these locations will reasonably aid the analysis of potential threats and vulnerabilities, and, overall, assist domain awareness
2. Geo-Mapping ethnic/racial demographics – if properly collected
3. General ethnic/racial behavior – cannot be collected, unless it bears a rational relationship to a valid investigative or analytical need
4. Specific and relevant ethnic behavior
5. Exploitive ethnic behavior – by criminal or terrorist groups

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## DIOG Section 4: Least Intrusive Investigative Method

**The AGG-DOM and the DIOG require that the “least intrusive” means or method be considered and, if operationally sound and effective, used to obtain intelligence or evidence in lieu of a more intrusive method**

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Teaching Point: There is a component of efficiency in being “effective”.

In some instances, a more intrusive method, i.e. use of a CHS, may be more operationally sound and effective for resolving an outstanding investigative need, than a less intrusive method such as acquiring financial records or business records. The totality of the circumstances surrounding the investigative activity plays an important role in considering the use of the least intrusive alternative for obtaining intelligence or evidence. It is a balancing test.



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## DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

By emphasizing the use of less intrusive  
means, employees will be able to balance:

Our need for evidence/intelligence

vs.

Mitigating potential negative impact on the privacy and civil  
liberties of people/public

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## DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

### **Primary factor in determining “intrusiveness”:**

- The degree of procedural protection that the law and the AGG-DOM provide for the use of the particular method.
  - Examples of “more intrusive” methods: Search Warrants, wiretaps, UCOs
  - Examples of “less intrusive” methods: checks of government databases, state or local criminal record checks, commercial databases, interviews

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## DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

### **Items to consider when determining the relative intrusiveness of an investigative method:**

- Is method permitted prior to the initiation of an assessment?
- Is the method relevant to the assessment or investigation?
- Will the information collected or obtained likely further the investigative objective?
- What alternatives exist for gathering the same information?
- Are those alternatives relatively less intrusive?
- What time span is involved in using the investigative method (days, weeks, months)?
- What confidence level is associated with the information gathered using the investigative method?
- Will the method resolve a pending investigative issue quickly?

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## DIOG Section 4: Least Intrusive Investigative Method

### **Factors to Determine "Intrusiveness":**

1. Nature of the information sought
2. Scope of the information sought
3. Scope of the use of the investigative method
4. Source of the information sought
5. Risk of public exposure



# DIOG Section 5 & 11: Investigative Methods

Authorized Methods for Assessments and Predicated Investigations  
Red indicates methods not allowed under a particular operational activity; Green indicates methods allowed.

	Assessments	Preliminary Investigations	Full Investigations
Obtain publicly available information			
Access and examine FBI and other DOJ records, and obtain information from any FBI or DOJ personnel			
Access and examine records maintained by, and request information from, other federal, state, local, tribal, or foreign governmental entities or agencies			
Use online services and resources (whether nonprofit or commercial)			
Use and recruit human sources in conformity with AG Guidelines Regarding the Use of FBI Confidential Human Sources			
Interview or request information from members of the public and private entities (includes pretextual interviews)			
Accept information voluntarily provided by governmental or private entities			
Engage in observation or surveillance not requiring a court order			
Mail covers			
Physical searches of personal or real property where a warrant or court order is not legally required because there is no reasonable expectation of privacy (e.g., trash covers)			
Consensual monitoring of communications, including consensual computer monitoring, is subject to legal review by the CDC or the FBI OGC. Where a sensitive monitoring circumstance is involved, monitoring must be approved by the Criminal Division or, if the investigation concerns foreign intelligence or a threat to the national security, by the National Security Division			
Use of closed-circuit television, direction finders, and other monitoring devices, subject to legal review by the CDC or FBI OGC			
Polygraph examinations			
Undercover operations			
Compulsory process as authorized by law, including Federal Grand Jury and other subpoenas and National Security Letters (Federal Grand Jury subpoenas for telephone and electronic mail subscriber records can be used during type 1 and 2 Assessments only)			
Accessing stored wire and electronic communications and transactional records			
Use of pen registers and trap and trace devices			
Electronic surveillance			
Foreign intelligence collection under Title VII of FISA			
Physical searches, including mail openings, where a warrant or court order is legally required because there is an expectation of privacy.			





# Investigative Methods/Approvals Chart

Authorized Method and DIOG Reference*	Approval Levels for Assessments and Predicated Investigations		
	Assessments	Predicated	Foreign Intelligence
1 5.9A Obtain publicly available information	None Required	None Required	None Required
Tasking a UCE to attend a religious service	Not Permitted	SSA Approval	SSA Approval
2 5.9B Physical surveillance of a person or group (Consult the DIOG for handheld photo and video surveillance with no reasonable expectation of privacy)	DIOG for requirements	None Required	None Required
	ASAC Approval	ASAC Approval	ASAC Approval
3 5.9C Access and examine FBI and other Department of Justice (DOJ) records, and obtain information from any FBI or other DOJ personnel	None Required	None Required	None Required
4 5.9D Access and examine records maintained by, and request information from, other federal, state, local, or tribal, or foreign governmental entities or agencies	None (Unless such approval is required by MOU or other agreements)	None (Unless such approval is required by MOU or other agreements)	None (Unless such approval is required by MOU or other agreements)
5 5.9E Use online services and resources (whether nonprofit or commercial)	None Required	None Required	None Required
6 5.9F Interview or request information from members of the public and private entities	None Required except for contact with represented persons, members of U.S. Congress, or their staffs, White House personnel, or other substantive division requirements	None Required except for contact with represented persons, members of U.S. Congress, or their staffs, White House personnel, or other substantive division requirements	None Required except for contact with represented persons, members of U.S. Congress, or their staffs, White House personnel, or other substantive division requirements
7 5.9G Accept information voluntarily provided by governmental or private entities	None Required	None Required	None Required
8 5.9H Use and recruit human sources	None Required (utilize [redacted])	None Required (utilize Delta)	None Required (utilize Delta)
Tasking a CHS to attend a religious service	SAC Approval	SSA Approval	SSA Approval
9 5.9I Federal Grand Jury subpoenas for telephone or electronic mail subscriber information	US Attorney Office Approval (Type 1 and 2 Assessments Only)	US Attorney Office Approval	Not Permitted
10 5.9C Pattern Based Data Mining	SORC	SORC	SORC

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**Teaching Points:**


- Obtain Publicly Available Information:** Supervisory approval is not required for use of this method, except as to information gathered at a religious service. Notwithstanding any other policy, tasking a CHS or UCE to attend a religious service during a predicated investigation, whether open to the public or not, requires SSA approval. Tasking a CHS to attend a religious service, whether open to the public or not, during an assessment requires SAC approval.
  - Engage in observation or surveillance not requiring a court order:** Use of mechanical devices operated by a user (e.g., binoculars; hand-held cameras; radiation, chemical or biological detectors) is authorized in physical surveillance provided the device is not used to collect information in which a person has a reasonable expectation of privacy (e.g., equipment such as a parabolic microphone or other listening device that would intercept a private conversation or thermal imaging a home is not permitted).
- Physical Surveillance: For assessments:** [redacted] surveillance begins as stated in the plan at the initiation of surveillance. Requires SSA or SIA approval. SSA or SIA authorized to approve physical surveillance requests in incremental periods. [redacted] FBI employee cannot submit multiple requests for one time approval. No limitation on use of fixed or moving physical surveillance. For predicated investigations: no limitation on use. [redacted] ASAC can delegate approval to SSA or SIA. Must be in writing and appropriately filed.
- Access and Examine FBI and other DOJ Records, and Obtain Information from any FBI or other DOJ Personnel:** Supervisory approval is not required to use this method during assessments or predicated investigations, except that if the use of records constitutes pattern-based data mining under the Federal Data Mining Reporting Act of 2007, it must be reviewed by the SORC and the FBI must report the pattern-based data mining to Congress.
  - Pattern-Based Data Mining Defined:** Use of one or more data bases to search for persons who fit a set of group characteristics or patterns of behavior (e.g., the known characteristics of a particular terrorist organization).
  - Use Online Services and Resources (whether non-profit or commercial):** Subscribing to or purchasing any new service must be done pursuant to FBI contracting procedures.
  - Interview Defined:** Questioning of an individual (to include the subject) designed to gather information from the person being interviewed that is accurate, pertinent to, and within the scope of an authorized assessment or predicated investigation.
- In normal course of interview, FBI should divulge employee's affiliation with FBI and true purpose of interview. If person being interviewed expresses desire not to provide information, FBI employee may not state or imply in any way that the interviewee is compelled to provide information or that adverse consequences may follow. If interviewee indicates he or she wishes to consult an attorney, the interview must immediately stop.
- Custodial Interviews:** Miranda warnings are required to be given prior to custodial interviews if the subject is significantly restricted in his/her freedom of action to a degree normally associated with arrest. See FBI Legal Handbook for Special Agents.
- Interviews that require supervisory approval:**
- contact with represented persons requires CDC review.
  - Members of U.S. Congress and Staff: Generally, FBI employees may take information received just as they would from other sources, and they may act upon it accordingly. However, prior CDC review, SAC and appropriate FBIHQ AD approval and prior notice to the AD Office of Congressional Affairs are required if FBI employee seeks to establish a formal relationship or interview a member of Congress or Congressional staff in connection with a foreign counterintelligence and/or public corruption matter.
  - White House Personnel: CDC review and SAC approval is required before initiating contact with White House personnel. CDC review, SAC approval and appropriate FBIHQ Section Chief approval must be obtained prior to conducting an interview of a member of the White House.

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- Accept Information Voluntarily Provided By Governmental or Private Entities:** Voluntarily provided information includes, but is not limited to: oral as well as documentary evidence and physical evidence such as: a computer hard drive or other electronic media that contains information, paper documents containing information, or physical objects (e.g., handgun or narcotics). FBI employee may not request nor knowingly accept information where disclosure would be prohibited by federal law (e.g., communications records).
- Access and Examine Records Maintained by, and Request Information From, Other Federal, State, Local, Tribal, or Foreign Governmental Entities or Agencies:** When requesting information using this authority, care must be taken to ensure the entity concerned understands that it is not compelled to provide such information or create a new record.
- Grand Jury Subpoenas for Telephone or Electronic Mail Subscriber Information:** Used only during a type 1 or 2 assessment. [redacted] Guardian [redacted]

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## Investigative Methods/Approvals Chart

Authorized Method and DIOG Reference*		Approval Levels for Assessments and Predicated Investigations		
		Assessments*	Predicated	Foreign Intelligence
11	11.3 Mail covers	Not Permitted		
12	11.4 Physical searches of personal or real property where a warrant or court order is not legally required because there is no reasonable expectation of privacy (e.g. [redacted])	[redacted]	[redacted]	[redacted]
13	11.5 Consensual monitoring of communications, including consensual computer monitoring	Not Permitted	CDC or OIG Review SSA Approval	CDC or OIG Review SSA Approval
14	11.5 Consensual monitoring of communications, including consensual computer monitoring, with a sensitive monitoring circumstance	Not Permitted	CDC or OIG Review, SAC Approval, DOJ Criminal or DOJ NSD Approval	CDC or OIG Review, SAC Approval, DOJ Criminal or DOJ NSD Approval
15	11.6 Use of closed-circuit television, direction finders, and other monitoring devices	Not Permitted	[redacted]	[redacted]
16	11.7 Polygraph examinations	Not Permitted	SSA Approval	SSA Approval
17	11.8 Undercover operations, Group II	[redacted]	CDC Review, SAC or ASAC with delegated authority; National Security cases also require NSD and UACB	CDC Review, SAC or ASAC with delegated authority; NSB-UH/MACB Approval
18	11.8 Undercover operations, Group I	Not Permitted	CDC review, SAC, and AD and GUORC or UGRG (EAD/DIO certain cases) Approval	CDC review, SAC and AD and UGRG (EAD/DIO certain cases) Approval
19	11.9 Compulsory process as authorized by law, Federal Grand Jury and trial subpoenas	[redacted]	US Attorney's Office Approval	[redacted]
20	11.9 Administrative Subpoenas, Drugs	Not Permitted	SAC, ASAC, SSRA, or Drug Squad SSA	Not Permitted
	11.9 Administrative Subpoenas, Sexual Exploitation		U.S. Attorney's Office Approval	
	11.9 Administrative Subpoenas, Healthcare Fraud		Field Office, CDC Review, ADIC or SAC Approval, HQ; NSLB Review; DD or EAD-NSB or AD & DADs CT/CD/Cyber or GC or Deputy GC-NSLB Approval	
21	11.9 National Security Letters	Not Permitted	Field Office, CDC Review, ADIC or SAC Approval, HQ; NSLB Review; DD or EAD-NSB or AD & DADs CT/CD/Cyber or GC or Deputy GC-NSLB Approval	Not Permitted
22	11.10 Accessing stored wire and electronic communications and transaction records	Not Permitted	Stipula/Court Order, Consult DIOG	Not Permitted
23	11.11 Use of pen registers and trap and trace devices	Not Permitted	FISA Court or District Court Order	Only Available for Non-DISPER by FISA Court order
24	11.12 Electronic surveillance	Not Permitted	[redacted]	[redacted]
25	11.13 Physical searches, where there is reasonable expectation of privacy, including mail openings	[redacted]	[redacted]	[redacted]
26	11.14 Acquisition of foreign intelligence information in conformity with Title VII of the Foreign Intelligence Surveillance Act	[redacted]	FISA Court Order	FISA Court order

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### Teaching Points:

1. **Mail Covers:** The DIOG currently states that for national security mail covers, "after being approved by the SSA, the Field Office must transmit the mail cover letter request by EC, with the draft letter as an attachment, to the National Security Law Branch (NSLB) for legal review and concurrence. Upon review and concurrence, the NSLB must transmit the letter request for signature to the EAD, National Security Branch, or, in his or her absence, to the Director.

2. **Consensual Monitoring:** [redacted] Field Office must ensure that the individual who approves OIA is so authorized. For example, if the SAC has delegated authority to approve OIA for consensual monitoring to the SSA, upon CDC review, the SSA can approve the consensual monitoring and OIA. If OIA authority was not delegated to SSA, appropriate supervisory authority must expressly approve OIA.

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3. **Administrative Subpoenas:** Within the FBI, the authority to issue administrative subpoenas is limited to those positions holding the delegated authority from the Attorney General; that authority may not be redelegated. [redacted]

[redacted]

Three Types of Administrative Subpoenas Authorized: (i) drug program investigations; (ii) child sexual exploitation and abuse investigations; (iii) health care fraud investigations.

4. **National Security Letters:** Authority to sign NSLs has been delegated to the Deputy Director, EAD and Assistant EAD for NSB; ADs and all DADs for CT/CD/Cyber; General Counsel; DGC for NSLB; ADICs in NY, DC and LA; and all SACs. Every NSL must be reviewed and approved by a CDC or NSLB attorney.