

[REDACTED]
From:
Sent:
To:

[REDACTED]
Friday, March 24, 2006 11:42 AM

Cc:
Subject:

[REDACTED] Legal

UNCLASSIFIED
NON-RECORD

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All, this is the most recent Legal presentation from [REDACTED] regarding [REDACTED] Please distribute... Thanks [REDACTED]



[REDACTED]
March 23, 2006

SSA [REDACTED]
[REDACTED]

UNCLASSIFIED

CELL/OTD 001107



CELL/OTD 0.08
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Cellular Tracking Legal Issues

March 23, 2006

Overview

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- DOJ's Policy on Cellsite Simulators: **Pen Register Device**
(18 U.S.C. § 3127(3))
 - Old Law vs. New Law
 - Non-Target users (Privacy Interest)
 - Potential Interference
 - Liability
- Recent Court Decisions on cellsite location data
 - distinguish
- Emergency Pen Register Authority
 - Federal v. State Orders
 - Voluntary Disclosures
- Loan of ELSUR Policy
 - liability
- Protecting Sensitive Techniques
 - Use as evidence
 - Qualified Privilege

CELL/OTD 001109

New DOJ Opinion:

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DOJ/CCIPS: Pen/Trap order

to use its own equipment to obtain any “signaling information” transmitted from a cellular telephone to:

- 1) Identify a target phone or
- 2) Locate a phone

CELL/OTD 001112

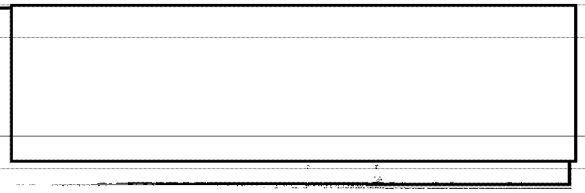
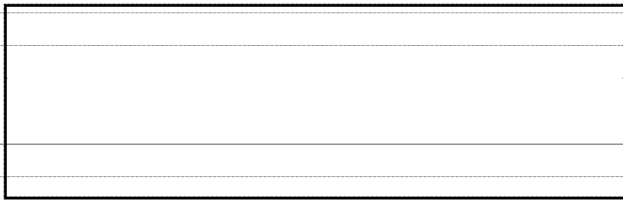
DOJ: “signaling information” is any non-content information “transmitted by” a telephone instrument

**CALEA: technical standard for
location parameters (J-STD-025)**

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- **Origination** (of an outgoing call from target phone)
 - **Answer** (at answer of a call terminating to the target phone)
 - **Release** (at the end of the call for both incoming and outgoing calls)
- (http://www.tiaonline.org/standards/search_results2.cfm?document_no=J-STD-025-A www.tiaonline.org)

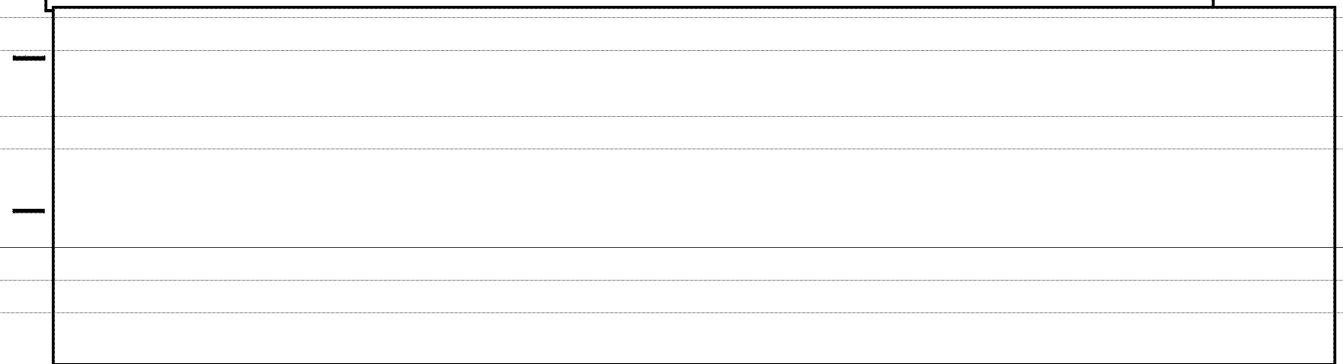
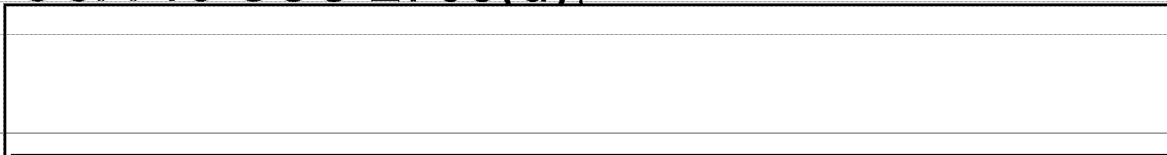
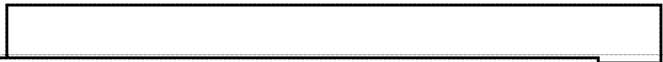
CELL/OTD 001115



- Recent Court Decisions

- CALEA prohibits collecting location information “solely pursuant” to a PR/TT

- SCA 18 USC 2703(d)



CELL/OTD 001117

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[Redacted]

Guidance

■

[Redacted]

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■ **AND Use a Separate PR/TT order for [Redacted] gear**

—

[Redacted]

■ Advise of [Redacted]

■ [Redacted]

■ Not retain records?

CELL/OTD 001121

Incidental Collection

(2) advise court of potential for incidental collection on innocent users

CELL/OTD 001123
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[Redacted]

[Redacted]

(5) [Redacted]
[Redacted]

[Redacted]

Therefore, pursuant to 18 U.S.C. § 3123(d), I request that this application and order be sealed until otherwise ordered by this court; and

■ [Redacted]

CELL/OTD 001128

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STATE Authority

IF State Authority: may assist **if** either:

- **Joint case** (i.e. significant FBI interest and resources—
Federal Nexus [REDACTED])

- **Written request from State** for assistance in a purely state matter;
- BOTH Trigger compliance with Loan of ELSUR policy
– MIOG, Part 2, 16-4.13.4

CELL/OTD 001130

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[REDACTED]

From: [REDACTED]
Sent: Wednesday, February 21, 2007 5:46 PM
To: [REDACTED]
Subject: FW: Cell Tracking
Attachments: [REDACTED]

UNCLASSIFIED
NON-RECORD

[REDACTED]

I am on [REDACTED] and my boss has talked with you about [REDACTED] (see below). We used your affidavit and sent it to our AUSA in [REDACTED]. They have been looking at it and I was told that I may be missing some statutory references. Have you guys ever gotten one of these through [REDACTED]? If yes, do you recall the AUSA's name? If they haven't, I am going to give them [REDACTED] name and number so we can figure this thing out.

Thanks

SA [REDACTED]
[REDACTED]
[REDACTED] Desk
[REDACTED] Cell

-----Original Message-----

From: [REDACTED]
Sent: Tuesday, January 30, 2007 3:13 PM
To: [REDACTED]
Subject: FW: [REDACTED]

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UNCLASSIFIED
NON-RECORD

[REDACTED]

Per our discussion, the [REDACTED] for using [REDACTED] et al. [REDACTED]

-----Original Message-----

From: [REDACTED]
Sent: Tuesday, January 30, 2007 3:02 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: [REDACTED]

UNCLASSIFIED
NON-RECORD

SSA [REDACTED]

As per our phone conversation yesterday, the second attachment [REDACTED] would be the appropriate pony. This document has been provided by [REDACTED] of OGC. [REDACTED]

[REDACTED]

Thanks, [redacted]

-----Original Message-----

From: [redacted]
Sent: Monday, November 14, 2005 1:15 PM
To: [redacted]

Cc: [redacted]
Subject: RE: [redacted]

UNCLASSIFIED
NON-RECORD

Attached is a copy of a DRAFT application and order to authorize [redacted] Also is a DRAFT app/order for a [redacted]

-----Original Message-----

From: [redacted]
Sent: Monday, November 14, 2005 11:57 AM
To: [redacted]
Cc: [redacted]
Subject: RE: [redacted]

UNCLASSIFIED
NON-RECORD

The attached includes some edits (use document/reviewer to see changes).

PRIVILEGED DELIBERATIVE DOCUMENT - NOT FOR DISCLOSURE OUTSIDE THE FBI WITHOUT PRIOR OGC APPROVAL

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[redacted]
Assistant General Counsel
Science & Technology Law Unit
Engineering Research Facility
Bldg. 27958A Room A-207B
Quantico, Va. 22135

SCIENCE & TECHNOLOGY LAW UNIT - OFFICE OF THE GENERAL COUNSEL

-----Original Message-----

From: [redacted]
Sent: Monday, November 07, 2005 8:49 PM
To: [redacted]
Cc: [redacted]
Subject: FW: [redacted]

UNCLASSIFIED
NON-RECORD

We would like to make this document [redacted] This is our latest draft after [redacted] provided some input earlier. Please provide legal guidance to ensure we have drafted an appropriate SOP for [redacted]

SSA

-----Original Message-----

From:

Sent: Tuesday, October 25, 2005 4:05 PM

To:

Cc:

Subject:

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NON-RECORD

Please review and provide feedback. We truly need to improve our response time to an

I think an SOP would be a big help.

Thank you,

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CELL/OTD 001071

~~SECRET~~

DATE: 10-13-2012
CLASSIFIED BY 65179 DMH/STW
REASON: 1.4 (C, G)
DECLASSIFY ON: 10-13-2037

[REDACTED]
From: [REDACTED]
Sent: Thursday, July 20, 2006 4:22 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Schedule to meet with you?

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

~~SECRET~~
~~RECORD~~

[REDACTED] (S)



(S)

[REDACTED]

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-----Original Message-----

From: [REDACTED]
Sent: Thursday, July 20, 2006 11:05 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Schedule to meet with you?

~~SECRET~~
~~RECORD~~

[REDACTED] (S)

(S)

[REDACTED]

~~SECRET~~

CELL/OTD 001147

~~SECRET~~

(S)

-----Original Message-----

From: [REDACTED]
Sent: Wednesday, July 19, 2006 2:05 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Schedule to meet with you?

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~~SECRET~~
~~RECORD~~

(S)

(S)

Special Agent [REDACTED]
[REDACTED]

~~DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97, Foreign CounterIntelligence Investigations
DECLASSIFICATION EXEMPTION 1~~

~~SECRET~~

~~DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97, Foreign CounterIntelligence Investigations
DECLASSIFICATION EXEMPTION 1~~

~~SECRET~~

~~DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97, Foreign CounterIntelligence Investigations
DECLASSIFICATION EXEMPTION 1~~

~~SECRET~~

~~SECRET~~

CELL/OTD 001148

~~SECRET~~

~~DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97, Foreign CounterIntelligence Investigations~~
~~DECLASSIFICATION EXEMPTION 1~~
~~SECRET~~

~~DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97, Foreign CounterIntelligence Investigations~~
~~DECLASSIFICATION EXEMPTION 1~~
~~SECRET~~

~~DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97, Foreign CounterIntelligence Investigations~~
~~DECLASSIFICATION EXEMPTION 1~~
~~SECRET~~

~~DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97, Foreign CounterIntelligence Investigations~~
~~DECLASSIFICATION EXEMPTION 1~~
~~SECRET~~

~~SECRET~~

CELL/OTD 001160

[REDACTED]

From: [REDACTED]
Sent: Tuesday, November 22, 2005 12:05 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: [REDACTED]

UNCLASSIFIED
NON-RECORD

Thanks [REDACTED]

SSA [REDACTED]
[REDACTED]
[REDACTED]

-----Original Message-----

From: [REDACTED]
Sent: Tuesday, November 22, 2005 12:03 PM
To: [REDACTED]
Subject: RE: [REDACTED]

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UNCLASSIFIED
NON-RECORD

FYI: You might want to include a reference to the below---another policy approval requirement before SAs may

[REDACTED]

[REDACTED]

[REDACTED]

-----Original Message-----

From: [REDACTED]
Sent: Monday, November 14, 2005 11:57 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: [REDACTED]

UNCLASSIFIED
NON-RECORD

The attached includes some edits (use document/reviewer to see changes).

PRIVILEGED DELIBERATIVE DOCUMENT - NOT FOR DISCLOSURE OUTSIDE THE FBI WITHOUT PRIOR
OGC APPROVAL

[REDACTED]
Assistant General Counsel
Science & Technology Law Unit
Engineering Research Facility

CELL/OTD 001175

Bldg. 27958A Room A-207B
Quantico, Va. 22135



SCIENCE & TECHNOLOGY LAW UNIT - OFFICE OF THE GENERAL COUNSEL

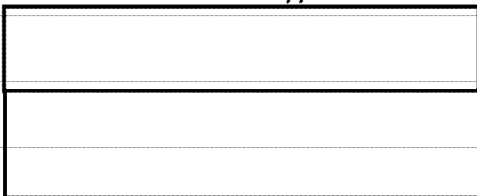
-----Original Message-----

From: [redacted]
Sent: Monday, November 07, 2005 8:49 PM
To: [redacted]
Cc: [redacted]
Subject: FW: [redacted]

UNCLASSIFIED
NON-RECORD

We would like to make this document [redacted] policy ASAP. This is our latest draft after [redacted] provided some input earlier. Please provide legal guidance to ensure we have drafted an appropriate SOP for [redacted]

SSA [redacted]



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-----Original Message-----

From: [redacted]
Sent: Tuesday, October 25, 2005 4:05 PM
To: [redacted]
Cc: [redacted]
Subject:

UNCLASSIFIED
NON-RECORD

Please review and provide feedback. We truly need to improve our response time to an [redacted]
[redacted] I think an SOP would be a big help.

Thank you, [redacted]

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UNCLASSIFIED

CELL/OTD 001176

UNCLASSIFIED

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UNCLASSIFIED

CELL/OTD 001177

To:

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Subject:

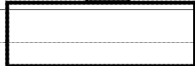
To All

I agree with most of the provisions of SA [redacted] and most Divisions will need to tailor the guidelines to their own structure. Specific protocol may need to be amended based on the results of meeting with CID concerning case agent [redacted]

[Redacted]

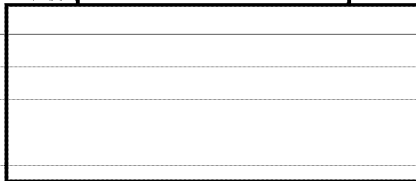
[Redacted] I have attached a PDF document provided to me
by [Redacted] There are subtle
differences in our authority emanating from DOJ. I believe [Redacted]
[Redacted]

This email does not require a response from anyone - but I welcome ideas that we [Redacted] can present to further our case and cause to CID.



Have a safe holiday season.....

SSA [Redacted]



-----Original Message-----

From: [Redacted]
Sent: Tuesday, December 20, 2005 5:03 PM
To:



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Subject: FW:

UNCLASSIFIED
NON-RECORD

Happy Holidays to each and everyone.

See attached "proposed" guidelines. Work with your CDC/AUSA to ensure that the procedures they deem appropriate for your division are followed.

Thanks

-----Original Message-----

From: [redacted]
Sent: Tuesday, December 20, 2005 2:58 PM
To: [redacted]
Cc: [redacted]
Subject: [redacted]

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UNCLASSIFIED
NON-RECORD

<< File: Revised SOP for [redacted]
This from [redacted] may be of some assistance

-----Original Message-----

From: [redacted]
Sent: Tuesday, December 20, 2005 12:40 PM
To: [redacted]
Cc: [redacted]
Subject: [redacted]

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NON-RECORD

[redacted]
I spoke with [redacted] after her presentation and advised that I'd like a copy of her powerpoint presentation. She said she thought you'd be getting that out to the Field? We're trying to come up with guidelines [redacted]

[REDACTED]
From: [REDACTED]
Sent: Thursday, December 22, 2005 10:05 AM
To: [REDACTED]
Subject: [REDACTED]

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NON-RECORD



[REDACTED]

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[REDACTED]

Saw your SOP re: [REDACTED] You are great - you need to be at HQ writing policy. I attached a copy of [REDACTED] policy that may be of some value - if not trash it.

Have a Great Christmas!!!! [REDACTED]

SSA [REDACTED]
[REDACTED]
[REDACTED]

UNCLASSIFIED

CELL/OTD 001206

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 09/02/2005

To:

Attn: All Agents

From:

Chief Division Counsel

Contact: CDC

Approved By:

Drafted By:

Case ID #:

(Pending)
(Pending)

Title: Legal Requirements for

Synopsis: This EC explains the legal authority required to

Enclosure(s):

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CELL/OTD 001207

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

FYI: the attached Wpd doc is the latest in the series of decisions on compelling [REDACTED]

-----Original Message-----

From: [REDACTED]
Sent: Monday, October 31, 2005 3:06 PM
To: [REDACTED]
Subject: FW [REDACTED]

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

-----Original Message-----

From: [REDACTED]
Sent: Wednesday, October 26, 2005 2:46 PM
To: FBI_ALL CDCs
Cc: HQ_DIV09_STLU
Subject: RE: [REDACTED]

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Here's the [REDACTED]

-----Original Message-----

From: [REDACTED]
Sent: Wednesday, October 26, 2005 1:30 PM
To: FBI_ALL CDCs
Cc: HQ_DIV09_STLU
Subject: [REDACTED]

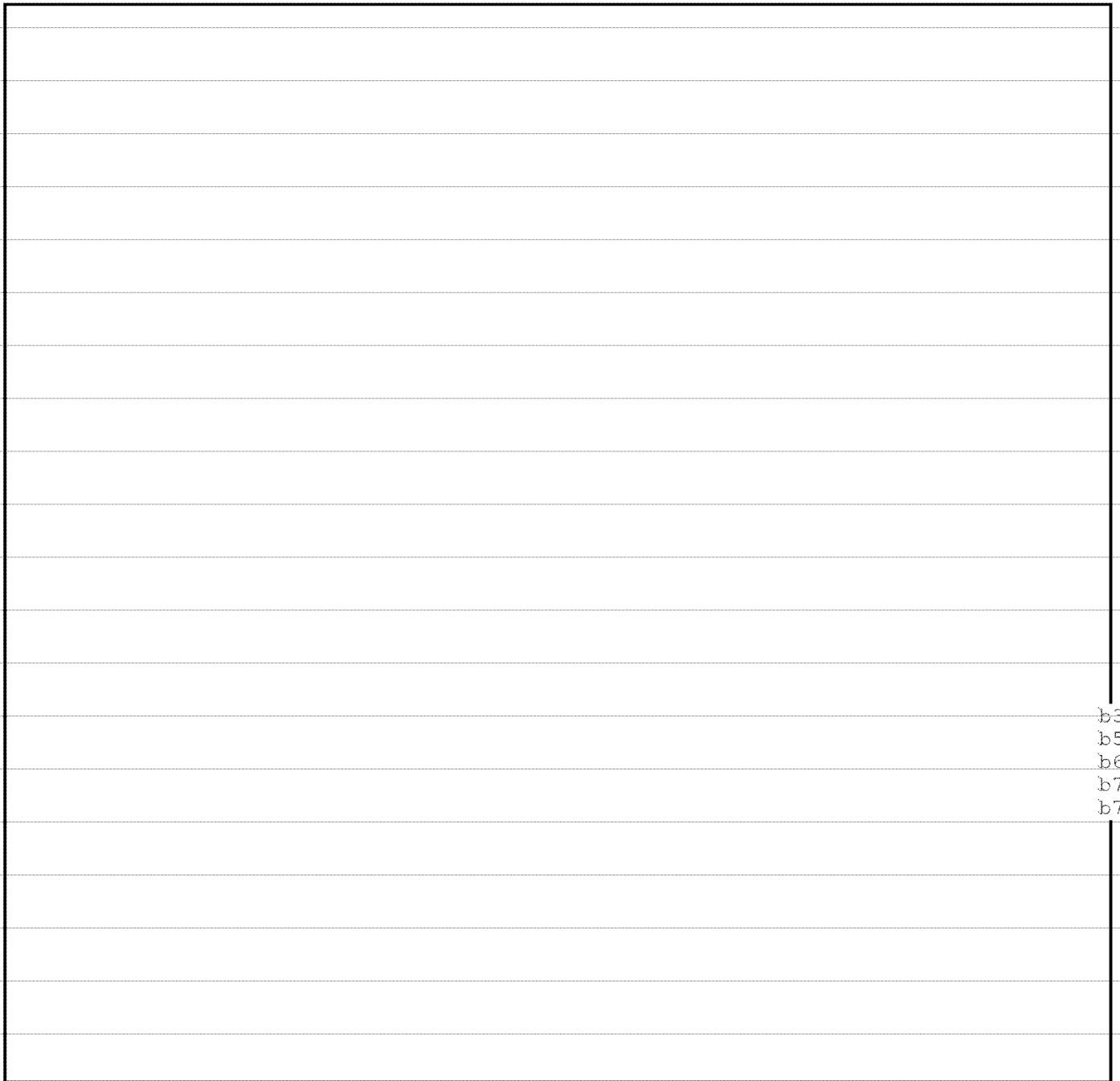
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To Update you on the status of current litigation on the authority to [REDACTED]

[REDACTED]

CELL/OTD 001214



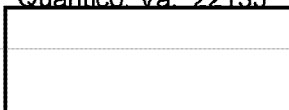
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Please keep us apprised of developments in your district.

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Assistant General Counsel
Science & Technology Law Unit
Engineering Research Facility
Bldg. 27958A Room A-207B
Quantico, Va. 22135



SCIENCE & TECHNOLOGY LAW UNIT - OFFICE OF THE GENERAL COUNSEL

-----Original Message-----

From: [REDACTED]
Sent: Thursday, September 01, 2005 9:36 AM
To: FBI_ALL CDCs
Subject: [REDACTED]

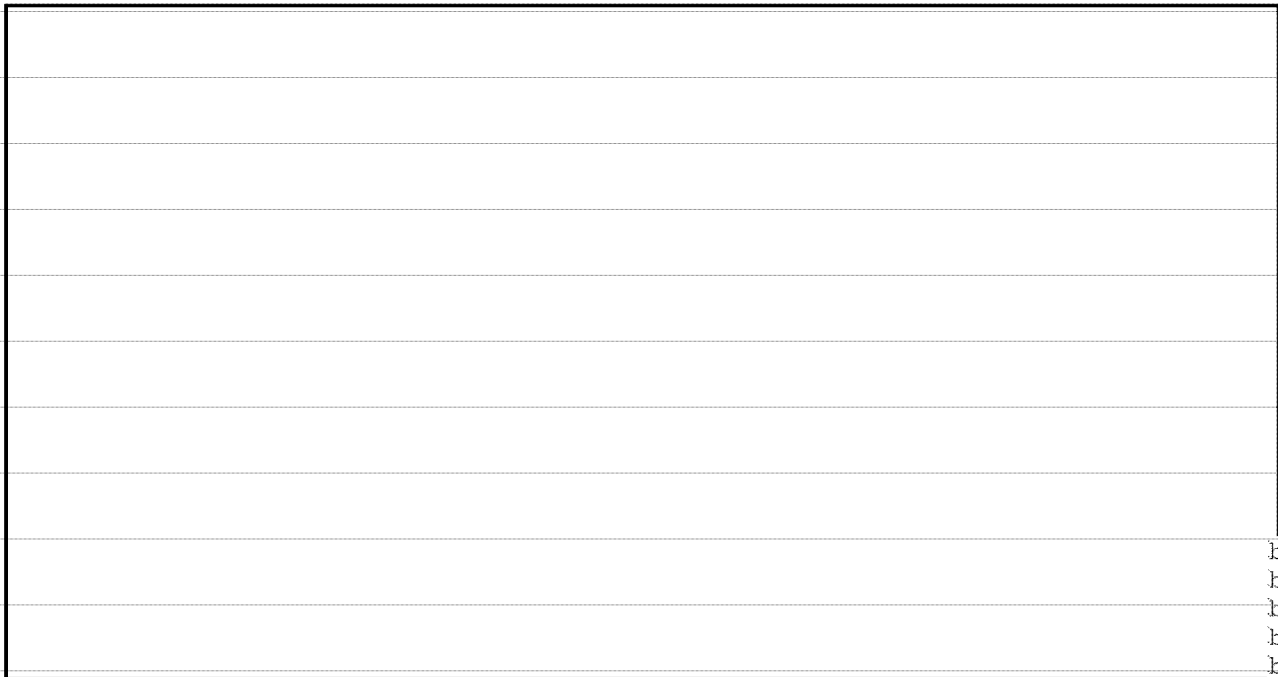
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SENSITIVE BUT UNCLASSIFIED
NON-RECORD

There is a rapidly growing trend among magistrate judges throughout the nation [REDACTED]

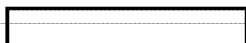
[REDACTED]

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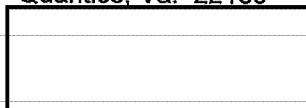


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PRIOR OGC APPROVAL



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Quantico, Va. 22135



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CELL/OTD 001217

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CELL/OTD 001218

Slip Copy
Slip Copy, 2005 WL 3471754 (S.D.N.Y.)
(Cite as: 2005 WL 3471754 (S.D.N.Y.))

Only the Westlaw citation is currently available.

United States District Court,
S.D. New York.
In re APPLICATION OF THE UNITED STATES OF
AMERICA FOR AN ORDER FOR DISCLOSURE
OF TELECOMMUNICATIONS RECORDS AND
AUTHORIZING THE USE OF A PEN REGISTER
AND
TRAP AND TRACE
No. 05 MAG.1763.

Dec. 20, 2005.

OPINION AND ORDER

GORENSTEIN, Magistrate J.

*I On October 19, 2005, the Court granted an *ex parte* application from the Government seeking an order requiring a provider of cellular telephone service to produce, *inter alia*, information pertaining to the location of cell site towers receiving a signal from a particular cellular telephone for a period of 60 days. The Court's Order expired on December 18, 2005. Because at least three other district courts have concluded that the Government lacks statutory authority for applications relating to certain types of cell site data, the Court is setting forth the reasons it granted the application in this case. Subsequent to the issuance of the Order, the Court sought additional information and briefing from the Government regarding the application. In addition, the Court asked the Federal Defenders of New York, Inc. to appear as *amicus curiae*. The Court has greatly benefitted from the briefing provided by both sides.

I. BACKGROUND

Cellular telephones communicate by means of signals to cellular telephone towers, which are operated by the various commercial carriers that provide cellular telephone service. As a cell phone user moves from place to place, the cell phone automatically switches to the tower that provides the best reception. In this case, the Government's application sought information on a prospective basis regarding cell towers being signaled by a specifically identified cellular telephone. The application, which remains under seal, furnishes detailed information indicating that the user of the target cellular telephone is engaged in ongoing criminal activity involving the illegal sale of contraband and that a warrant for the arrest of this person is outstanding. An order was previously granted by another Magistrate Judge in this District for cell site information with respect to the same target telephone.

The relevant portions of the application seek, for a period of 60 days, "cell site activations" for the telephone. The application also seeks a directive that the provider of the service furnish a map showing cellular tower "locations/addresses, sectors and orientations" as well as "the physical address/location of all cellular towers in the specified market." In a portion of the application not relevant to the instant opinion, the application seeks numbers dialed, incoming numbers, call durations, and other information relating to the subscriber of the target cellular telephone. The application contains additional provisions requiring that the provider furnish certain assistance to the federal law enforcement agents necessary to comply with the requested court order.

While the application uses the term "cell-site activations," the Government has specified that it seeks "cell-site information concerning the physical location of the antenna towers associated with the beginning and termination of calls to and from a particular cellphone." See Letter to the Court from Thomas A.G. Brown, dated November 22, 2005 ("Gov't Letter"), at 10. This phrasing corresponds roughly to the information that in fact has been obtained by the Government in this District in the past with respect to cell site information. Under prior orders issued in this District, the Government has been able to obtain a list of each call made by the subject cell phone, along with a date, start time and end time. With respect to the beginning or end of the call (and possibly sometimes in between), there is a listing of a three-digit number assigned to a cellphone tower or base station. At least one cellular provider will give, in addition to the number of the tower, a digit ("1," "2" or "3") indicating a 120 degree "face" of the tower towards which the cell phone is signaling.

*2 In suburban or rural areas, towers can be many miles apart. The Court has examined a map of cellular towers of a provider in lower Manhattan, which is one of the areas more densely populated by towers. In this area, the towers may be anywhere from several hundred feet to as many as 2000 feet or more apart.

The Court is aware of three cases that have considered the availability of cell site data: *In re Application for Pen Register and Trap/Trace Device with Cell Site Location Authority*, 396 F.Supp.2d 747 (S.D.Tex.2005) ("Texas Decision"); *In the Matter of an Application of the United States for an Order (1) Authorizing the Use of a Pen Register and a Trap and Trace Device and (2) Authorizing Release of Subscriber Information and/or Cell Site Information*, 396 F.Supp.2d 294 (E.D.N.Y.2005) ("EDNY Decision"); and *In re Application of the United States for an Order Authorizing the Installation and Use of*

CELL/OTD 001219

a *Pen Register and a Caller Identification System on Telephone Numbers (Sealed) and Production of Real Time Cell Site Information*, 2005 WL 3160860 (D.Md. Nov. 29, 2005) ("Maryland Decision"). These cases appear to involve requests for cell site information that go beyond both what has been sought in this case and what has actually been received by the Government pursuant to any cell site application in this District. First, the cell site information provided in this District is tied only to telephone calls actually made or received by the telephone user. Thus, no data is provided as to the location of the cell phone when no call is in progress. Second, at any given moment, data is provided only as to a single cell tower with which the cell phone is communicating. Thus, no data is provided that could be "triangulated" to permit the precise location of the cell phone user. Third, the data is not obtained by the Government directly but is instead transmitted from the provider digitally to a computer maintained by the Government. That is, the provider transmits to the Government the cell site data that is stored in the provider's system. The Government then uses a software program to translate that data into a usable spreadsheet.

II. DISCUSSION

The Government's application cites to two enactments: the statutes governing the installation of pen registers and trap and trace devices, 18 U.S.C. §§ 3121-27 ("the Pen Register Statute"), and a provision of the Stored Wire and Electronic Communications and Transactional Records Access Act codified at 18 U.S.C. § 2703. We begin our discussion with the text of these statutes inasmuch as "[e]very exercise in statutory construction must begin with the words of the text." *Saks v. Franklin Covey Co.*, 316 F.3d 337, 345 (2d Cir.2003). "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997) (citations omitted). In general, if the statutory language is not ambiguous, the statute is construed according to the plain meaning of the words. See, e.g., *Greenery Rehab. Group, Inc. v. Hammon*, 150 F.3d 226, 231 (2d Cir.1998) (citing *Rubin v. United States*, 449 U.S. 424, 430 (1981)). We look to the legislative history and other tools of statutory construction only if the statutory terms are ambiguous. *Id.* (citing *Aslanidis v. United States Lines, Inc.*, 7 F.3d 1067, 1073 (2d Cir.1993)).

A. Pen Register Statute

*3 The Pen Register Statute is the statute used to obtain information on an ongoing or prospective basis regarding outgoing calls from a particular telephone (captured by a "pen register") and incoming calls (captured by a "trap and trace" device). These devices are more fully defined in 18 U.S.C. § 3127(3), (4). [FNI] A "pen register" is defined as a device that provides not merely the telephone number of a telephone call dialed from the subject telephone--the most

common use of the term "pen register"--but also "signaling information" transmitted by the subject telephone itself or the "facility from which a wire or electronic communication is transmitted," 18 U.S.C. § 3127(3). The term "signaling information" was added by the USA PATRIOT Act in 2001. See Pub.L. No. 107-56, § 216(c)(2), 115 Stat. 272, 290 (2001). Prior to the enactment of the USA PATRIOT Act, the District of Columbia Circuit had held in connection with its interpretation of a related statute, 47 U.S.C. § 1001(2), that because a cell phone sends "signals" to cellphone towers in order to operate, the term "signaling information" includes information on the location of cell site towers used by a cellular telephone. See *United States Telecom. Ass'n v. FCC*, 227 F.3d 450, 458, 463-64 (D.C.Cir.2000). [FN2] While one cell site decision notes an absence of legislative history indicating that Congress intended cell site data to be included in this term when it enacted the USA PATRIOT Act, see *Texas Decision*, 396 F.Supp.2d at 761, the language enacted is not so limited. Indeed, the legislative history reflects that the language regarding "signaling information" would apply "across the board to all communications media." H.R.Rep. No. 107-236(I), 107th Cong., 1st Sess., available at 2001 WL 1205861, at *53 (Oct. 11, 2001). Accordingly, we will interpret this provision in accordance with its most obvious meaning and the one that naturally would have been available to Congress, through the *United States Telecom* case, when the statutory language was enacted in 2001. See *Lorillard v. Pons*, 434 U.S. 575, 581 (1978) ("Where ... Congress adopts a new law incorporating sections of a prior law, Congress normally can be presumed to have had knowledge of the interpretation given to the incorporated law, at least insofar as it affects the new statute.").

FNI. At one time, a "pen register" referred perforce to a physical device that recorded information regarding outgoing telephone calls. In this District at least, law enforcement agencies do not in all instances need to install a physical device on a telephone line to obtain information regarding these calls. Instead, information that was heretofore captured by a pen register can now be transmitted digitally by the telephone service provider. The Government has properly assumed that, despite this change in technology, it is bound to follow the Pen Register Statute to obtain information otherwise covered by the statute.

FN2. Because the location information is "transmitted" by the cell phone, a pen register (not a trap and trace device) identifies location information for both incoming and outgoing calls. See 18 U.S.C. § 3127(3).

On a separate point, *amicus* contends that the "signaling information" available under the Pen Register Statute is only the "signaling information" that is transmitted during a particular telephone call. See Letter to the Court from Yuanchung Lee, dated October 27, 2005

("Amicus Letter") at 16. The statute is ambiguous on this point, however. It says only that a pen register records the "signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted." 18 U.S.C. § 3127(3). The term "is transmitted" is susceptible of two meanings: it could refer either to a particular communication or to an ongoing transmission. It is not necessary to reach this issue, however, because here the Government has sought only cell-site information tied to telephone calls.

In addition, construing the pen register definition as covering the capture of cell site data is the only way to make sense of a separate statute: 47 U.S.C. § 1002. As described in the next section, that statute specifically assumes that cell site data is available under the Pen Register Statute.

Notably, the showing required to install a pen register is a low one: the Government need only identify the law enforcement agency conducting the investigation and certify that the information likely to be obtained is "relevant to an ongoing criminal investigation" being conducted by the agency. 18 U.S.C. § 3122(b)(1), (2). Orders requiring the installation of a pen register may not exceed 60 days, though they may be extended for additional 60-day periods if the required showing is made. 18 U.S.C. § 3123(c). In certain emergency situations, a pen register may be installed even in the absence of a court order. 18 U.S.C. § 3125. The Pen Register Statute explicitly excludes from its definition "the contents of any communication"--an exclusion not relevant to the instant application as there is no effort to obtain the contents of any telephone calls. See 18 U.S.C. § 3127(3).

*4 The Government has certified that the cell site information it seeks here is "relevant and material to an ongoing investigation." Thus, the Pen Register Statute would by itself provide authority for the order being sought by the Government were it not for a provision codified elsewhere in the United States Code. That provision occurs in an "exception" clause within 47 U.S.C. § 1002, which is entitled "Assistance capability requirements."

B. 47 U.S.C. § 1002

Section 1002 was enacted as part of the Communications Assistance for Law Enforcement Act of 1994. It requires telecommunications carriers to ensure that their equipment is capable of providing a law enforcement agency with information to which it may be entitled under statutes relating to electronic surveillance. Section 1002 provides, in pertinent part, as follows:

a telecommunications carrier shall ensure that its equipment, facilities, or services that provide a customer or subscriber with the ability to originate, terminate, or direct communications are capable of--

(2) expeditiously isolating and enabling the government, pursuant to a court order or other lawful authorization, to access call-identifying information that is reasonably available to the carrier--

(A) before, during, or immediately after the transmission of a wire or electronic communication (or at such later time as may be acceptable to the government); and

(B) in a manner that allows it to be associated with the communication to which it pertains,

except that, with regard to information acquired solely pursuant to the authority for pen registers and trap and trace devices (as defined in section 3127 of Title 18), such call-identifying information shall not include any information that may disclose the physical location of the subscriber (except to the extent that the location may be determined from the telephone number);

47 U.S.C. § 1002(a)(2) (emphasis added).

The phrase "information that may disclose the physical location of the subscriber" in the exception clause can reasonably be interpreted to encompass the prospective cell site information being sought by the Government here, although, as already discussed, the information the Government obtains in this District "disclose[s] the physical location" of the subscriber in only the roughest manner. [FN3]

FN3. A literal reading of this exception clause might lead one to question whether it is of any relevance at all to the Government's application inasmuch as the clause is framed only as an exception to the sort of "capab[ilities]" a carrier is obligated to "ensure" that it possesses. Under this reading, the exception clause merely states that a carrier is not obligated to ensure that it possesses the capability to disclose physical location information. The clause says nothing about whether the carrier should or should not disclose such information. Nor does it say anything about whether the Government may obtain an order for such information. As is described below, however, the legislative history relevant to this provision reflects that a literal reading of this kind would be at odds with the intention of Congress.

The effect of the exception clause is not obvious at first glance. But the clause plainly reflects an underlying assumption that physical location data *would* have been obtainable under the Pen Register Statute in the absence of the exception clause. Otherwise, it would have been unnecessary to add the exception clause at all. Indeed, the legislative history of section 1002 states as much. See H. Rep. 103-827(I), reprinted in 1994 U.S.C.C.A.N. 3489, 3497, 1994 WL 557197, at *17 (Oct. 4, 1994) ("Currently, in some cellular systems, transactional data that could be obtained by a pen register may include location information."); S. Rep. 103-402, available at 1994 WL

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FN4. In fact, the definition of a "pen register" in effect at the time of the exception clause's passage did not seem to include cell site or location information, inasmuch as the term "pen register," prior to the USA PATRIOT Act amendment in 2001, had been defined as a device that identified "the number dialed or otherwise transmitted." See Pub.L. No. 99-508, § 301, 100 Stat 1848 (Oct. 21, 1986). Nonetheless, Congress obviously thought such information was available under the Pen Register Statute when the exception clause was enacted in 1994.

*5 But if the exception clause of 47 U.S.C. § 1002(a)(2) is read to mean that a pen register may not be used at all to deliver cell site information to the Government, then the Government may not acquire cell site information by *any* mechanism. This is because the Pen Register Statute is clear that the device that captures cell site information--that is, a "pen register"--may be installed only pursuant to the Pen Register Statute itself. As noted, the Pen Register Statute defines a pen register as a device that provides "signaling information" (e.g., cell site information). See 18 U.S.C. § 3127(3). At the same time, the Pen Register Statute states unequivocally (with exceptions not relevant here) that "no person may install or use a pen register ... without first obtaining a court order under section 3123"--that is, pursuant to a court order issued under the Pen Register Statute itself. See 18 U.S.C. § 3121(a). Taken together, the two sections require that prospective cell site information may be obtained *only* pursuant to the Pen Register Statute. If the exception clause in 47 U.S.C. § 1002(a)(2) is read to mean that the Pen Register Statute may not be used in any form to obtain cell site information, as is urged by *amicus* and the other cell site cases, the exception clause in combination with section 3121(a) would constitute a directive that cell site information was not obtainable by any mechanism at all.

Amicus and the other cell site cases do not address this question and simply assume that 47 U.S.C. § 1002(a)(2) means that some mechanism other than the Pen Register Statute may be used to obtain cell site information as long as this mechanism stands on its own--that is, as an independent ground authorizing the collection of cell site data. The cell site cases believe a search warrant under Fed.R.Crim.P. 41 is the appropriate mechanism, see, e.g., Texas Decision, 396 F.Supp.2d at 757, and *amicus* asserts that it is the Title III wiretap statute, see Letter to the Court dated December 6, 2005 from Yuanchung Lee, at 5-6. But, again, this reading fails to give effect to the explicit directives contained in the Pen Register Statute that a pen register--which is defined to include a device providing cell site information--can be installed only pursuant to "a court order under section 3123 of [Title 18]." 18 U.S.C. § 3121(a). In other words, Fed.R.Crim.P. 41 or Title III cannot by themselves provide authority for the

Government's application because any warrant or order issued pursuant to those mechanisms must necessarily authorize the installation of a "pen register."

If the cell site cases and *amicus* were correct in their interpretation of the exception clause--that is, that it constitutes a simple direction that no cell site information may be obtained pursuant to the Pen Register Statute--this Court might conclude that Congress intended that the Government could not obtain cell site information by any means. However, the exception clause in fact does not contain a direction that no cell site information may be obtained "pursuant" to the Pen Register Statute. Instead, it states that cell site information may not be obtained "*solely* pursuant" to the Pen Register Statute. 47 U.S.C. § 1002(a)(2). The phrase "solely pursuant" is an unusual one--so unusual that the only time it appears in the United States Code is in 47 U.S.C. § 1002(a)(2). [FN5]

FN5. The phrase "only pursuant" appears several dozen times in the United States Code. But in each instance the phrase is used to direct affirmatively how an act is to be done--for example, to direct that judicial review of an order may be obtained "only pursuant" to a particular statutory provision. 49 U.S.C. § 46301(d)(7)(D)(iii). Here, however, the exception clause authorizes something to be done as long as it is *not* done "solely pursuant" to a particular statutory provision. Thus, the statutes using "only pursuant" provide no assistance in our interpretation.

*6 The use of the word "solely" is significant. "Solely" means "without another" or "to the exclusion of all else." See *Merriam-Webster's Collegiate Dictionary* (10th ed.2000), at 1114. If we are told that an act is not done "solely" pursuant to some authority, it can only mean that the act is done pursuant to that authority "*with* [] another" authority. *Id.* As a result, the use of the word "solely" in section 1002 necessarily implies that "another" mechanism may be combined--albeit in some unspecified way--with the Pen Register Statute to authorize disclosure of cell site information.

As just noted, *amicus* and the other cell-site cases read the exception clause as a direction to the Government to rely exclusively on some other mechanism to obtain the cell-site information and to rely on that other mechanism alone. We have already pointed out one problem with this reading--that it results in a contradiction in the terms of the Pen Register Statute and 47 U.S.C. § 1002. But there is a second problem, which is reflected in section 1002 itself. If section 1002 means that the Pen Register Statute cannot be relied on whatsoever to obtain cell site information, it would have been sufficient for the statute's drafters to use the word "pursuant" rather than the phrase "solely pursuant." In other words, the use of the word "pursuant" would have been enough by itself to give a clear direction

that cell-site information cannot be obtained under the Pen Register Statute. Given the doctrine that "we must, if possible, construe a statute to give every word some operative effect," *Cooper Industries, Inc. v. Aviall Services, Inc.*, 125 S.Ct. 577, 584 (2004), the word "solely" must be given semantic content if it is possible to do so. The most reasonable reading of the word "solely" is that if cell-site information is not being obtained "solely" pursuant to the statute, it is being obtained pursuant to the opposite of "solely": that is, not "alone" but in combination with some other mechanism.

While we have extracted some semantic content out of the word "solely," it has hardly been a satisfying exercise inasmuch as we are left with the conclusion that Congress has given a direction that cell site information may be obtained through some unexplained combination of the Pen Register Statute with some other unspecified mechanism. As unsatisfying as this result is, the only alternative is either (1) to ignore the plain dictate of 18 U.S.C. § 3121(a) by assuming that 47 U.S.C. § 1002 means that some other mechanism may be used to intercept "physical location" information if it can do so on an independent basis, or (2) to ignore Congress's inclusion of the otherwise unnecessary word "solely" and conclude that ongoing cell site data is not obtainable at all.

We reject the first choice as it requires us to ignore a clear statutory command. Nor can we accept the second choice because it requires us to conclude that Congress intended that ongoing cell site location information could not be obtained by any means at all. Congress, however, plainly manifested its intention to the contrary. First, as noted, any such interpretation necessarily reads the word "solely" out of the exception clause. If Congress had intended that no prospective cell site data be obtainable, it would have simply said in the exception clause that physical location information could not be obtained "pursuant" to the Pen Register Statute.

*7 Second, the only legislative history that directly bears on the meaning of the exception clause--consisting of a prepared statement of former Federal Bureau of Investigation ("FBI") director Louis Freeh--reflects that the § 1002 exception was put in at the suggestion of the FBI itself, as a way of assuring Congress that the FBI would rely on mechanisms--referred to as "court orders and subpoenas"--other than the Pen Register Statute to obtain physical location information, including cell site data. See *Police Access to Advanced Communication Systems: Before the Subcommittee on Technology and the Law of the Committee on the Judiciary United States Senate and the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary House of Representatives* (1994) (statement of FBI Director Louis J. Freeh) ("Freeh Statement"), available at 1994 WL 223962 ("Even when such generalized location information, or any other type of 'transactional' information, is obtained from communications service providers, court orders or

subpoenas are required and are obtained."). Thus, it would not make sense for Congress to have taken Director Freeh up on his proposal by barring law enforcement agencies from obtaining cell site information entirely.

Third, the District of Columbia Circuit, in considering the "solely pursuant" exception in the context of a Federal Communications Commission's rule-making proceeding, approved of the FCC's decision that section 1002 "simply imposes upon law enforcement an authorization requirement different from that minimally necessary for use of pen registers and trap and trace devices." *United States Telecom Ass'n*, 227 F.3d at 463 (citing *In the Matter of Communications Assistance for Law Enforcement Act*, 14 F.C.C.R. 16794, 16815, ¶ 44 (1999)). The plain import of this statement is that law enforcement agencies would be able to get authorizations to obtain cell site information from some mechanism, although the Government would have to meet an authorization requirement different from the minimal standard provided in the Pen Register Statute.

Having rejected the two alternatives--that is, that cell site data can be obtained without reliance on the Pen Register Statute or that it is not obtainable at all--we are back at the originally discussed reading of the word "solely." We thus conclude that Congress expected physical location information--including cell site information--would be obtainable by the Government by using some mechanism in combination with the Pen Register Statute. The idea of combining some mechanism with as yet undetermined features of the Pen Register Statute is certainly an unattractive choice. After all, no guidance is provided as to how this "combination" is to be achieved. But, again, in light of the language used in section 1002, the Court believes that it is the only choice possible.

The next question is (1) whether the other mechanism relied on by the Government--18 U.S.C. § 2703--is an appropriate mechanism to "combine" with the Pen Register Statute, and (2) if so, how section 2703 should be "combined" with the Pen Register Statute. To answer these questions, we turn to an examination of section 2703.

C. Section 2703

*8 Section 2703 contains three main sections that authorize the Government to obtain records. Two are not relevant here: section 2703(a) authorizes disclosure of the contents of wire or electronic communications held by a "provider of electronic communication service" and section 2703(b) authorizes disclosure of the contents of wire or electronic communications in a "remote computing service."

Section 2703(c)(1) --the section relied upon by the Government--provides that a "governmental entity may require a provider of electronic communication service or remote computing service to disclose a record or other information pertaining to a subscriber to or customer of

such service (not including the contents of communications)," provided the Government "offers specific and articulable facts showing ... reasonable grounds to believe that ... the records or other information sought, are relevant and material to an ongoing criminal investigation" under 18 U.S.C. § 2703(d). A separate portion of section 2703 provides that basic subscriber information--such as name, address and duration of calls--need not even meet this threshold showing but is obtainable merely by subpoena. See 18 U.S.C. § 2703(c)(2). The Government may obtain additional information about a subscriber under 18 U.S.C. § 2703(c)(1)(B) as long as the "specific and articulable facts" standard is met.

The first question that arises is whether prospective cell site data is encompassed in the phrase "record or other information pertaining to a subscriber to or customer of [an electronic communication] service."

Certainly, prospective cell site data is "information," and it may also be said--in this District at least--to be in the form of a "record" inasmuch as cell site information is transmitted to the Government only after it has been in the possession of the cell phone company. Cell site data also "pertain[s]" to a subscriber to or customer of cellular telephone service. The remaining question is whether cellular telephone service constitutes an "electronic communication service." According to 18 U.S.C. § 2711(1), we must turn to 18 U.S.C. § 2510 for the definition of this term. Section 2510 defines an "electronic communication service" to mean "any service which provides to users thereof the ability to send or receive wire or electronic communications." 18 U.S.C. § 2510(15).

The phrase "electronic communication" is itself defined. Section 2510(12) provides that "electronic communication" means "any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce." With the definition taken thus far, it would be plain that a user of a cellular telephone is a "customer of an electronic communication service" under section 2703(d) since the cellular telephone makes transmissions to a tower through an electromagnetic system. See generally <http://www.fda.gov/cellphones/qa.html#1> (wireless phones rely on radio-frequency energy, which is a form of electromagnetic energy).

*9 *Amicus* argues, however, that an exception contained in the definition of "electronic communication" in section 2510(12) is of importance here. *Amicus* Letter at 8. The exception states that an "electronic communication ... does not include ... any communication from a tracking device (as defined in section 3117 of this title)." 18 U.S.C. § 2510(12)(C). Section 3117 in turn defines a tracking device as "an electronic or mechanical device which permits the tracking of the movement of a person or thing." 18

U.S.C. § 3117(b).

Because a cellular telephone arguably has the capability of being a "device which permits ... tracking"--in addition to its normal voice and data transmission uses--we must determine if the tracking device exception to the definition of "electronic communication" means that a cellular telephone service subscriber is not in fact a "customer of an electronic communication service" under section 2703(c).

To understand the import of this exception, it is necessary to examine what "service" is being provided to the customer of a cellular telephone. This is because the term "electronic communication" is used in section 2703 to describe the sort of "service" that an individual subscribes to or is a customer of, and the Government may only obtain "records or other information" pertaining to such a person. Section 2510(15) says that the relevant service is a service that provides to users thereof the ability to "send or receive ... electronic communications." The exception in section 2510(12)(C) tells us only that "tracking" information is not considered to be an electronic communication. But this exception does not alter the fact that the cellular telephone service that the customer uses and to which the subscriber subscribes is nonetheless an "electronic communication service" under section 2510(15).

We next turn back to section 2703, which governs "information" pertaining to "customers and users" of electronic communications service. It is certainly the case that cell site or tracking information constitutes "information" pertaining to customers or users of electronic communications services. Thus, such cell site or tracking information comes within section 2703(c) and consequently is the sort of "information" that the Government may seek pursuant to an order under section 2703(d).

The objection to this reading, see *Amicus* Letter at 8-9, appears to be as follows: section 2703(c) governs information pertaining to electronic communication services. The definition of "electronic communication" in section 2510(12)(C) excludes tracking information. Therefore, the Government cannot get under section 2703 the tracking information a cell phone provides.

The problem with this syllogism is that it assumes that the term "information" in section 2703(c) is limited by the definition contained in section 2510. In fact, section 2510 does not speak to the scope of the term "information" in section 2703. Rather, section 2510 speaks only to the meaning of the term "electronic communication service," which it defines broadly as a service that "provides to users thereof the ability to send or receive ... electronic communications." Thus, the term "electronic communications service" in section 2703(c) refers broadly to the "service" of providing users with the "ability to send or receive ... electronic communications." It does not refer to any one particular piece of information, such as cell site

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information, that might be obtainable from the device carried by the user of the service. While tracking information is not to be considered part of "electronic communications" pursuant to the exception contained in 2510(12)(C), this does not alter the fact that the cellular telephone service to which a cellphone customer subscribes necessarily comes within the definition of section 2510(15). After all, the service a cellular telephone company "provides to users" is the ability to make cellular telephone calls, not exclusively tracking information. Inasmuch as a service that provides cellular telephone capabilities is within section 2510(15), information pertaining to a subscriber to or customer of that "service" is obtainable under section 2703(c).

*10 In other words, information on the location of cell towers is not the "service" to which a cellular customer subscribes. Instead, the user subscribes to the voice--and perhaps data--transmission capabilities provided by the cellular carrier. Although tower location information may be a necessary ingredient for the operation of that service, the "service" to which the user subscribes is still the "electronic communication" capabilities of the cellular telephone. Section 2703(c) tells us broadly that the Government may obtain "information" pertaining to users of this sort of service. Cell site information is just one of many possible categories of "information" that pertains to users of this service. The exception in section 2510(12)(C) does not purport to limit the meaning of the term "information." [FN6]

FN6. There is potentially an independent reason why the exception clause in section 2510(12)(C) does not limit the Government's ability to obtain cell site information under section 2703. The exception clause points to section 3117 for the definition of a tracking device. Section 3117, however, is a statute that refers to a tracking device that has been "install[ed]" at the behest of the Government. 18 U.S.C. § 3117(a). Here, however, no tracking device has been "installed."

It may seem anomalous that the Government may obtain under section 2703 a particular category of information pertaining to a user of electronic communications that is excepted from the term electronic communications itself. But this is not surprising given the multiple purposes that the section 2510(12)(C) exception serves. The definitions in section 2510 apply across the board to (1) wiretaps; (2) section 2703 applications; and (3) Pen Register Statute applications. See 18 U.S.C. §§ 2510 (introductory clause); 2711(1); and 3127(1). There is no suggestion in the structure of the statutes that the section 2510(12)(C) exception was meant to limit in any way the "information" that the Government was entitled to get under section 2703(c).

In light of the analysis so far, section 2703(c)'s use of the term "information" would cover the prospective cell site

data being sought here. At least some of the cell site cases recognize that the term "information" includes historical cell site information. See Texas Decision, 396 F.Supp.2d at 759 n. 16; EDNY Decision, 396 F.Supp.2d at 313; Maryland Decision, 2005 WL 3160860, at *4; see also *Amicus* Letter at 12. They question, however, whether cell site information not yet in existence at the time of the order--that is, prospective or what is colloquially referred to as "real time" data--may be included in the term "information."

The text of the statute itself contains no limitation of this kind. Some courts have pointed to the title of the chapter in which the statute appears-- the "Stored Wire and Electronic Communications and Transactional Records Access"--as harboring some importance in this regard. See Texas Decision, 396 F.Supp.2d at 760. But this title is of limited significance for two reasons. First, it refers to types of data-- "communications" and "records"-- that are narrower than one of the actual terms in section 2703(c): "information." Second, and more significantly, even the data being obtained regarding the location of the cell phone is in fact "stored" by the carrier--at least in this District. Cell site information is not obtained directly by the Government. Instead, it is transmitted to the Government only after it has come into the possession of the cellular telephone provider in the form of a record.

*11 The question of "historical" versus "real time" data is still of some significance, however. While the data the Government seeks can appropriately be characterized as "stored" or "historical" records by the time the Government gets possession of them, the Government wants that information on an ongoing basis. That is, it wants a continuing order for the cell phone company to provide the stored records in the future.

Amicus and the cell site cases have properly pointed to aspects of 2703 that make it unsuited to requiring the carrier to provide cell site data on an ongoing basis. *Amicus* Letter at 12. The two related statutes that plainly permit transmission of information to the Government on an ongoing basis--the Pen Register Statute and Title III--both contain limitations, 60 days and 30 days respectively, that cap the duration of any prospective orders. See 18 U.S.C. § 3123(c)(1); 18 U.S.C. § 2518(5). Section 2703, by contrast, contains no such time limitation. In a similar vein, the Pen Register Statute and Title III contain automatic sealing provisions, see 18 U.S.C. § 2518(8)(b) and 3123(d)(1)--provisions that are obviously important to the Government when obtaining ongoing information--whereas section 2703 does not.

These omissions, however, are understandable when considered in the context of the discussion presented thus far. *Amicus* and the cell site cases have conducted their analysis of section 2703 as an effort to determine whether Congress "intended" section 2703 to cover prospective cell site data. See, e.g., Texas Decision, 396 F.Supp.2d at 760;

Amicus Letter at 11-12. But there is no reason to believe that section 2703 was specifically enacted as the mechanism to cover such cell site data inasmuch as the Pen Register Statute professes to be the only statute that authorizes the installation of the device used to capture this sort of data, i.e. "signaling information." See 18 U.S.C. § 3121(a).

Section 2703, however, remains an appropriate candidate as a legal mechanism that could properly be "combined," as contemplated by 47 U.S.C. § 1002(a)(2), with the Pen Register Statute to obtain cell site locations. This is because the text of section 2703(c) covers the data the Government seeks here. The heart of the statute--granting authority to obtain "information" about cell phone customers--does not on its face contain any limitation regarding when such information may come into being. It is thus susceptible to an interpretation that the "information" sought might come into being in the future. Moreover, because cell site data in this District exists as a record before it is transmitted to the Government, the text of the statute does not prevent the Government from presenting daily or hourly (or even more frequent) applications to the Court to obtain historical cell site data. Thus, as a theoretical matter, the statute permits the Government to obtain cell site data on a continuing or ongoing basis even under a narrow reading of section 2703.

*12 The principal reason why the statute does not serve easily as a fully independent source of authority for providing such data is a structural one: the statute does not contain certain procedural features, such as a time limitation, that Congress has typically included in statutes that permit the gathering of ongoing information. But this is an understandable omission given that Congress envisioned a pen register as the mechanism that would be used to capture cell site data, and the Pen Register Statute contains the procedural features missing from section 2703. In other words, the Pen Register Statute contains the time limitation (and sealing) provisions that are tied to the very "device"--that is, the pen register--that Congress deemed necessary to obtain prospective cell site information. It is thus logical to conclude that these two statutes in combination contain the necessary authority contemplated by Congress in 47 U.S.C. § 1002.

Section 2703 is an appropriate mechanism to "combine" with the Pen Register Statute for yet another reason. As the District of Columbia Circuit recognized, and as is implicit from the statement presented by Director Freeh, the objection to using the Pen Register Statute alone for the purpose of obtaining cell site data was that it contained a "minimal[]" authorization requirement. *United States Telecom Ass'n*, 227 F.3d at 463 (citing *In the Matter of Communications Assistance for Law Enforcement Act*, 14 F.C.C.R. 16794, 16815, ¶ 44 (1999)). Thus, the District of Columbia Circuit concluded that the section 1002 exception "simply imposes upon law enforcement an authorization requirement different from that minimally necessary for use of pen registers and trap and trace devices." *Id.* Section 2703, by contrast, contains a higher

authorization requirement than that required for a pen register. While the Pen Register Statute permits disclosure of information upon the mere showing that the information likely to be obtained is "relevant to an ongoing criminal investigation" being conducted by the agency, 18 U.S.C. § 3122(b)(2), section 2703 requires the Government to offer "specific and articulable facts showing ... reasonable grounds to believe that ... the records or other information sought, are relevant and material to an ongoing criminal investigation." See 18 U.S.C. § 2703(d). Using section 2703 thus fulfills the apparent purpose of the section 1002 exception: to require something different from than the "minimal[]" authorization requirement imposed by the Pen Register Statute.

Of course, *amicus* and the cell site cases suggest that Fed.R.Crim.P. 41 or Title III are better mechanisms than section 2703 to obtain the cell site information. They rely on them, however, based in part on their belief that the non-pen-register mechanism for obtaining cell-site data must operate independently of the Pen Register Statute. [FN7] But once this proposition is rejected, section 2703 is a far more obvious source of authority since it covers the very sort of information that is being sought under the warrant. Its only failing is that it does not explicitly allow for the continuous release of such information. Certainly, Title III does not represent an appropriate fit for cell site information inasmuch as its purpose is to govern the interception of the "contents" of communications. See, e.g., 18 U.S.C. §§ 2510(4), 2511(1); *United States v. New York Tel. Co.*, 434 U.S. 159, 167 (1977) (pen registers not within Title III because they do not acquire the "contents" of communications).

FN7. Their reliance is also based on the belief that a cell phone is transformed into a "tracking device" when prospective cell site data is sought. For reasons discussed further in the next section, the requirements that attach to tracking devices are not relevant here.

*13 In sum, section 2703 is the most obvious candidate to be used in combination with the Pen Register Statute to authorize the ongoing collection of cell site information because it covers cell site information generally. Section 2703's absence of procedural provisions that typically attach to the transmission of ongoing information is explained by the fact that the pen register is the proper "device" to obtain cell-site information. Thus the Pen Register Statute's procedural provisions that are tied to such a device are appropriately combined with an application under section 2703 to obtain such information.

D. Effect of the Fourth Amendment

The only remaining question is whether the issuance of a court order for cell site information under section 2703 and the Pen Register Statute is unconstitutional because it violates the Fourth Amendment's prohibition against

CELL/OTD 001226

unreasonable searches and seizures. *Amicus* (and some of the cell site cases) discusses the issue in terms of whether the cell phone is a "tracking device" and whether a warrant grounded in probable cause is necessary for the installation of such a device. But the data being sought by the Government in this District is not what *amicus* believes it to be. The information does not provide a "virtual map" of the user's location. *Amicus* Letter at 24. The information does not pinpoint a user's location within a building. Instead, it only identifies a nearby cell tower and, for some carriers, a 120-degree face of that tower. These towers can be up to 10 or more miles apart in rural areas and may be up to a half-mile or more apart even in urban areas. Moreover, the data is provided only in the event the user happens to make or receive a telephone call. Thus, *amicus*'s reference to tracking devices and the cases considering this technology is not on point. [FN8]

FN8. The tracking device statute, 18 U.S.C. § 3117, is of no relevance at all because it provides no guidance on what showing must be made to install a tracking device. It states only that "If a court is empowered to issue a warrant or other order for the installation of a mobile tracking device, such order may authorize the use of that device within the jurisdiction of the court, and outside that jurisdiction if the device is installed in that jurisdiction." 18 U.S.C. § 3117(a) (emphasis added); see also *United States v. Gbemisola*, 225 F.3d 753, 758 (D.C.Cir.2000) ("section 3117 does not prohibit the use of a tracking device in the absence of conformity with the section"). Not only is the statute prefaced by a conditional clause, the statute itself contemplates that a tracking device may be installed merely pursuant to an "order"--that is, without a warrant and thus without a probable cause showing. And, of course, it contemplates the "installation" of a tracking device, which has not been sought here.

In any event, the case most strongly relied on by *amicus*, *United States v. Karo*, 468 U.S. 705 (1984), held only that the installation of a true tracking device without the knowledge of the person it was tracking must be the subject of a warrant if the device discloses its location inside someone's home and that information could not have been obtained by observation. 468 U.S. at 714; cf. *United States v. Knotts*, 460 U.S. 276, 282 (1983) (no warrant required where the installed tracking device reveals information observable from a public highway). Here, however, the Government does not seek to install the "tracking device": the individual has chosen to carry a device and to permit transmission of its information to a third party, the carrier. As the Supreme Court has held in the context of telephone numbers captured by a pen register, the provision of information to a third party does not implicate the Fourth Amendment. See *Smith v. Maryland*, 442 U.S. 735, 744 (1979); see also *United States Telecom. Ass'n v. FCC*, 227

F.3d at 459 ("*Smith*'s reason for finding no legitimate expectation of privacy in dialed telephone numbers-- that callers voluntarily convey this information to the phone company in order to complete calls--applies as well to much of the information provided by the challenged capabilities.") (referring to information that included "antenna tower location"). *Amicus* argues that the information is not voluntarily conveyed because, unlike telephone numbers, location information is being transmitted even in the absence of a telephone call. *Amicus* Letter at 23 (citing Texas Decision, 396 F.Supp.2d at 756-57). The Court need not reach this question because the only information being sought by the Government here is information tied to an actual telephone call. [FN9]

FN9. *United States v. Forest*, 355 F.3d 942, 951 (6th Cir.2004), suggests in dictum that there might be a Fourth Amendment concern where a law enforcement agent purposely dialed the target cellphone in order to obtain location data. The court viewed such an act as demonstrating that the user was not voluntarily providing the cell site data. Here, we have no request to authorize such an act.

Conclusion

*14 The above analysis applies with respect to the instant Order, and is based upon the technology that is available to the Government in this District. Because the Court cannot know how that technology may change, it intends to identify specifically, in any future orders authorizing the provision of cell site information, the character of the information that may be provided by a carrier. Specifically, any such Order will make clear that it contemplates the production only of: (1) information regarding cell site location that consists of the tower receiving transmissions from the target phone (and any information on what portion of that tower is receiving a transmission, if available); (2) tower information that is tied to a particular telephone call made or received by the user; and (3) information that is transmitted from the provider to the Government. If the Government seeks to obtain other information, it should provide additional briefing on why such information is permissible under the relevant authorities.

Slip Copy, 2005 WL 3471754 (S.D.N.Y.)

END OF DOCUMENT

CELL/OTD 001227

[REDACTED]

From: [REDACTED]
Sent: Monday, October 24, 2005 8:54 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Standard Operating Procedure (SOP) for Case Agents Requesting [REDACTED]
[REDACTED]

UNCLASSIFIED
NON-RECORD

Interesting. In light of recent Magistrate views, we might well see more [REDACTED]
[REDACTED]

At any rate, isn't it typically the case that you discuss- [REDACTED]
[REDACTED]

[REDACTED] What's your preference? [REDACTED]

PRIVILEGED DELIBERATIVE DOCUMENT - NOT FOR DISCLOSURE OUTSIDE THE FBI WITHOUT PRIOR OGC APPROVAL

[REDACTED]
Assistant General Counsel
Science & Technology Law Unit
Engineering Research Facility
Bldg. 27958A Room A-207B
Quantico, Va. 22135
[REDACTED]

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SCIENCE & TECHNOLOGY LAW UNIT - OFFICE OF THE GENERAL COUNSEL

-----Original Message-----

From: [REDACTED]
Sent: Saturday, October 22, 2005 3:27 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Standard Operating Procedure (SOP) for Case Agents Requesting [REDACTED]

UNCLASSIFIED
NON-RECORD

[REDACTED]
Thank you for your reply. As for your question, [REDACTED]
[REDACTED]

I am currently digesting the rest of the information you sent me. It is extremely helpful. I am going to draft a separate SOP for [redacted] and send it to you for your review. **Just to make sure I understand the legal matters!**

Thanks again [redacted]

-----Original Message-----

From: [redacted]

Sent: Wednesday, October 12, 2005 1:00 PM

To: [redacted]

Cc: [redacted]

Subject: RE: Standard Operating Procedure (SOP) for Case Agents Requesting [redacted]

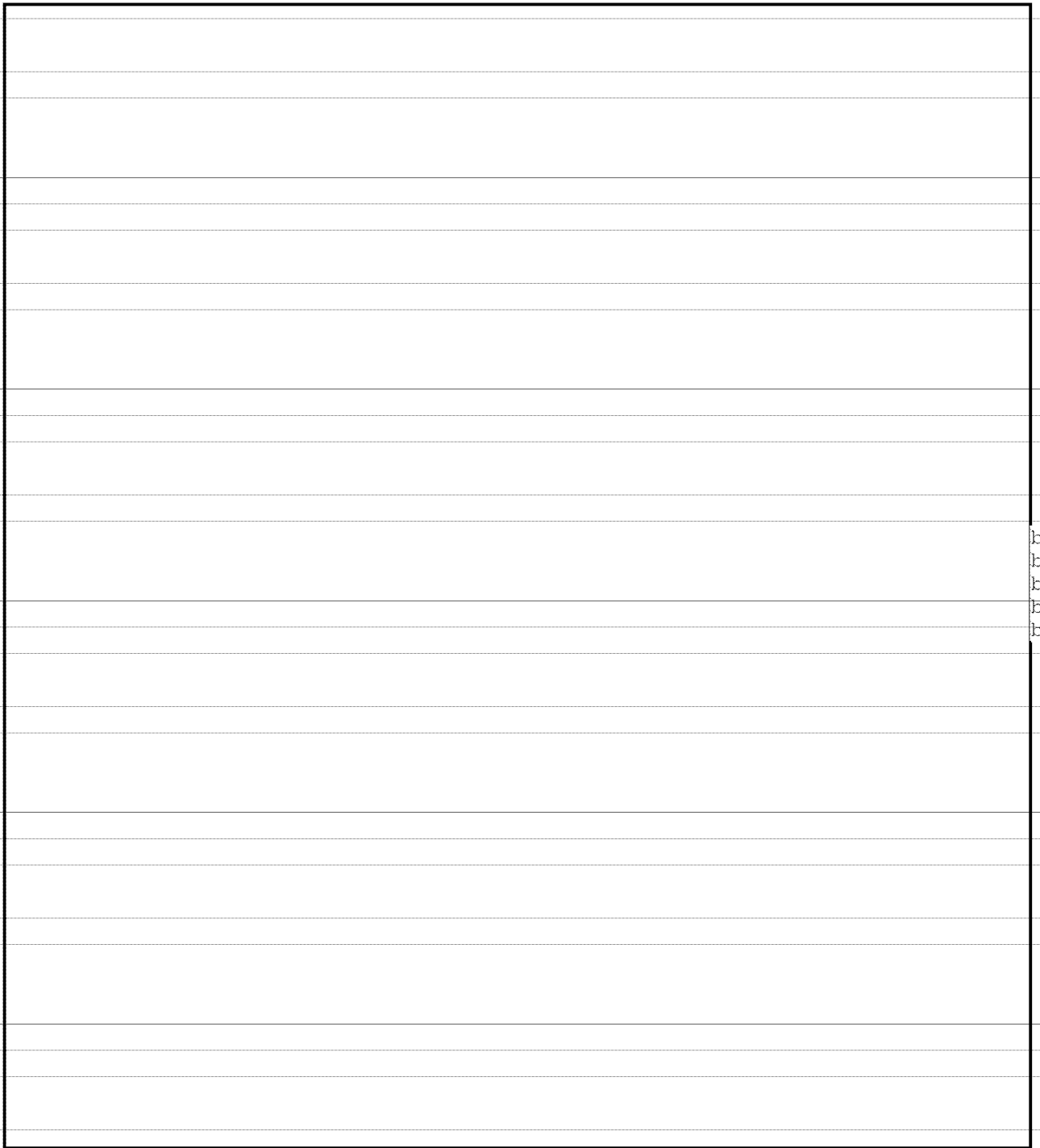
UNCLASSIFIED
NON-RECORD

[redacted]
I'll defer to [redacted] the policy issues, as I understand [redacted] is trying to address some similar issues directly with [redacted]

By way of background, last year [redacted]

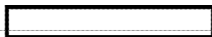
[redacted]

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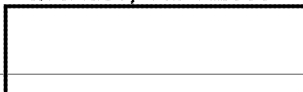


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Assistant General Counsel
Science & Technology Law Unit
Engineering Research Facility
Bldg. 27958A Room A-207B
Quantico, Va. 22135



SCIENCE & TECHNOLOGY LAW UNIT - OFFICE OF THE GENERAL COUNSEL

-----Original Message-----

From: [REDACTED]
Sent: Tuesday, October 11, 2005 2:07 PM
To: [REDACTED]

Subject: Standard Operating Procedure (SOP) for Case Agents Requesting [REDACTED]
[REDACTED]

UNCLASSIFIED
NON-RECORD

The attached file is the first draft of a proposed SOP to assist [REDACTED] case agents who request [REDACTED]

Boss (SSA [REDACTED]), as we spoke yesterday this is the first draft.

Squad members, please review and provide input. Thanks.

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[REDACTED] as this largely pertains to your squad, would you please review and provide any suggestions or input? Thanks.

[REDACTED] when you have a moment, would you see if I missed anything? Thanks

[REDACTED] when you too have a moment, would you be so kind as to review the attachment for legal considerations? If you could provide more details regarding a useable procedure for [REDACTED] [REDACTED] that would be great. We really need to determine the quickest procedure for [REDACTED]

Thank you all,

[REDACTED]

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[REDACTED]
From: [REDACTED]
Sent: Friday, October 28, 2005 8:36 AM
To: [REDACTED]

Cc:
Subject: RE: [REDACTED] Cheat Sheets for the [REDACTED]

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

[REDACTED]
Thanks for the guides. I will have the guys review the cheat sheets and look forward to reviewing the SOP. Please let ERF review the SOP so we can run them by the Criminal Division for approval. Before any policy can be distributed, it needs to be run by the substantive desks at FBIHQ and OGC. This SOP will actually help our (ERF) efforts in establishing an SOP with FBIHQ for [REDACTED]
[REDACTED] Keep up the good work.
[REDACTED]

SSA [REDACTED]
Unit Chief

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-----Original Message-----

From: [REDACTED]
Sent: Wednesday, October 26, 2005 11:34 AM
To: [REDACTED]

Cc: [REDACTED]
Subject: [REDACTED] Cheat Sheets for the [REDACTED]

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Enclosed is a "cheat sheet" for dummies guide on the [REDACTED]
[REDACTED]

SSA [REDACTED]
[REDACTED]

[REDACTED]

From:

Sent:

Monday, November 14, 2005 11:57 AM

To:

Cc:

Subject:

RE: [REDACTED]

Attachments:

SOP for [REDACTED] 1142005 @ 1130.wpd

UNCLASSIFIED

NON-RECORD

The attached includes some edits (use document/reviewer to see changes).

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[REDACTED]
Assistant General Counsel
Science & Technology Law Unit
Engineering Research Facility
Bldg. 27958A Room A-207B
Quantico, Va. 22135

[REDACTED]

SCIENCE & TECHNOLOGY LAW UNIT - OFFICE OF THE GENERAL COUNSEL

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-----Original Message-----

From:

Sent: Monday, November 07, 2005 8:49 PM

To:

Cc:

Subject: FW: [REDACTED]

UNCLASSIFIED

NON-RECORD

We would like to make this document [REDACTED]. This is our latest draft after [REDACTED] provided some input earlier. Please provide legal guidance to ensure we have drafted an appropriate SOP for [REDACTED]
mpk

SSA [REDACTED]

[REDACTED]

-----Original Message-----

From:

Sent: Tuesday, October 25, 2005 4:05 PM

To:

[redacted]
Cc: [redacted]

Subject:

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NON-RECORD

Please review and provide feedback. We truly need to improve [redacted]

[redacted] I think an SOP would be a big help.

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Thank you, [redacted]

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UNCLASSIFIED

[REDACTED]

From: [REDACTED]
Sent: Monday, November 14, 2005 1:15 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: [REDACTED]
Attachments: [REDACTED] Oct052005.doc

UNCLASSIFIED
NON-RECORD

Attached is a copy of a DRAFT [REDACTED] Also is a DRAFT [REDACTED]
[REDACTED]

-----Original Message-----

From: [REDACTED]
Sent: Monday, November 14, 2005 11:57 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: [REDACTED]

UNCLASSIFIED
NON-RECORD

The attached includes some edits (use document/reviewer to see changes).

PRIVILEGED DELIBERATIVE DOCUMENT - NOT FOR DISCLOSURE OUTSIDE THE FBI WITHOUT PRIOR
OGC APPROVAL

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[REDACTED]
Assistant General Counsel
Science & Technology Law Unit
Engineering Research Facility
Bldg. 27958A Room A-207B
Quantico Va 22135
[REDACTED]

SCIENCE & TECHNOLOGY LAW UNIT - OFFICE OF THE GENERAL COUNSEL

-----Original Message-----

From: [REDACTED]
Sent: Monday, November 07, 2005 8:49 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: [REDACTED]

UNCLASSIFIED
NON-RECORD

We would like to make this document [REDACTED] policy ASAP. This is our latest draft after [REDACTED] provided
some input earlier. Please provide legal guidance to ensure we have drafted an appropriate SOP for
[REDACTED]

CELL/OTD 001256

SSA

[Redacted]

-----Original Message-----

From: [Redacted]

Sent: Tuesday, October 25, 2005 4:05 PM

To: [Redacted]

Cc: [Redacted]

Subject: [Redacted]

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UNCLASSIFIED

NON-RECORD

Please review and provide feedback. We truly need to improve [Redacted]

[Redacted] I think an SOP would be a big help.

Thank you,

[Redacted]

UNCLASSIFIED

UNCLASSIFIED

UNCLASSIFIED

UNCLASSIFIED

[REDACTED]

From: [REDACTED]
Sent: Wednesday, October 12, 2005 1:00 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Standard Operating Procedure (SOP) for Case Agents Requesting [REDACTED]
Attachments: [REDACTED] Oct052005.doc

UNCLASSIFIED
NON-RECORD

[REDACTED]

I'll defer to [REDACTED] the policy issues, as I understand [REDACTED] is trying to address some similar issues directly with [REDACTED]
[REDACTED]

By way of background, last year [REDACTED]

[REDACTED]

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PRIVILEGED DELIBERATIVE DOCUMENT - NOT FOR DISCLOSURE OUTSIDE THE FBI WITHOUT PRIOR OGC APPROVAL

[Redacted]
Assistant General Counsel
Science & Technology Law Unit
Engineering Research Facility
Bldg. 27958A Room A-207B
Quantico, Va. 22135
[Redacted]

SCIENCE & TECHNOLOGY LAW UNIT - OFFICE OF THE GENERAL COUNSEL

-----Original Message-----

From: [Redacted]

Sent: Tuesday, October 11, 2005 2:07 PM

To: [Redacted]

Subject: Standard Operating Procedure (SOP) for Case Agents Requesting [Redacted]

UNCLASSIFIED
NON-RECORD

CELL/OTD

001294

CELL/OTD

CELL/OTD

001294

The attached file is the first draft of a proposed SOP to assist [] case agents who request []

Boss (SSA []) as we spoke yesterday this is the first draft.

Squad members, please review and provide input. Thanks.

[] as this largely pertains to your squad, would you please review and provide any suggestions or input?
Thanks.

[] when you have a moment, would you see if I missed anything? Thanks

[] when you too have a moment, would you be so kind as to review the attachment for legal considerations?
If you could provide more details regarding a useable procedure for [] that would
be great. We really need to determine the quickest procedure for []
[]

Thank you all,

[]

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CELL/OTD

001295

~~*** SECRET ***~~

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

(U) Security Addendum to requisition [REDACTED]

(U) The above-referenced procurement request was reviewed in order to make a determination as to whether it should be relieved of the "full and open competition" requirements of the FAR, for security reasons.

X

(S)

X

(S)

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(U) Inasmuch as advertisement of this procurement [REDACTED]
[REDACTED], it is
recommended that no advertisement be made.

May 6, 2004

[REDACTED]
Security Officer
Investigative Technology Division

~~Derived From: G-3~~

~~*** SECRET ***~~

001359

CELL/OTD

DATE: 10-16-2012
CLASSIFIED BY 65179 DMH/STW
REASON: 1.4 (C, G)
DECLASSIFY ON: 10-16-2037

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

~~SECRET~~

(S)

X

X

(S)

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(U) Full and open competition of referenced procurement
requirement could [REDACTED]

[REDACTED]

[REDACTED] it is recommended that no advertisement be made.

April 29, 2003

[REDACTED]
Security Officer
Investigative Technology Division

~~Derived From: G-3~~
~~Declassify On: X1~~

~~SECRET~~

CELL/OTD

001361

~~SECRET~~

DATE: 10-17-2012
CLASSIFIED BY: 65179 DMH/STW
REASON: 1.4 (C, G)
DECLASSIFY ON: 10-17-2037

FEDERAL BUREAU OF INVESTIGATION

Precedence: IMMEDIATE

Date: 05/04/2004

To: Finance

Attn:

[Redacted]

Attn:
Attn:

Criminal Investigative

Attn:

From: Investigative Technology

Contact: EE

Approved By:

[Redacted]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

Drafted By:

Case ID #: (U) 268-HQ-1068430

(S)

(S)
(S)
(S)

[Redacted]

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Title:

(U)
(S)
(S)
(S)

(S)

[Redacted]

Synopsis: (S)

[Redacted]

(S)

[Redacted]

(U) ~~Derived From : G-3~~
~~Declassify On: X1~~

~~SECRET~~

[Redacted]

CELL/OTD

001363

~~SECRET~~

(S)

(S)

Sole Source Justification

(S)

(S)

The following reasons assist in explaining why:

(S)

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(S)

(S)

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(U) Other companies would probably require a substantial monetary investment and possibly years of development time to make systems that could provide the same capabilities and compete on the same level as the requested system.

(U) All of these reasons support the claim that it is in the FBI's best interest to acquire the requested systems. Funding for this procurement is available from Budget Item [redacted] Subobject Classification [redacted]

NON-ADVERTISEMENT STATEMENT

(S)

(S)

~~SECRET~~

~~SECRET~~

DATE: 10-17-2012
CLASSIFIED BY 65179 DMH/STW
REASON: 1.4 (C, G)
DECLASSIFY ON: 10-17-2037

Sole Source Justification for
07/07/04

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

1. Identification of the agency and the contracting activity, and specific identification of the document as a "Justification for other than full and open competition". ? - not sure what you want here??

2. Nature and/ or description of the action being approved.

(S)

X

3. A description of the supplies or services required to meet the agency's needs
MINIMUM SALIENT REQUIREMENTS

(S)

X

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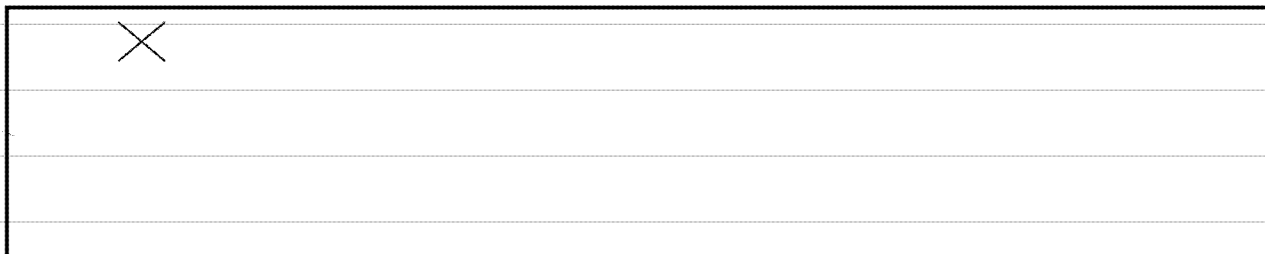
001369

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4. Identification of the statutory authority (Contracting Officer will complete this questions)
(OMIT)

5. A demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the authority cited.

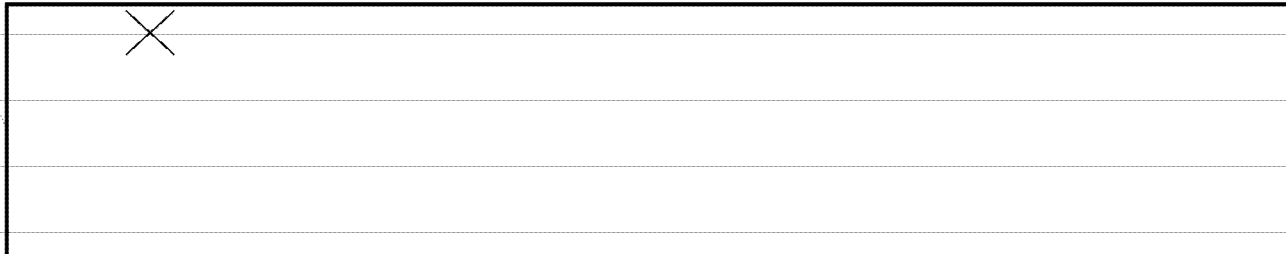
(S) 

6. A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a notice was or will be publicized as required by Subpart 5.2 and, if not, which exception under 5.202 applies.

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7. A determination by the Contracting Officer that amount is fair and reasonable (OMIT)

8. A description of the market research conducted and the results or a statement of the reason market was not conducted.

(S) 

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CELL/OTD

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9. Any other facts supporting the use if other than full and open competition such as:
example follow on work ; etc.

X

(S)

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10. A listing of the sources, if any, that expressed, in writing, an interest in the acquisition.
None.

11. A statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required.

The FBI could initiate a developmental effort with another vendor to design, develop and manufacture equipment capable of meeting the minimum salient requirements. However, due to the urgent and compelling need and exorbitant costs associated with 'reinventing-the-wheel' it is in the FBI's best interest to use the most expedient, cost-effective solution. This solution would be to procure existing, commercially available equipment.

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001371

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CELL/OTD

001:

ACQUISITION PLAN

FEDERAL BUREAU OF INVESTIGATION

1. Unit/Section/Division: [] / ITD

2. Description of Requirement: []

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3. Estimated Cost: []

4. Term of Contract: []

5. Distribution of Dollars: FY- 04 []

6. Subobject Class/Budget Item: []

FY- []
FY- []
FY- []

Product or Service Code: n/a

7. Market Research (state how performed & attach): Market survey conducted via internet research and contact/communication with multiple vendors

Commercial Item: ☒ Yes ☐ No

Competitive: ☐ Yes ☒ No

If no to one or more above, explain: Reference Attached EC for Sole Source Justifications

8. Sources Considered: ☐ FBI Personnel ☐ Other Government Personnel ☐ Required Sources (FAR Part 8)
☐ 100% Small Bus. ☐ 8a Set aside ☐ Disadvantaged (FAR Part 8)
☐ Hubzone ☐ Women-owned ☒ Other Federal Contracts
☐ A-76

9. If Information Technology: ☐ IRM Review ☐ AIS Approval

10. Type of Procurement: ☒ Brand Name Only ☐ Commercial Item ☐ Functional Specifications
☐ Brand Name or Equal ☐ Compatibility ☐ Performance-Based Service Contract

11. Contract Type: ☐ BOA ☐ IDIQ Contract ☐ Reimbursable Agreement
☐ Cost-Reimbursement ☐ (IFB) ☐ RFP
☒ Firm-Fixed Price ☐ Incentive ☐ RFQ
☐ Firm-Fixed Price w/Economic Adj. ☐ Letter Contract (DOJ Approval) ☐ Time and Material

12. Lease vs Purchase (if lease, analysis attached): No

13. Environmentally Preferable Item: ☐ Yes ☒ No

14. Inherently Government Function (justified): ☐ Yes ☒ No

15. Lead Time Required: [] To be filled in by Contracting Officer.

Approval: []
Technical Staff Member/(date)

[]
Budget Staff Member/(date)

[]
Legal Review (If applicable)/(date)

[]
Contracting Officer or CCO/(date)

CELL/OTD

001372

May 04, 2004

- EE [] finished requisition packet []
- requisition []
 - classified EC (Secret)
 - Acquisition Plan
 - non-Advertisement (Security) Addendum
 - non-IT Waiver EC (dated 04/2004)

May 12, 2004

[] secretary finalized EC

May 24, 2004

packet (EC & Requisition) received approval from AD

May 26, 2004

EC uploaded

June 02, 2004

packet shipped via courier to []

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b7E

June 23, 2004

SSA [] and EE [] visited [] in [] - met with []
and [] (packet could not be located)

June 24, 2004

met with [] and he confirmed packet left building on 06/02/2004

June 25, 2004

notified [] and [] that unless packet is located
by COB that I will need to notify ITD's Security Officer

approximately 10 minutes after speaking with [] received
first email (from OSSCU Chief [])

Numerous email communications follow.

DATE: 10-17-2012
CLASSIFIED BY 65179 DMH/STW
REASON: 1.4 (C, G)
DECLASSIFY ON: 10-17-2037
ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

~~SECRET~~

ADDENDUM TO SOLE SOURCE JUSTIFICATION FOR REQUISITION

X

(S)

X

X

X

b1
b3
b7E

CELL/OTD

001374

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 06/19/2003

To: Finance

Attn:

[Redacted]
Criminal Investigative

From: Investigative Technology

Contact: EE [Redacted]

Approved By:

Drafted By:

Case ID #: 268-HQ-1068430

Title:

Synopsis: To request procurement of [Redacted]

Enclosure(s): FD-369, [Redacted] in the amount of [Redacted]
Non-IT Waiver and Acquisition Plan.

Details:

b3
b6
b7C
b7E

CELL/OTD

001375

To: Finance From: Investigative Technology
Re: 268-HQ-1068430, 06/19/2003

LEAD(s):

Set Lead 1: (Action)

FINANCE

AT WASHINGTON, DC

The Engineering Contracts Unit is requested to procure

[REDACTED]
[REDACTED] Funding is available on FD-369 [REDACTED]

Set Lead 2: (Action)

[REDACTED]
AT WASHINGTON, DC

[REDACTED] is requested to
approve funding for [REDACTED]
[REDACTED] Funding
is available on FD-369 [REDACTED]

Set Lead 3: (Info)

CRIMINAL INVESTIGATIVE

AT WASHINGTON, DC

For information only.

CC:

[REDACTED]
[REDACTED]
[REDACTED]

♦♦

TO: [REDACTED]
Information Resources Manager (IRM)

Date: 06/19/2003

SUBJECT: INFORMATION TECHNOLOGY (IT) MATTER
NON-IT WAIVER REQUEST

The attached requisition, number [REDACTED] is from the Investigative Technology Division,

[REDACTED]
[REDACTED] Supervisory Special Agent (SSA) [REDACTED] is in charge of the
[REDACTED] Electronics Engineer [REDACTED]
[REDACTED]

The purpose of the requested equipment is to fill requirements to [REDACTED]
[REDACTED]
[REDACTED]

The requested equipment is not an FBI [REDACTED]
[REDACTED]
[REDACTED]

b3
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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Therefore, a non-IT waiver is being requested to expedite this
purchase.

[REDACTED]

CELL/OTD

001381

ACQUISITION PLAN

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 10-17-2012 BY 65179 DMH/STW

FEDERAL BUREAU OF INVESTIGATION

1. Unit/Section/Division: /ITD

2. Description of Requirement: To request procurement of

b3
b7E

3. Estimated Cost:

4. Term of Contract:

5. Distribution of Dollars: FY- 03

6. Subobject Class/Budget Item:

FY-
FY-

Product or Service Code: n/a

7. Market Research (state how performed & attach): Market survey conducted via internet research and contact/communication with multiple vendors

Commercial Item: ☒ Yes ☐ No

Competitive: ☐ Yes ☒ No

If no to one or more above, explain: Reference Attached EC for Sole Source Justification

8. Sources Considered: ☐ FBI Personnel ☐ Other Government Personnel ☐ Required Sources (FAR Part 8)
☐ 100% Small Bus. ☐ 8a Set aside ☐ Disadvantaged (FAR Part 8)
☐ Hubzone ☐ Women-owned ☒ Other Federal Contracts
☐ A-76

9. If Information Technology: ☐ IRM Review ☐ AIS Approval

10. Type of Procurement: ☒ Brand Name Only ☐ Commercial Item ☐ Functional Specifications
☐ Brand Name or Equal ☐ Compatibility ☐ Performance-Based Service Contract

11. Contract Type: ☐ BOA ☐ IDIQ Contract ☐ Reimbursable Agreement
☐ Cost-Reimbursement ☐ (IFB) ☐ RFP
☒ Firm-Fixed Price ☐ Incentive ☐ RFQ
☐ Firm-Fixed Price w/Economic Adj. ☐ Letter Contract (DOJ Approval) ☐ Time and Material

12. Lease vs Purchase (if lease, analysis attached): No

13. Environmentally Preferable Item: ☐ Yes ☒ No

14. Inherently Government Function (justified): ☐ Yes ☒ No

15. Lead Time Required: To be filled in by Contracting Officer.

Approval: Technical Staff Member/(date)

Budget Staff Member/(date)

Legal Review (If applicable)/(date)

Contracting Officer or CCO/(date)

CELL/OTD

001382

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

~~SECRET~~

(U) Security Addendum to EC dated 04/24/2003, captioned,
[redacted] and requisition

[redacted] dated 04/22/03.

X

(S)

X

(S)

b1
b3
b6
b7C
b7E

(U) Full and open competition of referenced procurement
requirement could [redacted]

[redacted] it is
recommended that no advertisement be made.

April 24, 2003

[redacted]
Security Officer
Investigative Technology Division

~~Derived From: G-3
Declassify On: X1~~

~~SECRET~~

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 06/19/2003

To: Finance

Attn:

[Redacted]

Criminal Investigative

[Redacted]

From: Investigative Technology

[Redacted]

Contact:

[Redacted]

Approved By:

[Redacted]

Drafted By:

Case ID #: 268-HQ-1068430

Title:

[Redacted]

Synopsis: To request procurement of

[Redacted]

[Redacted]

b3
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b7C
b7E

Enclosures: FD-369, [Redacted] in the amount of [Redacted] Non-IT
Waiver, and Acquisition Plan.

Details:

[Redacted]

[Redacted]

CELL/OTD

001385

To: Finance From: Investigative Technology
Re: 268-HQ-1068430, 06/13/2003

LEAD:

Set Lead 1: (Action)

FINANCE

AT WASHINGTON, DC

The Engineering Contracts Unit is requested to issue a procurement for [REDACTED]

[REDACTED] Funding for this procurement is available from Budget Items [REDACTED] and [REDACTED] Subobject Classification [REDACTED]

Set Lead 2: (Action)

[REDACTED]

AT WASHINGTON, DC

[REDACTED] is requested to approve funding for the procurement for [REDACTED]

[REDACTED] Funding for this procurement is available from Budget Items [REDACTED] Subobject Classification [REDACTED] in the amount of [REDACTED]

b3
b6
b7C
b7E

Set Lead 3: (Info)

CRIMINAL INVESTIGATIVE

AT WASHINGTON, DC

For information only.

CC:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

♦♦

TO: [REDACTED]
Information Resources Manager (IRM)

Date: 06/19/2003

SUBJECT: INFORMATION TECHNOLOGY (IT) MATTER
NON-IT WAIVER REQUEST

The attached requisition, number [REDACTED] is from Investigative Technology Division,

[REDACTED]
[REDACTED] Supervisory Special Agent [REDACTED] is in charge of the
[REDACTED] Electronics Engineer [REDACTED]
[REDACTED] is the individual requesting purchase of this equipment.

The purpose of the requested equipment [REDACTED]
[REDACTED]

The requested equipment is not an FBI [REDACTED]
[REDACTED]

b3
b6
b7C
b7E

[REDACTED]
[REDACTED]
[REDACTED] Therefore, a non-IT waiver is being requested to expedite this
purchase.

[REDACTED]

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 07/21/2004

To: Finance

Attn:

From: Investigative Technology

Contact: EE

Approved By:

Drafted By:

Case ID #: 268-HQ-1068430

Title:

Synopsis: To request the Engineering Contracts Unit (ECU) to approve funding for

Enclosure(s): Statement of Work, FD-369 in the amount of copy of Non-IT Waiver EC, Acquisition Plan.

Details:

b3
b6
b7C
b7E

CELL/OTD

001397

To: Finance From: Investigative Technology
Re: 268-HQ-1068430, 07/21/2004

LEAD(s):

Set Lead 1: (Action)

FINANCE

AT WASHINGTON, DC

The Engineering Contracts Unit is requested to approve
funding in the amount of [] for the purchase of

[] Funding for this procurement is available from
Budget Item [] Subobject Classification []

CC:

♦♦

b3
b6
b7C
b7E

--

ACQUISITION PLAN

FEDERAL BUREAU OF INVESTIGATION

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 10-17-2012 BY 65179 DMH/STW

1. Unit/Section/Division: [REDACTED] /ITD

2. Description of Requirement: To request [REDACTED]

b3
b7E

3. Estimated Cost: [REDACTED] 4. Term of Contract: 1 Base (FY03) W/4 Options

5. Distribution of Dollars: FY- 04 [REDACTED] 6. Subobject Class/Budget Item: [REDACTED]
FY- [REDACTED] FY- [REDACTED] Product or Service Code: n/a
FY- [REDACTED] FY- [REDACTED]

7. Market Research (state how performed & attach): N/A

Commercial Item: ☒ Yes ☐ No Competitive: ☐ Yes ☒ No
If no to one or more above, explain: Reference Attached EC

8. Sources Considered: ☐ FBI Personnel ☐ Other Government Personnel ☐ Required Sources (FAR Part 8)
☐ 100% Small Bus. ☐ 8a Set aside ☐ Disadvantaged (FAR Part 8)
☐ Hubzone ☐ Women-owned ☒ Other Federal Contracts
☐ A-76

9. If Information Technology: ☐ IRM Review ☐ AIS Approval

10. Type of Procurement: ☐ Brand Name Only ☐ Commercial Item ☒ Functional Specifications
☐ Brand Name or Equal ☐ Compatibility ☐ Performance-Based Service Contract

11. Contract Type: ☐ BOA ☐ IDIQ Contract ☐ Reimbursable Agreement
☒ Cost-Reimbursement ☐ (IFB) ☐ RFP
☐ Firm-Fixed Price ☐ Incentive ☐ RFQ
☐ Firm-Fixed Price w/Economic Adj. ☐ Letter Contract (DOJ Approval) ☐ Time and Material

12. Lease vs Purchase (if lease, analysis attached): No 13. Environmentally Preferable Item: ☐ Yes ☒ No

14. Inherently Government Function (justified): ☐ Yes ☒ No

15. Lead Time Required: [REDACTED] To be filled in by Contracting Officer.

Approval: [REDACTED]
Technical Staff Member/(date)

[REDACTED]
Budget Staff Member/(date)

[REDACTED]
Legal Review (If applicable)/(date)

[REDACTED]
Contracting Officer or CCO/(date)

CELL/OTD

001399

Page 1 OF 1

REQ. #

7/21/2004
DATE

ORDERING OFFICE/COST CODE	APPROVED BY
---------------------------	-------------

JULIAN DATE

Supply Technician:
Program Manger:
Funding Approved:
COTR:
Room# & Ext:

Contract Specialist:
Date Received:
PPMS Approval:
Purchase Order#

[illegible]

b3
b4
b6
b7C
b7E

SPECIAL INSTRUCTION:

Ship to Code:
 Delivery Restrictions: M-F, 8am-4:30pm, except holidays
 Government's Estimate:
 Previous PO #
 Previous Contract #

JUSTIFICATION FOR THE PURCHASE OF NONEXPENDABLE ITEM:

See attached EC

CELL/OTD

001409

STATEMENT OF WORK

Task

Description

In Task the contractor shall research and evaluate methods that shall

b3
b7E

Impact on Commercially Available Services

Impact on Current Capabilities

b3
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Demonstration and Product Release

- The contractor shall provide which shall reflect the results of these methodologies, which shall be incorporated into a final release to the customer.
- The contractor shall not provide these features to any other customer unless there exists written approval from both the Contracting Officer (CO) and the Contracting Officer Technical Representative (COTR), or their designees.

Deliverables and Reports

The contractor shall provide the following deliverables and reports:

- **DRAFT RESEARCH REPORT:** The Contractor shall deliver to the customer a draft research report describing its research and evaluation performed in accordance with sub section titled, Description. If the research indicates that methods described above are not reflective of a realizable solution, the report shall contain the contractor's recommendations and/or proposed modifications for improvement. The report shall cite reference or describe all data, data sources, methodologies, findings, and determinations used or discovered during the research and evaluation.
- **FINAL RESEARCH REPORT:** The Contractor shall deliver a final research report that embodies the draft research report and also addresses or incorporates, as appropriate, all comments or questions from the customer that were submitted to the Contractor in response to the draft research report.

- [redacted] The Contractor shall deliver a [redacted] which shall encompass the methods and solutions detailed in the Final Research Report.

The draft and final research reports shall be submitted in both hard copy and electronic copy, with electronic versions in MS Word format (or MS Excel if applicable). The [redacted] shall be delivered [redacted]

b3
b7E

Reporting Requirements

At minimum, the contractor shall provide a status briefing and report to the Contracting Officer (CO) and Contracting Officer Technical Representative (COTR) every 2 months from the start date of the activity. This briefing should contain at a minimum the following:

Reporting Period Information

1. A narrative review of work accomplished during the reporting period and significant events/major milestones.
2. Problem areas
3. Anticipated activity for the next reporting period
4. Other relative information as necessary or requested

In addition the contractor shall provide the following:

- The contractor shall inform the CO in writing of the actual task starting date on or before the starting date.
- The contractor shall bring technical issues or potential problems affecting performance to the attention of the COTR as soon as possible. Verbal reports must be followed up with written reports when directed by the COTR.
- The contractor shall notify the CO when 75 % of the amount of the task has been expended.
- Additional written reports may be required as deemed necessary by the CO or COTR.

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FBI

***Portable Electronic Device
Security Management Plan
(SMP) for Legacy*** [redacted]

*From
Investigative Technology Division*

[redacted]

11/12/2004

*Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Room 9364
Washington, DC 20530*

b3
b6
b7C
b7E

Prepared By:

[redacted] *Program Manager*

[redacted] *Chief Technician*

*Engineering Research Facility, Building [redacted]
Quantico, Virginia 22135*


[redacted]

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FOR OFFICIAL USE ONLY

1 INTRODUCTION

This document serves as the instrument for the Mobile Computing Security Program to identify requirements and assess risk, with the objective of providing an approval-to-operate (ATO). The information required for this assessment includes, but is not limited to, a complete scope of need, justification, concept of operations, technical specifications, configuration management and residual risk relative to the device being placed into service. Once completed, and if residual risk is deemed acceptable, an official EC will be generated granting an ATO for those device(s) described within, in the manner set forth in the concept of operations. Attachments 1 and 2 are "living" documents. That is they are updated each time there is a change in the configuration, or when new devices are fielded under this SMP. Attachment 1 is the Configuration Management control document that lists the specific applications in use under this SMP. Attachment 2 is a complete listing of all devices fielded under this SMP.



b3
b7E

2 MISSION BACKGROUND



This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

4 CONCEPT OF OPERATIONS

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There is a vertical margin line on the left side, creating a narrow left margin. The paper appears to be from a notebook or a standard ruled document.

FOR OFFICIAL USE ONLY

[Redacted]

5 TECHNICAL DATA

[Redacted]

5.1

[Redacted]

b3
b7E

[Redacted]

5.2 Field Control/Storage

[Redacted]

FOR OFFICIAL USE ONLY

5.3



5.4 **Technical Specifications**




b3
b7E



FOR OFFICIAL USE ONLY



7 POINTS OF CONTACT

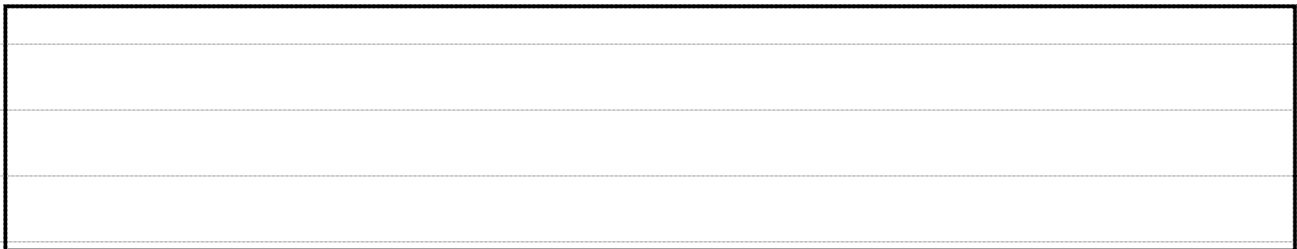
The ISSM has approval authority for the  and is responsible for the life cycle system security. Significant changes in configuration or usage will be submitted to the ISSM by the ISSO for approval.

b3
b6
b7C
b7E

The ISSO is responsible for day-to-day oversight of the  He is responsible for engineering, development, configuration management and ensuring that the program security requirements are met. The ISSO also maintains an up-to-date inventory of all  contained within this OP plan and to report any:

- Loss
- Changes in configuration or usage
- Incremental/decremental changes to the baseline to the ISSO and ISSM.

Note: In the event that an ISSM is not assigned, ISSM duties are the responsibility of the assigned security officer.



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8 CONFIGURATION MANAGEMENT

Configuration management is a process that controls and manages changes (i.e., new applications, peripherals, changes in configuration, etc.) to a device or system. By controlling changes made to a system's hardware, software, firmware, and/or documentation, throughout the system/device life cycle, configuration management is a mandatory, integral part of this overall risk management solution. The ISSM and ISSO are responsible for managing this process.

8.1 Incremental Changes

Incremental changes to the baseline may be vetted and approved by the ISSM. Minor changes such as the revision number of an application do not require ISSM approval but are to be tracked by the ISSO in the configuration information periodically provided to the ISSM in the configuration management document illustrated in Attachment 1.

8.2 Security Architecture and Usage Changes

Any changes affecting the security architecture including the manner in which the are used or the type of data stored on them may require a renegotiated ATO.

9 RULES OF BEHAVIOR

The PEDs known as covered under this SMP are granted deviations from the standard security settings based on operational need. These deviations have corresponding expected rules of behavior with respect to how they are used, stored, and maintained. These include:

9.1 Protection

b3
b7E

9.2 Data Protection

CELL/OTD

001425

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9.3

[Redacted]

[Redacted]

9.4

[Redacted]

[Redacted]

b3
b7E

9.5

[Redacted]

[Redacted]

CELL/OTD

001430

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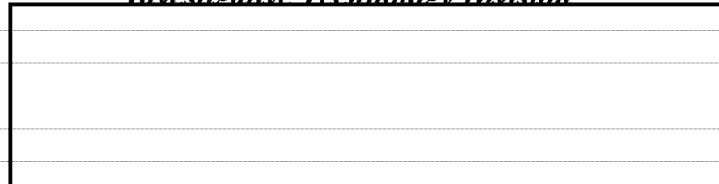
ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 10-13-2012 BY 65179 DMH/STW



FBI
Portable Electronic Device
Security and Management Plan (SMP)

From

Investigative Technology Division



09/14/2004

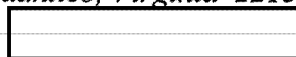
*Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Room 9364
Washington, DC 20530*

b3
b6
b7C
b7E

Prepared By:

[Redacted] *Program Manager*

*Engineering Research Facility, Building [Redacted]
Quantico, Virginia 22135*



CELL/OTD

001432

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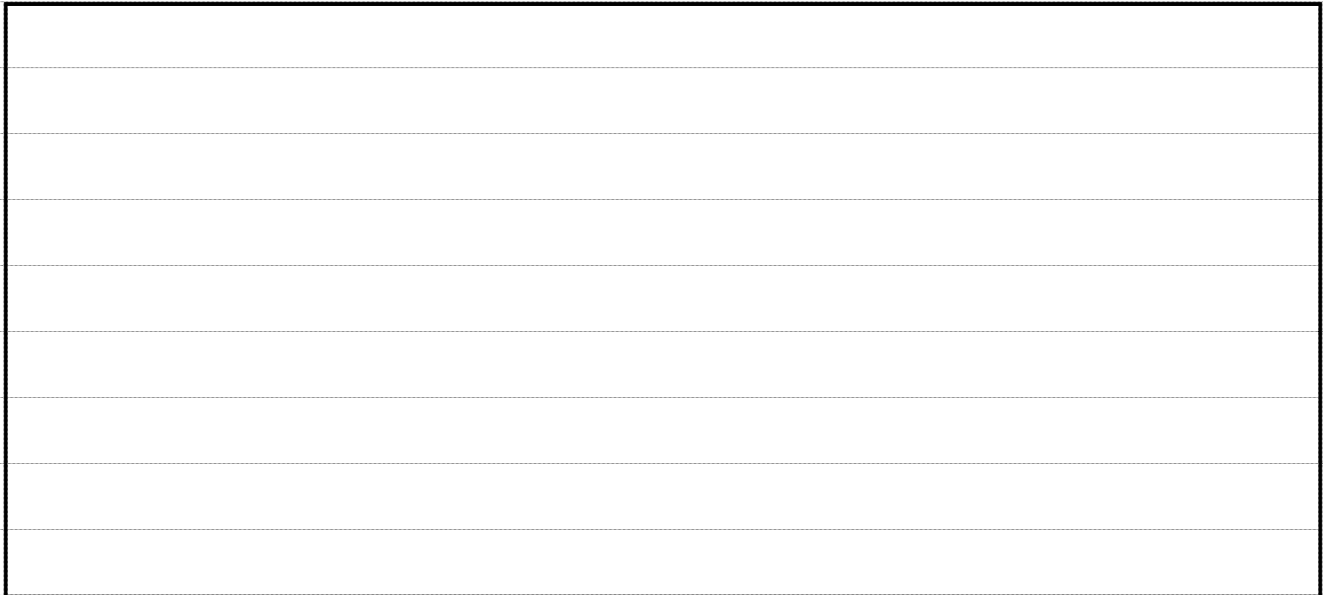
FOR OFFICIAL USE ONLY

1 INTRODUCTION

This document serves as the instrument for the Mobile Computing Security Program to identify requirements and assess risk, with the objective of providing an approval-to-operate. The information required for this assessment includes, but is not limited to, a complete scope of need, justification, concept of operations, technical specifications, configuration management and residual risk relative to the device being placed into service. Once completed, and if residual risk is deemed acceptable, an official EC will be generated granting an approval to operate (ATO) for those device(s) described within, in the manner set forth in the concept of operations.

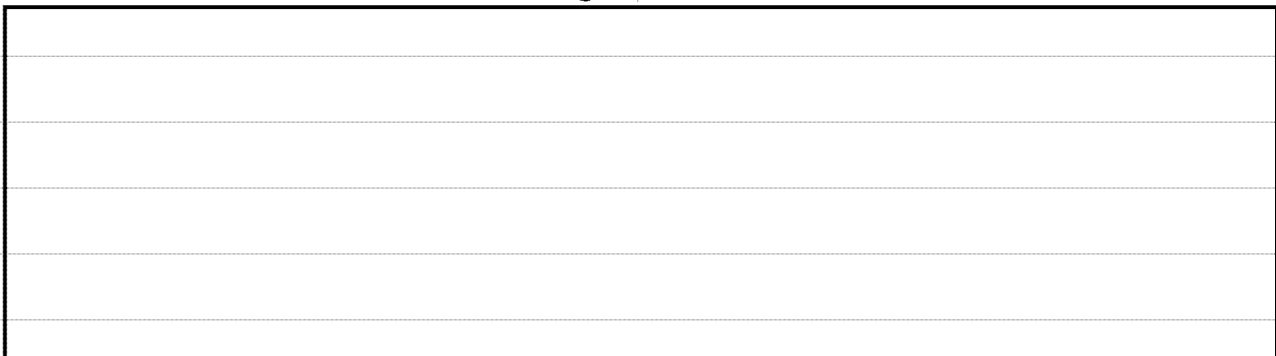
Attachments 1 and 2 are "living" documents. That is they are updated each time there is a change in the configuration, or when new devices are fielded under this ATO. Attachment 1 is the Configuration Management control document that lists the specific applications in use under this ATO. Attachment 2 is a complete listing of all devices fielded under this ATO.

2 MISSION BACKGROUND



b3
b7E

3 JUSTIFICATION FOR REQUEST



CELL/OTD

2

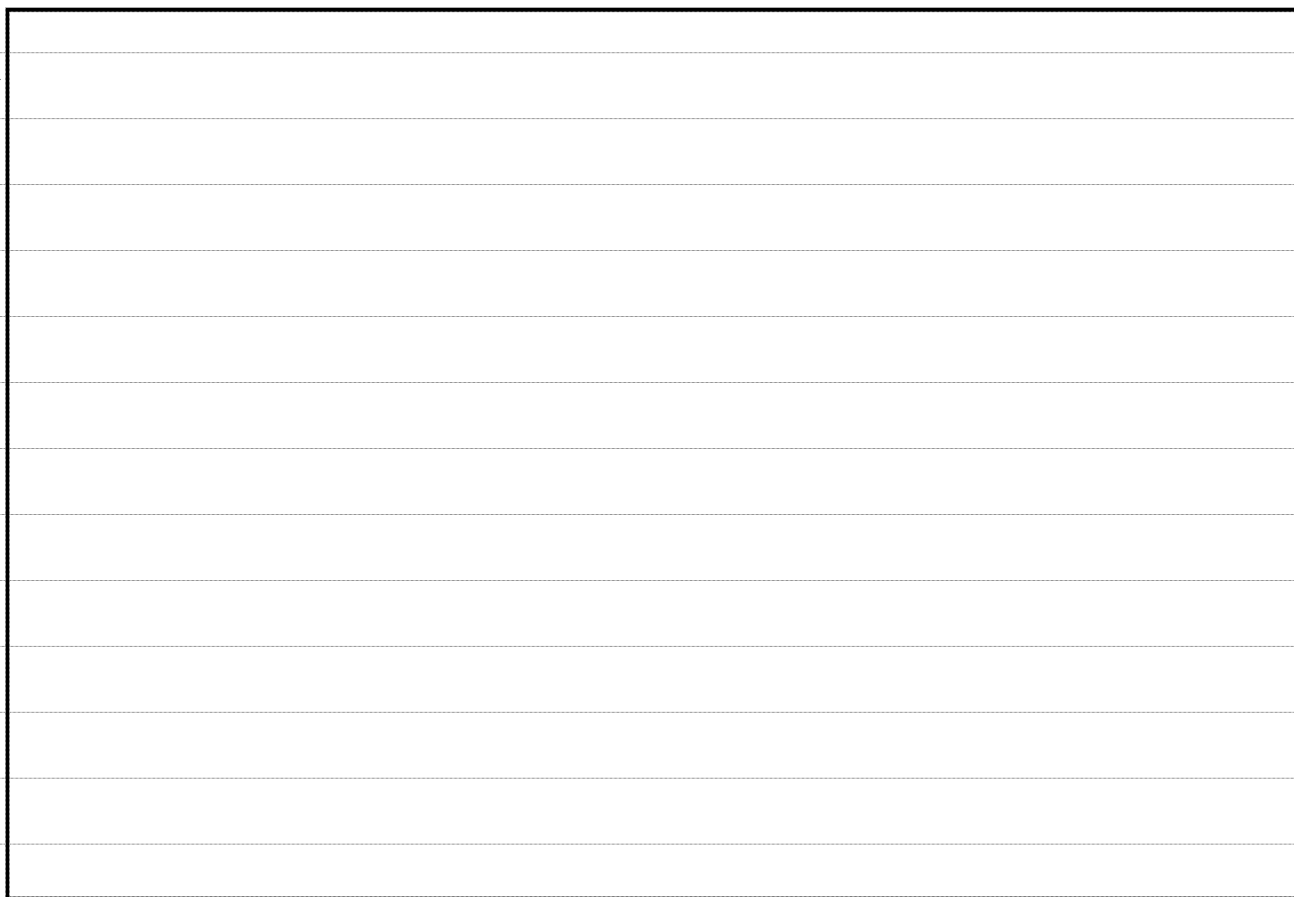
001433

FOR OFFICIAL USE ONLY

FOR OFFICIAL USE ONLY



4 CONCEPT OF OPERATIONS



b3
b7E

CELL/OTD

001434

FOR OFFICIAL USE ONLY

FOR OFFICIAL USE ONLY

5 TECHNICAL DATA

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5.1

--

--

5.2 Field Control/Storage

b3
b7E

--

5.3

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CELL/OTD

001435

FOR OFFICIAL USE ONLY

10 RULES OF BEHAVIOR

The PEDs known as [REDACTED] covered under this ATO are granted deviations from the standard security settings based on operational need. These deviations have corresponding expected rules of behavior with respect to how they are used, stored, and maintained. These include:

10.1 [REDACTED] Protection

10.2 Data Protection

10.3 [REDACTED]

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b7E

10.4 [REDACTED]

10.5 [REDACTED]

10.6 PRE/POST Testing and Deployment Procedure

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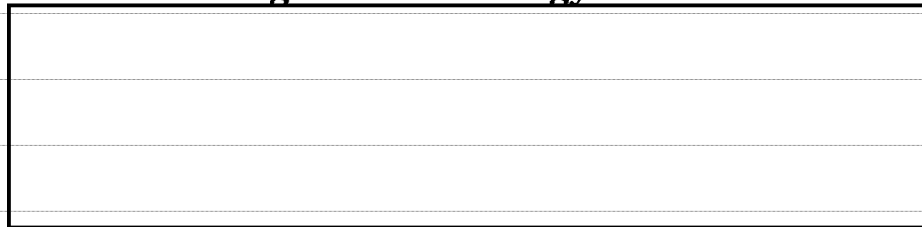
ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 10-13-2012 BY 65179 DMH/STW



FBI

***Portable Electronic Device
Security and Management
Plan (SMP)***

*From
Investigative Technology Division*





09/14/2004

*Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Room 9364
Washington, DC 20530*

b3
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b7E

Prepared By:

 *Program Manager*


CELL/OTD

1

001445

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FOR OFFICIAL USE ONLY

Engineering Research Facility, Building

Quantico, Virginia 22135

b3
b6
b7C
b7E

CELL/OTD

001446

FOR OFFICIAL USE ONLY

FOR OFFICIAL USE ONLY

10 RULES OF BEHAVIOR

The PEDs known as [redacted] covered under this ATO are granted deviations from the standard security settings based on operational need. These deviations have corresponding expected rules of behavior with respect to how they are used, stored, and maintained. These include:

10.1 [redacted] Protection

10.2 Data Protection

b3
b7E

10.3 [redacted]

10.4 [redacted]

10.5 [redacted]

CELL/OTD

001455

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 05/13/2004

To: Finance

Attn:

From: Investigative Technology

Contact:

Approved By:

Drafted By:

Case ID #: 268-HQ-1068430

Title:

Synopsis: To request procurement of

b3
b6
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b7E

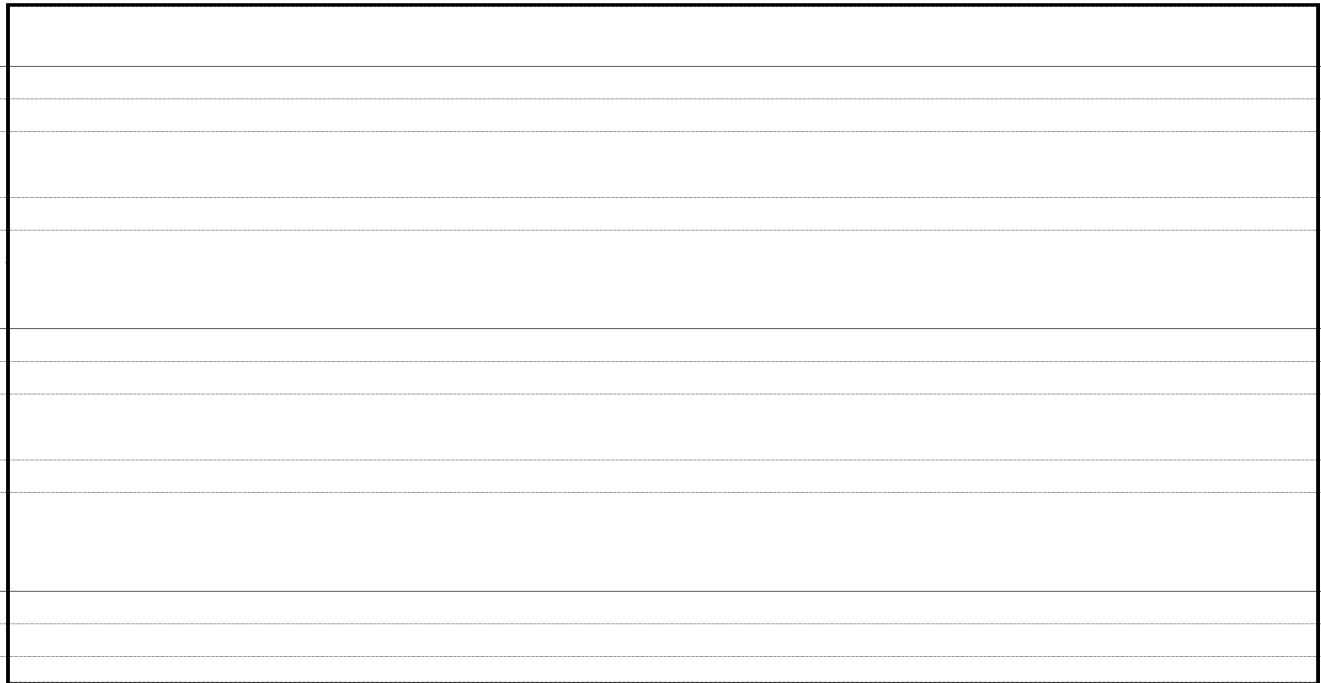
Enclosures: FD-369, #xxxxxxx in the amount of copy of
Non-IT Waiver EC, and Acquisition Plan.

Details:

CELL/OTD

001467

To: Finance From: Investigative Technology
Re: 268-HQ-1068430, 06/13/2003



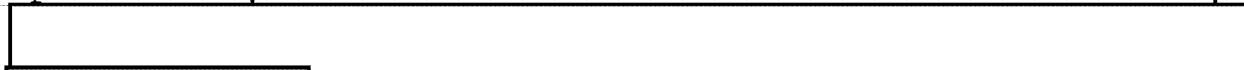
LEAD:

Set Lead 1: (Action)

FINANCE

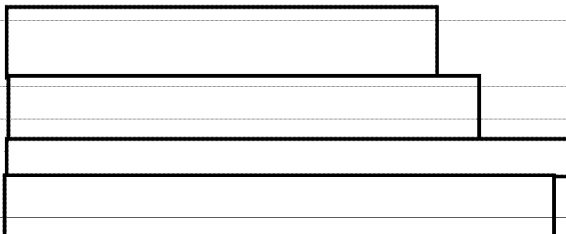
AT WASHINGTON, DC

The Engineering Contracts Unit is requested to issue a
procurement [redacted]



[redacted] Funding for this procurement is available from
Budget Items [redacted] Subobject Classification [redacted]

CC:



♦♦

ACQUISITION PLAN

FEDERAL BUREAU OF INVESTIGATION

1. Unit/Section/Division: []/ITD
2. Description of Requirement: To request procurement []
[] b3
b7E
3. Estimated Cost: [] 4. Term of Contract: []
5. Distribution of Dollars: FY- 04 []
FY- [] FY- []
FY- [] FY- []
6. Subobject Class/Budget Item: []
Product or Service Code: n/a
7. Market Research (state how performed & attach): Market survey conducted via internet research and contact/communication with multiple vendors
- Commercial Item: ☒ Yes ☐ No Competitive: ☐ Yes ☒ No
If no to one or more above, explain: Reference Attached EC for Sole Source Justifications
8. Sources Considered: ☐ FBI Personnel ☐ Other Government Personnel ☐ Required Sources (FAR Part 8)
☐ 100% Small Bus. ☐ 8a Set aside ☐ Disadvantaged (FAR Part 8)
☐ Hubzone ☐ Women-owned ☒ Other Federal Contracts
☐ A-76
9. If Information Technology: ☐ IRM Review ☐ AIS Approval
10. Type of Procurement: ☒ Brand Name Only ☐ Commercial Item ☐ Functional Specifications
☐ Brand Name or Equal ☐ Compatibility ☐ Performance-Based Service Contract
11. Contract Type: ☐ BOA ☐ IDIQ Contract ☐ Reimbursable Agreement
☐ Cost-Reimbursement ☐ (IFB) ☐ RFP
☒ Firm-Fixed Price ☐ Incentive ☐ RFQ
☐ Firm-Fixed Price w/Economic Adj. ☐ Letter Contract (DOJ Approval) ☐ Time and Material
12. Lease vs Purchase (if lease, analysis attached): NO 13. Environmentally Preferable Item: ☐ Yes ☒ No
14. Inherently Government Function (justified): ☐ Yes ☒ No
15. Lead Time Required: [] To be filled in by Contracting Officer.

Approval: []
Technical Staff Member/(date)

[]
Budget Staff Member/(date)

[]
Legal Review (If applicable)/(date)

[]
Contracting Officer or CCO/(date)

CELL/OTD

001470

JULIAN DATE

Room# & Ext:

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b7C
b7E

See attached EC

001471

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 06/03/2004

To: Finance

Attn:

Criminal Investigative

From: Investigative Technology

Contact:

Approved By:

Drafted By:

Case ID #: 268-HQ-1068430

Title:

Synopsis: To request the Engineering Contracts Unit (ECU) to
establish an

b3
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Enclosures: FD-369, in the amount of , Statement
of Work and Acquisition Plan.

Details:

CELL/OTD

001476

To: Finance From: Investigative Technology
Re: 268-HQ-1068430, 06/03/2004

LEAD(s):

Set Lead 1: (Action)

FINANCE

AT WASHINGTON, DC

The ECU is requested to establish an [redacted]
[redacted]
[redacted] Funding in the amount of [redacted] for
the first year is available from Subobject Classification [redacted]
Budget Item [redacted]

Set Lead 2: (Info)

CRIMINAL INVESTIGATIVE

AT WASHINGTON, DC

For information only.

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CC:

[redacted]
[redacted]
[redacted]
[redacted]

♦♦

~~SECRET~~

DATE: 10-13-2012
CLASSIFIED BY 65179 DMH/STW
REASON: 1.4 (C, G)
DECLASSIFY ON: 10-13-2037



U.S. Department of Justice

Federal Bureau of Investigation

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

**JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION
IN ACCORDANCE WITH 41 U.S.C. 253(c)(6)**

All information contained herein is classified "~~SECRET~~" unless so otherwise noted (U).

(1) AGENCY AND CONTRACTING ACTIVITY AND IDENTIFICATION OF DOCUMENT.

(S)

[Redacted]

(2) NATURE AND/OR DESCRIPTION OF THE ACTION BEING APPROVED.

(S)

(S)

[Redacted]

b1
b3

(3) DESCRIPTION OF THE SUPPLIES OR SERVICES.

(S)

[Redacted]

CELL/OTD

Derived From: G3 487

Declassify On: X-1

~~SECRET~~

~~SECRET~~

(S)

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(4) STATUTORY AUTHORITY.

(U) This contract action is authorized by 41 U.S.C. 253(c)(6), as implemented in FAR 6.302-6, National Security.

**(5) A DEMONSTRATION THAT THE NATURE OF THE ACQUISITION
REQUIRES USE OF THE AUTHORITY CITED.**

(U) As described in FAR 6.302-6(a)(2), use of other than full and open competition is deemed applicable to satisfy the FBI's minimum needs when the disclosure of agency needs would compromise national security.

(S)

~~Derived From: G3~~

~~Declassify On: X-1~~

~~SECRET~~

CELL/OTD

~~SECRET~~

- (6) **EFFORTS MADE TO ENSURE OFFERS ARE SOLICITED FROM AS MANY POTENTIAL SOURCES AS PRACTICABLE.**

(S)

(S)

(S)

b1
b3

001489

- (7) **DEMONSTRATION THAT THE ANTICIPATED COST TO THE GOVERNMENT WILL BE FAIR AND REASONABLE.**

(U) The contractor's proposal will be subjected to cost/price analysis, audit, and technical evaluation. The Contracting Officer will make a determination, in accordance with FAR 15.404-1, that costs are fair and reasonable.

- (8) **A DESCRIPTION OF THE MARKET RESEARCH.**

(S)

CELL/OTD

~~Derived From: G3~~

~~Declassify On: X-1~~

~~SECRET~~

~~SECRET~~

(U) A market survey will be conducted to determine that the anticipated cost to the government will be fair and reasonable.

(9) **ANY OTHER FACTS SUPPORTING THE USE OF OTHER THAN FULL AND OPEN COMPETITION.**

(S)

A large rectangular box with a black border, used to redact information.

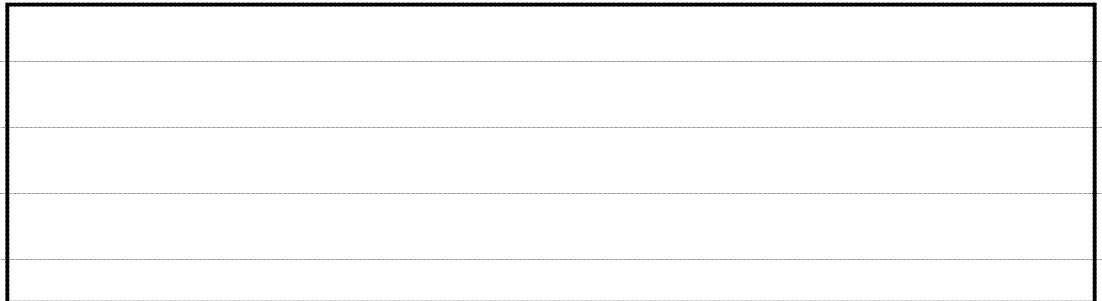
(10) **LISTING OF SOURCES, IF ANY, THAT EXPRESSED A WRITTEN INTEREST IN THE ACQUISITION.**

(U) Since the requirement is classified, and therefore not publicized, no other source was given the opportunity to express an interest in writing or orally.

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(11) **A STATEMENT OF ACTIONS, IF ANY, THE AGENCY MAY TAKE TO REMOVE OR OVERCOME ANY BARRIERS TO COMPETITION.**

(S)

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001490

CELL/OTD

~~Derived From: G3~~

~~Declassify On: X-1~~

~~SECRET~~

~~SECRET~~

(12) CERTIFICATIONS.

TECHNICAL SPECIALIST CERTIFICATION:

- (U) As Technical Representative of this requirement, I hereby certify that all information contained herein is complete and accurate to the best of my knowledge.

[Redacted]

Contracting Officer's Technical Representative (COTR)

Date

CONTRACTING OFFICER CERTIFICATION:

- (U) As the Contract Specialist handling this acquisition, I hereby certify that all information contained herein is complete and accurate to the best of my knowledge.

[Redacted]

Contracting Officer

Date

- (U) Reviewed by:

[Redacted]

Unit Chief
Telecommunications Contracts and Audit Unit

Date

Reviewed by:

[Redacted]

Chief Contracting Officer

Date

Reviewed by:

[Redacted]

Office of General Counsel

Date

Approved by:

Joseph L. Ford
Deputy Assistant Director

Date

b6
b7c

001491

CELL/OTD

~~Derived From: G3~~
~~Declassify On: X-1~~

~~SECRET~~

~~SECRET~~

DATE: 10-13-2012
CLASSIFIED BY 65179 DMH/STW
REASON: 1.4 (C, G)
DECLASSIFY ON: 10-13-2037



U.S. Department of Justice

Federal Bureau of Investigation

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

**JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION
IN ACCORDANCE WITH 41 U.S.C. 253(c)(6)**

All information contained herein is classified "~~SECRET~~" unless so otherwise noted (U).

(1) AGENCY AND CONTRACTING ACTIVITY AND IDENTIFICATION OF DOCUMENT.

(S)

[Redacted]

(2) NATURE AND/OR DESCRIPTION OF THE ACTION BEING APPROVED.

(S)

(S)

[Redacted]

001492

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(3) DESCRIPTION OF THE SUPPLIES OR SERVICES.

(S)

[Redacted]

CELL/OTD

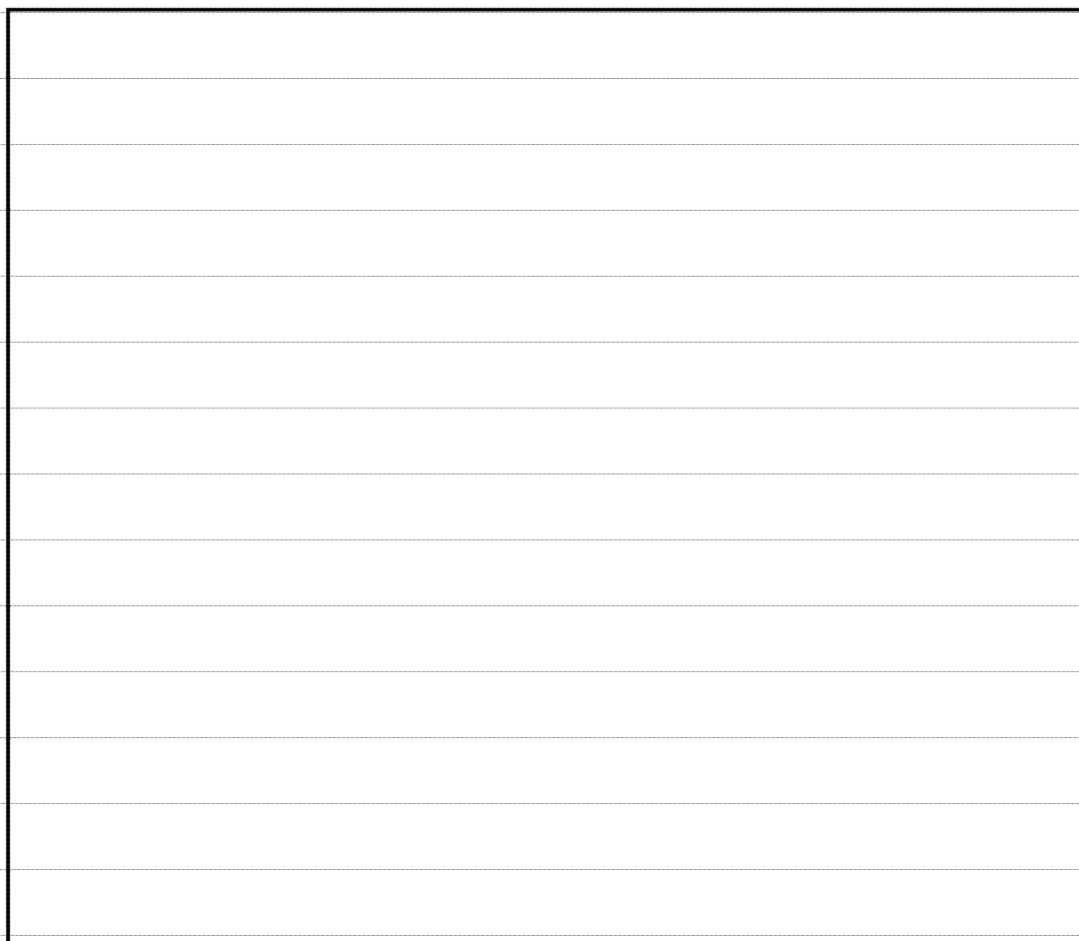
~~Derived From: G3~~

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001493

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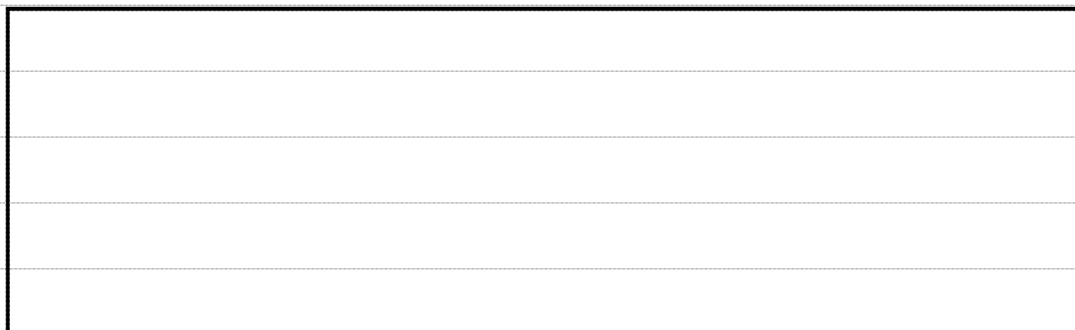
(4) STATUTORY AUTHORITY.

(U) This contract action is authorized by 41 U.S.C. 253(c)(6), as implemented in FAR 6.302-6, National Security.

(5) A DEMONSTRATION THAT THE NATURE OF THE ACQUISITION REQUIRES USE OF THE AUTHORITY CITED.

(U) As described in FAR 6.302-6(a)(2), use of other than full and open competition is deemed applicable to satisfy the FBI's minimum needs when the disclosure of agency needs would compromise national security.

(S)



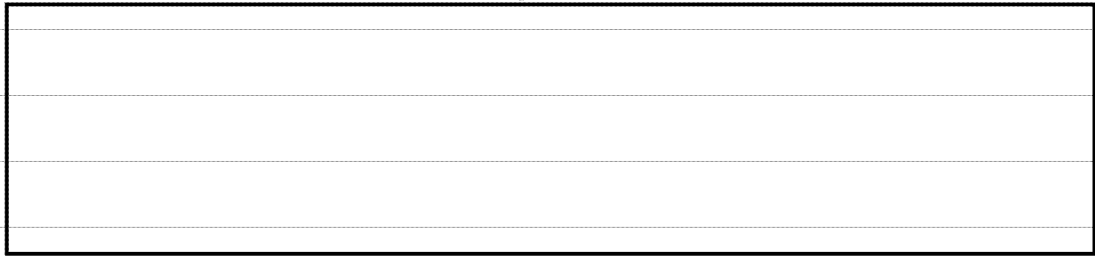
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~~Derived From: G3~~

~~Declassify On: X-1~~

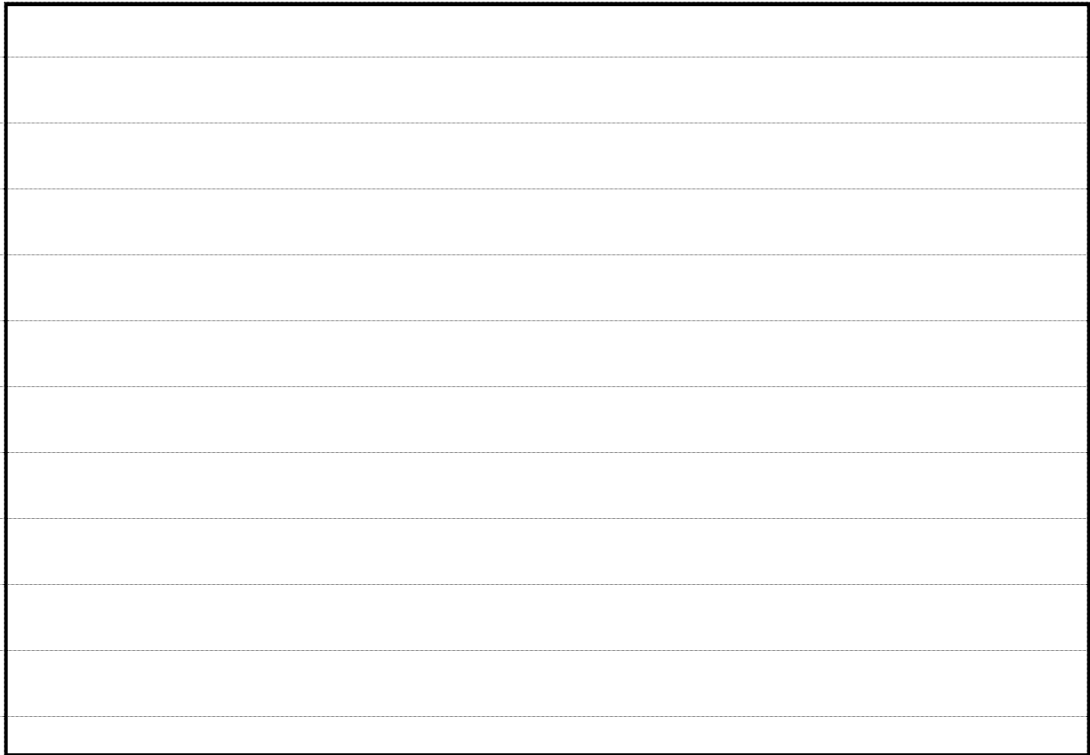
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- (6) **EFFORTS MADE TO ENSURE OFFERS ARE SOLICITED FROM AS MANY POTENTIAL SOURCES AS PRACTICABLE.**

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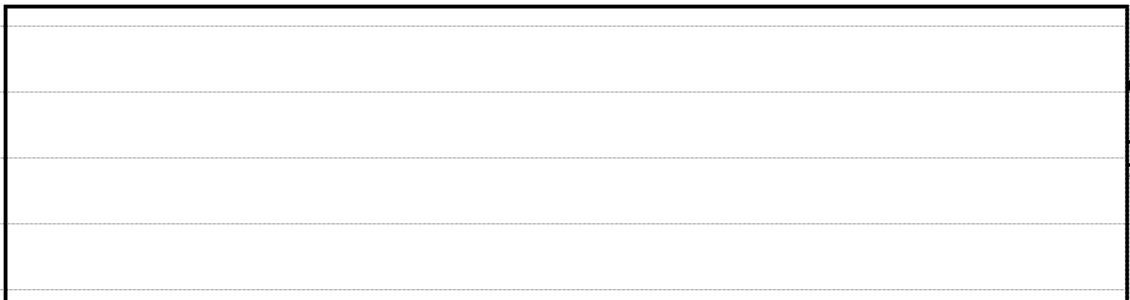
001494

- (7) **DEMONSTRATION THAT THE ANTICIPATED COST TO THE GOVERNMENT WILL BE FAIR AND REASONABLE.**

(U) The contractor's proposal will be subjected to cost/price analysis, audit, and technical evaluation. The Contracting Officer will make a determination, in accordance with FAR 15.404-1, that costs are fair and reasonable.

- (8) **A DESCRIPTION OF THE MARKET RESEARCH.**

(S)



CELL/OTD

Derived From: G3
Declassify On: X-1

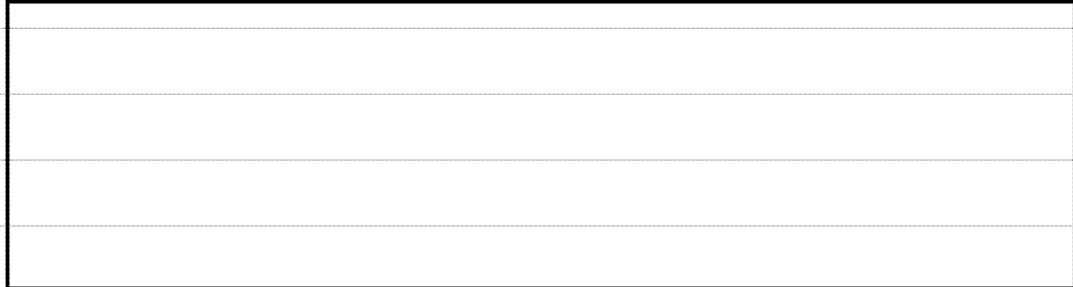
~~SECRET~~

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(U) A market survey will be conducted to determine that the anticipated cost to the government will be fair and reasonable.

(9) ANY OTHER FACTS SUPPORTING THE USE OF OTHER THAN FULL AND OPEN COMPETITION.

(S)

A large rectangular box with a black border, used for redaction of sensitive information.

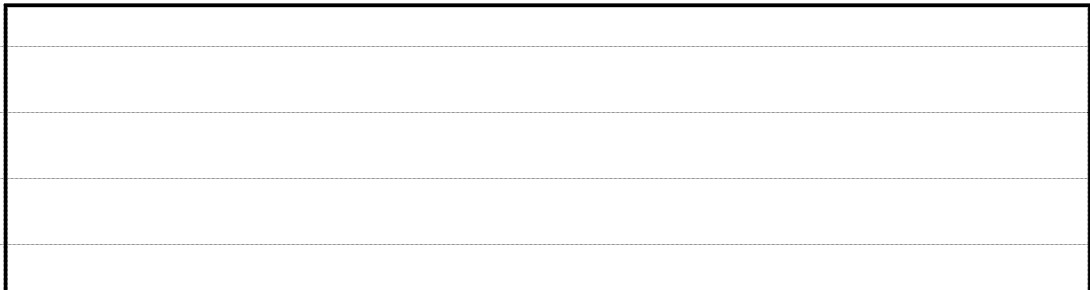
(10) LISTING OF SOURCES, IF ANY, THAT EXPRESSED A WRITTEN INTEREST IN THE ACQUISITION.

(U) Since the requirement is classified, and therefore not publicized, no other source was given the opportunity to express an interest in writing or orally.

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(11) A STATEMENT OF ACTIONS, IF ANY, THE AGENCY MAY TAKE TO REMOVE OR OVERCOME ANY BARRIERS TO COMPETITION.

(S)

A large rectangular box with a black border, used for redaction of sensitive information.

CELL/OTD

001495

~~Derived From: G3~~
~~Declassify On: X-1~~
~~SECRET~~

~~SECRET~~

(12) CERTIFICATIONS.

TECHNICAL SPECIALIST CERTIFICATION:

- (U) As Technical Representative of this requirement, I hereby certify that all information contained herein is complete and accurate to the best of my knowledge.

[Redacted]

Contracting Officer's Technical Representative (COTR)

Date

CONTRACTING OFFICER CERTIFICATION:

- (U) As the Contract Specialist handling this acquisition, I hereby certify that all information contained herein is complete and accurate to the best of my knowledge.

[Redacted]

Contracting Officer

Date

- (U) Reviewed by:

[Redacted]

Unit Chief

Date

[Redacted]

Reviewed by:

[Redacted]

Chief Contracting Officer

Date

Reviewed by:

[Redacted]

Office of General Counsel

Date

Approved by:

Joseph L. Ford
Deputy Assistant Director

Date

Derived From: G3

Declassify On: X-1

~~SECRET~~

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001496

CELL/OTD

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 07/05/2001

To: Criminal Investigative
Finance
Information Resources

Attn:

From: Laboratory

Contact:

Approved By:

Drafted By:

Case ID #: 269-HQ-1194267

Title:

Synopsis: The Finance Division, Engineering Contracts Unit, is requested to modify the Basic Ordering Agreement, [REDACTED]
[REDACTED]

Enclosure(s): FD-369, Number [REDACTED] in the amount of [REDACTED] and
[REDACTED]

Details:

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To: Finance From: Laboratory
Re: 269-HQ-1194267, 07/05/2001

LEAD(s):

Set Lead 1: (Adm)

CRIMINAL INVESTIGATIVE

AT WASHINGTON, DC

For information only.

Set Lead 2: (Adm)

FINANCE

AT WASHINGTON, DC

The Finance Division is requested to procure the

[redacted]
[redacted] Funding totaling to [redacted] is available for this
procurement from Budget Item [redacted] Spend Code [redacted]

Set Lead 3: (Adm)

INFORMATION RESOURCES

AT WASHINGTON, DC

For information only.

CC:

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