

UNCLASSIFIED – FOR OFFICIAL USE ONLY
Domestic Investigations and Operations Guide

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9.7 (U) STANDARDS FOR OPENING OR APPROVING THE USE OF AN AUTHORIZED INVESTIGATIVE METHOD IN A FULL POSITIVE FOREIGN INTELLIGENCE INVESTIGATION

(U//FOUO) Prior to opening or approving the use of an investigative method in a Full Investigation for the purpose of collecting positive foreign intelligence pursuant to a PFI Collection Requirement, an FBI employee or approving official must determine whether:

- A) (U//FOUO) The use of the particular investigative method is likely to further the authorized purpose of the Full Investigation;
- B) (U//FOUO) The investigative method selected is the least intrusive method, if reasonable based upon the circumstances of the investigation and, if taken relative to an US person (USPER), the method involves open and consensual activities, to the extent practicable;
- C) (U//FOUO) Open and consensual activity would likely be successful (if it would, covert non-consensual contact with an USPER may not be approved); and
- D) (U//FOUO) The investigative method is an appropriate use of personnel and financial resources.

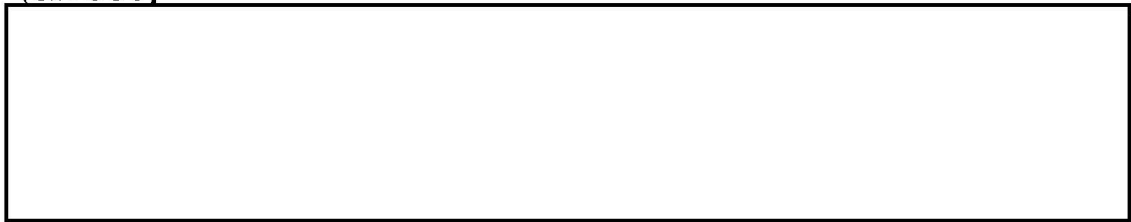
9.8 (U) AUTHORIZED INVESTIGATIVE METHODS IN A FULL POSITIVE FOREIGN INTELLIGENCE INVESTIGATION

(U//FOUO) Prior to opening or approving the use of an investigative method, an FBI employee and approving official must apply the standards as provided in DIOG Section 9.7. With the exceptions noted below, all lawful methods may be used during a Full Investigation to collect positive foreign intelligence pursuant to PFI Collection Requirements. If actions are to be taken with respect to an USPER, the method used must be open and consensual, to the extent practicable.

(U) See DIOG Section 18 for a complete description of the following methods that may be used in Full PFI Investigations. The methods are:

- A) (U) Public information. (See Section 18.5.1)
- B) (U) Records or information - FBI and DOJ. (See Section 18.5.2)
- C) (U) Records or information - Other federal, state, local, tribal, or foreign government agency. (See Section 18.5.3)
- D) (U) On-line services and resources. (See Section 18.5.4)
- E) (U) CHS use and recruitment. (See Section 18.5.5)
- F) (U) Interview or request information from the public or private entities. (See Section 18.5.6)
- G) (U) Information voluntarily provided by governmental or private entities. (See Section 18.5.7)
- H) (U) Physical Surveillance (not requiring a court order). (See Section 18.5.8)
- I) (U) Trash Covers (Searches that do not require a warrant or court order). (Section 18.6.12)
- J) (U) Consensual monitoring of communications, including electronic communications. (Section 18.6.1)

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(U//FOUO) See the classified provisions in Appendix G for additional information.

- K) (U) Intercepting the communications of a computer trespasser. (Section [18.6.2](#))
- L) (U) Closed-circuit television/video surveillance, direction finders, and other monitoring devices. (Section [18.6.3](#))
- M)(U) Polygraph examinations. (Section [18.6.11](#))
- N) (U) Undercover Operations (Section [18.6.13](#))
- O) (U//FOUO) Pen registers and trap/trace devices for non-USPERs using FISA. (See Section [18.6.9](#))
- P) (U) Electronic surveillance using FISA or E.O. 12333. (See Section [18.7.3](#))
- Q) (U//FOUO) Searches – with a warrant or court order using FISA or E.O. 12333 § 2.5. The DIOG classified Appendix G provides additional information regarding certain searches. (AGG-Dom, Part V.A.12) (See Section [18.7.1](#))
- R) (U) FISA Title VII - Acquisition of positive foreign intelligence information. (See Section [18.7.3](#))
- S) (U//FOUO) FISA Order for business records (for records relating to a non-USPER only). (See Section [18.6.7](#))

9.9 (U) INVESTIGATIVE METHODS NOT AUTHORIZED DURING A FULL POSITIVE FOREIGN INTELLIGENCE INVESTIGATION

(U//FOUO) The following investigative methods are not permitted to be used for the purpose of collecting positive foreign intelligence pursuant to PFI Collection Requirements:

- A) (U//FOUO) National Security Letters (15 U.S.C. §§ 1681u, 1681v; 18 U.S.C. § 2709; 12 U.S.C. § 341[a][5][A]; 50 U.S.C. § 436). (Section [18.6.6](#))
- B) (U//FOUO) FISA Order for business records (for records relating to an USPER). (Section [18.6.7](#))
- C) (U//FOUO) Pen registers and trap/trace devices in conformity with FISA (on an USPER). (Section [18.6.9](#))
- D) (U//FOUO) Pen registers and trap/trace devices in conformity with chapter 206 of 18 U.S.C. §§ 3121-3127. (Section [18.6.9](#))
- E) (U//FOUO) Mail covers. (Section [18.6.10](#))
- F) (U//FOUO) Grand jury subpoenas. (Section [18.6.5](#))
- G) (U//FOUO) Administrative subpoenas. (Section [18.6.4](#))

differences between Section 704 and traditional FISA authorities. First, the application is not required to identify the specific facilities, places, premises, or property at which the acquisition will be directed. Second, Section 704 allows for the targeting of “an officer or employee of a foreign power” even if the target is not knowingly engaging in clandestine intelligence gathering activities, sabotage, or international terrorism. Refer to the FISA Unit’s intranet website for further information. Section 704 also allows for emergency authorization. Unlike traditional FISA orders, however, surveillance authorized pursuant to this section must cease if the USPER enters the United States but may be re-started if the person is again reasonably believed to be outside the United States during the authorized period of surveillance. If there is a need to continue surveillance while the target is located inside the United States a separate court order must be obtained. The use of any information collected using FISA 704 authority must comply with the applicable minimization procedures.

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18.7.3.3.6.4 (U) SECTION 705 - JOINT APPLICATIONS AND CONCURRENT AUTHORIZATIONS

(U//FOUO) Section 705(a) “joint applications” allow the FISC, upon request of the FBI, to approve a joint application targeting an USPER under both Sections 703 and 704 (authority to collect both when the facilities are located inside and outside the United States).

(U//FOUO) Section 705(b) provides that if an order has been obtained under Section 105 (electronic surveillance under Title I of FISA) or 304 (physical search under Title III of FISA), the Attorney General may authorize the targeting of the USPER target while such person is reasonably believed to be located outside the United States. The Attorney General has this authority under E.O. 12333 § 2.5. In other words, when the FISA Court authorizes surveillance of an USPER target, the Attorney General, under Section 705(b) and E.O 12333 § 2.5, can simultaneously authorize surveillance to continue if the target travels outside the United States during the authorized period of the surveillance. According to Section 705(b), there is no need for a separate order pursuant to Section 703 or 704. During the FISA drafting process, an FBI employee should determine whether surveillance or physical search may occur for purpose of acquiring foreign intelligence while the person is reasonably believed to be outside the United States. If so, the FBI employee should consult with an OGC or DOJ-NSD attorney to ensure that appropriate language is added to the application.

(U//FOUO) [Redacted]

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