



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 10, 2012

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed please find responses to questions for the record arising from the appearance of Ralph Boelter, Acting Assistant Director of the Federal Bureau of Investigation, before the Committee on September 21, 2011, at a hearing entitled "Countering Terrorist Financing: Progress and Priorities." An additional classified response will be forwarded to you under separate cover. We hope that this information is of assistance to the Committee.

Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that from the perspective of the Administration's program there is no objection to submission of this letter.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosure

cc: The Honorable Charles Grassley
Ranking Member

**Questions for the Record for
Ralph Boelter
Acting Assistant Director
Counterterrorism Division
Federal Bureau of Investigation
U.S. Department of Justice**

**Committee on the Judiciary
United States Senate**

**“Countering Terrorist Financing: Progress and Priorities”
September 21, 2011**

Questions Posed by Senator Grassley

Agents Cheating on the Domestic Investigations and Operations Guide (DIOG) Exam

In 2007, the FBI implemented the Attorney General’s Consolidated Guidelines for FBI Domestic Operations, which addressed the requirements FBI agents must follow in criminal investigations, national security investigations, and foreign intelligence collection. These policies and procedures are contained in the Domestic Investigations and Operations Guide (DIOG), and all FBI employees were required to take an exam based on the DIOG. Subsequently, the Department of Justice, Office of Inspector General (DOJ OIG) performed a limited investigation regarding allegations of FBI agents, including supervisors, cheating on the exam. The OIG found a significant number of employees had engaged in some form of cheating or improper conduct on the DIOG exam. The OIG recommended that the FBI take action regarding those who cheated on the exam, consider other appropriate conduct, and also conduct a new exam on the revised DIOG. As of February 9, 2011, the OIG reported that the FBI was still considering steps it would take in response to the OIG recommendations.

1. How many special agents that work national security or intelligence collection cheated on the exam?

Response:

As of September 30, 2011, 18 Special Agents were found to have received or provided unauthorized assistance on the Domestic Investigations and Operations Guide (DIOG) exam: 11 Agents worked on national security/intelligence collection (9 of whom also conducted criminal investigations), 11 Agents conducted criminal investigations (9 of whom also worked on national security/intelligence collection), and 5 Agents worked on other matters. Of the 18 Agents, 11 were supervisors. Some of these cases have appeals pending; therefore, these decisions (and the numerical tallies) are not final.

The FBI is disappointed with the conduct in these cases. The FBI acknowledges some responsibility for these results. The FBI did not strictly limit how field offices administered the training and testing, and the Department of Justice (DOJ) Office of the Inspector General found that training was not uniformly delivered across the country and testing procedures varied.

2. How many special agents that conduct criminal investigations cheated on the exam?

Response:

Please see the response to Question 1, above.

3. How many supervisors were found to have cheated on the DIOG exam?

Response:

Please see the response to Question 1, above.

4. Pursuant to the requirements of Giglio v. United States, if the FBI finds an agent cheated, that information is legally required to be disclosed to a defendant by the prosecution.

a. Will the FBI allow agents to testify in open court without disclosing to the U.S. Attorneys the fact that they cheated on this exam?

b. Will the FBI instruct or require all agents who are found to have cheated on this exam, to disclose that information to their respective U.S. Attorney's Office prior to testifying before a grand jury or in court?

Response to subparts a and b:

Employees who are under FBI investigation regarding the DIOG exam or have been adjudicated as having engaged in misconduct related to the DIOG exam are required to disclose to Assistant United States Attorneys with whom they are working the existence of the investigation and the conduct at issue before providing sworn statements or testimony, whether in writing, in open court, or before a grand jury.

The Use of Suspicious Activity Reports (SARs) to Detect Terrorist Financiers

In the written testimony of FBI Acting Assistant Director Boelter, he states that "Suspicious Activity Reports have been important components in our efforts to identify Terrorist financing." He also states that Suspicious Activity Reports are "critical tripwires to detect possible terrorist financiers as well as identifying associates of known terrorists."

5. How does the FBI receive Suspicious Activity Reports?

Response:

The Suspicious Activity Report (SAR) program was implemented by the Treasury Department's Financial Crimes Enforcement Network (FinCEN) and the five banking regulatory agencies to serve as a single repository of banking institutions' reports of suspicious activity. The FBI has direct access to SARs through FinCEN's WebCBRS, which is FinCEN's database of information filed electronically by the banking institutions. SARs are also regularly downloaded from FinCEN directly into the FBI's Investigative Data Warehouse (IDW).

IDW is a one-stop shop that allows a search of multiple databases at one time using a search engine similar to Google and state-of-the-art analytical tools. The search capability is robust, allowing various types of searches ranging from searches for individual records to comparisons of large batches of data with other data sets or individual pieces of information. Through IDW, the FBI is able to query SARs in conjunction with other FBI database holdings to quickly identify all information related to the query.

6. Does the FBI have a database that collects Suspicious Activity Reports information?

Response:

As noted above, all SARs are regularly downloaded into IDW, which is used to query SAR information. The FBI also has direct access to SARs through FinCEN's WebCBRS.

7. How does the FBI generate new investigative leads from the vast volume of Suspicious Activity Reports?

Response:

Of the large volume of SARs, a small percentage is identified by the filing entity as potentially related to terrorist financing, or "T-coded." T-coded SARs are reviewed by the FBI's Terrorist Financing Operations Section (TFOS) and the relevant FBI field office for potential terrorist-related activity. In addition, TFOS has developed an automated process that independently reviews all SARs filed each month, identifies those that may relate to terrorism financing according to the programmed parameters, and provides a summary of related FBI information and associations to the relevant FBI field office.

Additional information responsive to this inquiry is classified and is, therefore, provided separately.

8. How does the FBI mine the Suspicious Activity Reports data so that it is useful?

Response:

Through searches developed using intelligence and keywords culled from existing investigations, select SARs are identified for further review. Each field office receives a monthly summary of each such SAR relevant to that area of responsibility. These summaries include FBI database content regarding the individual, any associated FBI investigations, and a link chart reflecting the associations. TFOS also reviews the reports of SARs impacting multiple field offices to identify any potential subjects not obvious to the receiving field offices and prepares targeting packages to provide this information when appropriate.

Additional information responsive to this inquiry is classified and is, therefore, provided separately.

9. Does the FBI participate on any task forces, committees, or working groups that use Suspicious Activity Reports to target terrorism or terrorism financing? If so, please describe those activities and relationships.

Response:

At the national level, the FBI participates on DOJ's National SAR Review Team, which includes federal law enforcement agencies. This team's review includes SARs with a potential terrorist financing nexus, including those with an international nexus. FBI field offices participate on similar local-level SAR review teams to identify SARs with a terrorism nexus that impact their areas of responsibility.

Questions Posed by Senator Kyl

10. There are several USG departments, agencies, and offices with equities in terrorist and proliferation financing. How do you balance the need to designate and sanction entities or pursue criminal investigations against the intelligence value of additional information that the USG could potentially gather by allowing an entity to continue operating?

Response:

The designation of an entity as a Foreign Terrorist Organization (FTO) is a powerful tool, making it unlawful to provide material support or resources to the organization and stigmatizing and isolating the organization internationally. Proposed designations are coordinated with relevant U.S. Government (USG) agencies to accumulate the evidence to support the designation and to determine the timing of the designation that will best avoid disrupting operational activities. The FBI is an active participant in this process.

The FBI does not see designations, sanctions, criminal investigations, and intelligence gathering as mutually exclusive objectives. The FBI has successfully obtained critical intelligence from suspects for many years, and the criminal justice system has proven to be one of the most effective weapons available to our government for both incapacitating terrorists and collecting intelligence from them.

As indicated in response to Question 11, below, if the objectives were to conflict in a given case, we would use the mechanism established for resolving such conflicts.

11. How do you handle a situation where Treasury believes an entity should be sanctioned for illicit activities, and the FBI believes those sanctions will impede a criminal investigation?

Response:

We are aware of no instance in which the Department of Treasury has believed an entity should be sanctioned but the FBI believed sanctions would impede a criminal investigation. In the event this should occur, though, and agencies cannot agree on a course of action at the working level, the issue can be raised for further discussion by senior agency officials.

12. What about the role of the State Department?

Response:

Statutorily, the Department of State (DoS) has a lead role in designating Foreign Terrorist Organizations (FTO) under the Immigration and Nationality Act in consultation with the Secretary of the Treasury and the Attorney General. The DoS also plays a lead role in designating entities and individuals under section 1(b) of E.O. 13224. When DoS is considering designating an entity or individual under E.O. 13224, or designating a group as an FTO, DoS seeks input from the FBI to determine both whether the FBI has any information relevant to the proposed designation and whether designation would adversely affect FBI equities.

The FBI participates with DoS on several initiatives designed to combat terrorist financing, including the following.

- The DoS chairs the Terrorist Financing Working Group (TFWG), coordinating the provision of capacity-building assistance to key foreign partners and providing foreign policy guidance and funding. The FBI serves on the TFWG and, along with other federal departments and agencies, assists by providing training and technical assistance.

- The FBI and DoS participate, along with DOJ, the Treasury Department, and others, as part of the USG delegation to the Financial Action Task Force (FATF), which is an inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing.

13. Do you face a situation where the State Department argues the imposition of sanctions or the initiation of a criminal investigation will undermine diplomacy?

Response:

While the FBI is not aware that such a situation has occurred, we defer to DoS on the impact the initiation of an FBI investigation might have on diplomatic efforts.

14. What mechanism is in place to adjudicate any disputes that arise?

Response:

The FBI engages with DoS on many levels, both formally and informally. On a formal level, the FBI belongs to several interagency groups in which DoS also participates, including the USG delegation to the FATF, the Counterterrorism Security Group (CSG) (to which the sub-CSG reports), and the TFWG. These groups provide formal avenues through which the participants can coordinate ongoing efforts and discuss any disputes that may arise. Informally, FBI employees work closely with their counterparts in DoS and the other agencies that address terrorism financing, and these employees have developed working relationships that enable them to discuss and mitigate disagreements before they need to be resolved at a more formal level. Ultimately, though, as noted in response to Question 11, above, if a disagreement cannot be resolved through any of these avenues, the conflict would be resolved by the NSC. To date, we are aware of no instance in which conflict resolution at this level has been necessary.

15. Would any of you care to comment on the material support statutes, and what role they have played in denying funds and resources to international terrorist organizations?

Response:

The material support statutes (18 U.S.C. §§ 2339A and 2339B) are effective tools in the toolbox used by the USG to deny funds and other resources to terrorist organizations. The successes in using these statutes include the following.

- On October 20, 2011, two Rochester, Minnesota, women were convicted by federal juries of providing material support to al-Shabaab, a designated FTO. The defendants, Amina Farah Ali and Hawo Mohamed Hassan, both of whom are naturalized United States citizens from Somalia, were each convicted of one count of conspiracy to provide material support to a terrorist organization.

Ali was additionally convicted of twelve counts of providing material support to al-Shabaab.

- In May 2010, Khalid Ouazzani pled guilty in the Western District of Missouri to conspiracy to provide material support to a terrorist organization. Ouazzani, who is a U.S. Person (USPER), admitted that beginning in August 2007 he participated in a conspiracy to provide material support and resources to al-Qa'ida and that he personally provided approximately \$23,000 to al-Qa'ida. In late April 2010, Ouazzani's co-conspirators, USPERs Sabirhan Hasanoff and Wesam El-Hanafi, were indicted and subsequently arrested in the Southern District of New York for conspiring to provide material support to al-Qa'ida. These subjects are currently awaiting trial.

16. Do you agree that it is important to deny all funds to a terrorist organization, regardless of whether a donation purports to be only for the organization's "charitable activities"?

Response:

We agree that it is important to deny all funds to a terrorist organization regardless of whether a donation purports to be only for the organization's "charitable activities." First, even if donated funds purport to be for, or are intended by the donor to be used for, charitable purposes, this does not necessarily mean this is the purpose to which the funds will actually be put. In addition, if the donated funds are used for charitable purposes, this might enable the recipient organization to free up other resources for use in terrorist activities.