

# DOWNLOAD PDF WHAT FEDERAL AGENCIES ARE AUTHORIZED TO ISSUE NATIONAL SECURITY LETTERS?

## Chapter 1 : EPIC - In re National Security Letter

*National Security Letter Authorities that the material is being sought for an authorized national security investigation. the letters stated that federal grand jury subpoenas had been.*

The need for a practical guide for legal counsel on responding to national security letters Why is guidance needed for legal counsel on national security letters? How did the law on national security letters change to produce these challenges for legal counsel? What tasks now confront companies and their legal counsel with respect to national security letters? How is the guide organized? Understanding national security letters What is a national security letter? Why are national security letters controversial? What issues of constitutional law do national security letters raise? Are there different kinds of national security letters or only one type? What federal agencies are authorized to issue national security letters? What kind of information does the federal government seek in national security letters? Receiving and reviewing national security letters What is the likelihood that a company will receive a national security letter? How does the federal government make a national security letter request known to a company? What should authorized company representatives do when they first talk or meet with federal agents concerning a national security letter? What does the company do with the national security letter upon receipt? What if a company receives a letter from a federal agency that contains a request for information, but the letter does not cite national security letter statutes for its legal basis? Responding to national security letters Does federal law mandate compliance with requests for information received through national security letters? What happens if a recipient of a national security letter fails to comply with the request for information? Why might a company decide not to comply with a request for information in a national security letter? What other actions should a company take with respect to responding to national security letters? Public relations Auditing issues National Security Letters and International Issues What are the basic principles that guide federal government efforts to access information held or located in a foreign country? How do these general principles apply to the use of national security letters? Jurisdiction and authority to seek information located outside the United States Determining the reasonableness of a request for foreign-based information Alternative mechanisms for obtaining foreign-based information What do the general principles on obtaining foreign-based information mean for recipients of national security letters in the United States? Monitoring the law on national security letters Why should monitoring the law on national security letters be a priority for companies and their legal counsel? What legislative proposals have been made in congress to reform the law on national security letters? Increased restrictions and obligations on federal agencies issuing national security letters Implications of the proposed legislation for potential recipients of national security letters Changes to other laws and policies on national security investigations What would be good strategies for monitoring potential changes to the law on national security letters?

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## Chapter 2 : National security letter - Wikipedia

*A national security letter (NSL) is a law enforcement investigative tool similar to a subpoena and is most commonly issued by the FBI. NSLs are used to obtain information from companies as part of national security-related investigations.*

What Is the Scope of Homegrown Terrorism? Building Blocks for Investigations or Intrusive Tools? What Role for Judicial Review? NSLs are secret demand letters issued without court approval or independent oversight to financial institutions, telecommunications and Internet service providers and credit agencies to obtain sensitive personal information such as financial records, credit reports, the phone numbers and email addresses with which a person has communicated, and possibly the websites a person visited. Three Department of Justice inspector general reports later confirmed pervasive FBI mismanagement, misuse and abuse of these Patriot Act-expanded authorities. The IG audits also confirmed that 40, NSLs were issued every year during the mids, and in a majority of them were directed against people in the U. This sort of broad, suspicionless collection of private data about innocent Americans is the logical result of destroying the requirement of a factual nexus between an NSL and terrorist activity. And permitting the NSLs to be issued at the field office level removed the opportunity for centralized administrative oversight, making abuse more likely to occur, and less likely to be discovered by FBI managers. These illegal requestsâ€”sometimes just a phone number written on a Post-it noteâ€”were often given to the telecommunications companies with the promise that an NSL or grand jury subpoena would follow, but more often than not these promises went unfulfilled. Rather than using NSLs as an investigative tool, as Congress clearly intended by only allowing them to be used when the information sought was relevant to an ongoing investigation, the FBI was using NSLs for mass data collection. The IG found FBI agents often carelessly uploaded information produced in response to NSLs into FBI databases without reviewing it to evaluate its importance to the investigation or even to ensure the proper data was received. As a result, information received in error was improperly retained and illegally shared throughout the intelligence community. In two other incidents, information for individuals not relevant to FBI investigations was uploaded into FBI databases, even though the FBI case agent had written on the face of the documents: New subscriber not related to subject. Agents self-reported the overproduction of unauthorized information in only four of the instances the IG identified. Congress foresaw some of these information-sharing and accuracy problems. In , it voted to reauthorize other portions of the Patriot Act that were scheduled to expire. That legislation required the attorney general and director of national intelligence to study whether minimization requirements were feasible in the context of NSLs. The report was due in February , and to date there is still no public information confirming that this report was ever sent to Congress, or even written. However, during the Patriot reauthorization efforts of , members of Congress did state that some sort of internal minimization procedures were voluntarily adopted. Without public oversight, the effectiveness of these internal procedures in protecting the rights of innocent Americans remains in doubt. As the NSL saga reveals, internal controls unchecked by independent oversight are insufficient to prevent abuse. NSLs generally contain language prohibiting recipients from telling anyone besides a lawyer or the people necessary to comply with the NSL that they received it, much less what it requested. Because the letters go to the service provider, bank or other third-party record holder, the target of the NSLâ€”the individual whose records are sought or obtainedâ€”is never notified of the NSL or told that sensitive, personal information was disclosed. In response, in Congress limited these gag orders to situations where an FBI special agent in charge certifies that disclosure of the NSL request might result in danger to the national security, interference with an FBI investigation or danger to any person. The ACLU challenged the gag order as rewritten and won again. The 2nd Circuit in *Doe v. Holder* held the gag unconstitutional because it put the burden on the recipient to prove that lifting the gag would not harm national security. To be consistent with the First Amendment, the court shifted the onus to the government to demonstrate to a court a

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risk to national security whenever an NSL recipient notified the government that he or she wanted to challenge the gag. While the Obama administration testified before Congress that it was implementing its gag orders consistent with this opinion, there is no public information to support this claim. Despite debating the reauthorization of the Patriot Act off and on for two years from to , the administration never once asked for this authority publicly, thereby preventing any meaningful debate about such a substantial expansion of authority. Section orders are sought to obtain any tangible things relevant to a foreign intelligence investigation, including the records that can be obtained using an NSL. However, Section orders require judicial approval and NSLs do not. Our client Doe—now publicly identified as Nick Merrill, the former operator of a small Internet service provider—believes that his NSL targeted someone because of his or her political speech on the Internet. Ultimately, the NSL statute must be amended. This imprudently low standard remains an open door to abuse. This authority ensured that the FBI would have the necessary tools to investigate threats to the national security posed by terrorists and spies because Congress had, at the same time, enacted statutory privacy protection to certain classes of records held by third-party businesses. Congress then understood a principle that remains true to this day: To appropriately and efficiently investigate threats to the national security, the FBI needs the ability to gather very basic information about individuals, including information about their finances, where they live and work, and with whom they are in contact, without alerting the targets that it is doing so. The NSL authority is now and always has been quite limited. First, unlike grand jury subpoenas that can be used to collect any nonprivileged document from any person or entity, the FBI can use NSLs only to obtain a very narrow range of information from a very narrow range of third-party businesses: NSLs can be used to obtain transactional information from wire or electronic communications service providers e. Other documents that can be critical to a national security investigation e. Second, unlike grand jury subpoenas that can be issued in any sort of criminal case, NSLs can only be used during duly authorized national security investigations. Finally, unlike grand jury subpoenas that can be issued by any assistant U. It is not an exaggeration to say that virtually every significant national security investigation, whether of an individual suspected of planning to wreak havoc through an act of terrorism or of an individual suspected of spying on the United States for the benefit of a foreign nation, requires the use of NSLs for at least some critical information. None of these arguments withstands scrutiny. While reasonable people may disagree about the appropriate standard, a rational debate cannot occur in a vacuum. The reality is far different. None of the information that can be obtained with an NSL is constitutionally protected. As noted above, the only information that can be obtained is information about who is in communication with whom not the content of the communication ; information contained in credit card and bank records; and information aggregated by credit reporting agencies. The unifying feature of all that data is that it has been shared with a third-party e. As the Supreme Court made clear in *United States v. Miller* , there is no reasonable expectation of privacy in such data. Second, putting aside the hyperbole about the inherent sensitivity of the information, to consider whether the NSL standard is too low, one must consider whether the standard required in a national security investigation is in sync or out of sync with the standard that exists to get the exact same information in other contexts. The fact is that information obtainable with an NSL is also obtainable with a grand jury subpoena in any criminal investigation and with an administrative subpoena in narcotics investigations. Although such investigations are obviously important, their purpose is to investigate crimes that generally pose far less danger to public safety and the national security than is posed by the targets of national security investigations. The standard for issuance of a grand jury or administrative subpoena is that the information sought must be relevant to the crime being investigated. It would be exceedingly odd public policy to make it harder for investigators who are investigating threats to the national security to get basic transactional data than it is for investigators who are investigating routine federal crimes to get the exact same information. Significantly, it did not find misuse in the sense of the FBI using NSLs maliciously or inappropriately to obtain records that were not relevant to an authorized FBI investigation. Of those errors, however, almost half 10 out of 22 were third-party errors—that is, the recipient of the NSL provided

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information that had not been sought by the FBI. Excluding third-party errors, the actual rate of FBI error was approximately 4 percent 12 out of 12. Of the 12 FBI errors, the overwhelming majority 10 out of 12 were nonsubstantive errors. While the practice originated in response to legitimate emergencies during which the FBI can obtain telephone records without any legal process, the practice morphed into an inappropriate substitute for required legal process either a grand jury subpoena or an NSL when there was no emergency. While the German-Richardson essay focuses on the negative findings of the IG, it studiously avoids discussing the actual controls that are in place and have been in place since shortly after the IG report to avoid the sort of errors discovered by the IG. Those controls are important because they collectively operate to ensure that the FBI is using the NSL authority responsibly and appropriately, and in a way that is subject to audit and review. The attorney general has established the standards that must be met in order to commence a predicated national security investigation, and the predication for every full investigation of a U. The authority to conduct national security investigations is further controlled through internal FBI policy that establishes internal controls regarding opening predicated investigations. The policy and procedures set forth clearly the standards that must be met before an NSL can be issued and mandate that the factual basis for the issuance of the NSL be documented in the file. Except in very limited circumstances, which generally account for fewer than 30 NSLs per year, NSLs must be created using an automated workflow system that minimizes the potential for error and helps ensure that statutory and policy requirements are met. As noted above, many of the errors detected by the IG in were nonsubstantive errors, such as citing the wrong statute, misquoting the required certification language, or omitting a step in the review process. The automated system ensures against such errors, automatically ensuring that each required review occurs and automatically ensuring the language in the NSL is uniform and legally correct. Finally, the automated system requires that documents received in response to an NSL are reviewed to minimize the impact of overproduction production of material not called for by the NSL and other third-party errors. The FBI mandates that all employees who may play a role in issuance of an NSL take training to ensure that they understand the rules. No person who is authorized to sign NSLs may do so until he or she has certified the receipt of that required training. Employees who make certain errors that are detected during the Inspection Division process or through other means lose the authority to approve NSLs until they complete remedial training and attest that they understand the rules for NSL issuance. In short, the FBI has taken numerous steps to improve compliance on the front end of the NSL process and to conduct rigorous self-evaluations after the fact to ensure strict compliance with the various statutes and policies that govern the use of this important tool. By statute, the recipient of an NSL can challenge it if responding would be unreasonable, oppressive or otherwise unlawful. Similarly, for any NSL that includes a nondisclosure order, the NSL notifies the recipient that, should they desire to disclose the fact that they received an NSL, they can either commence an action to set aside the nondisclosure requirement or notify the FBI of their desire to disclose. Mukasey that such a procedure was necessary for the nondisclosure provision of the NSL statute to pass constitutional muster. That statistic is not particularly surprising since NSLs can only be used to investigate national security cases cases where the risk from premature disclosure can be particularly grave. For example, a terrorist target upon learning of an investigation could take steps to expedite his plans of mayhem, to eliminate individuals who are believed to be cooperating with the government or to destroy critical evidence. Or diplomatic relations could be gravely harmed if a foreign government were to learn that the FBI had obtained telephone records associated with its officials who are in the United States. In short, there are good and sufficient reasons why the FBI generally wishes to keep the existence of an NSL secret; nevertheless, there is now a clear and constitutional process that any NSL recipient can follow if it wishes to make a disclosure. We should note that after approximately three years of including in NSLs the provision for disclosure during which time the FBI issued well in excess of 50, NSLs no recipients have notified the FBI that they wish to make a disclosure. Although NSLs will no doubt remain the national security tool that critics love to hate, when one focuses on reality rather than hyperbole, it is clear that the NSL is a constitutional tool that is reasonably used and is necessary in national security investigations to maintain

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the safety and security of the American people. The founders designed our constitutional system of government to prevent abuse of power through checks and balances between the branches and robust procedural protections where the government attempts to deprive an individual of his rights. Indeed, the most fully developed processes for the protection of civil rights exists within the criminal justice system, which makes the Caproni-Siegel comparison of NSLs to grand jury subpoenas most misplaced. The grand jury, made up of ordinary citizens, is designed to serve as an independent check on law enforcement authority by protecting people against unfounded charges. And in grand jury proceedings, the role of prosecutors—who are bound by the ethical obligations of their profession—is also a curb against law enforcement overreach. None of these protections exist with NSLs or other surveillance tools geared toward intelligence collection rather than criminal prosecution. The secrecy required in grand jury proceedings is designed to protect the privacy of the witnesses and individuals investigated, not to hide the government conduct from independent oversight and public accountability, as is the case with intelligence tools like NSLs. Victims of NSL abuse have no way of knowing their rights have been violated, and no remedy. The truth is that NSLs are intrusive tools. While the Supreme Court did fail to protect personal data held by third parties in , as Caproni and Siegel point out, Congress then stepped in to protect financial, credit and communications records, which most Americans consider sensitive and private information. The pre-Patriot NSL authorities Caproni and Siegel mention were limited to collecting information about suspected foreign agents or international terrorists. When the entities that hold private information show as little interest in protecting it as the government, everyone should worry. These figures justify calling the abuse pervasive, and denying their importance only raises further skepticism that Americans can trust government agents with such unfettered power. Even though national security letters cannot be used to obtain constitutionally protected information, Michael German and Michelle Richardson attempt to bolster their argument—or merely inflame the reader—against NSLs by casting the issue in constitutional terms.

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## Chapter 3 : National Security Letters: Building Blocks for Investigations or Intrusive Tools?

*National security letters (NSLs) "continue to be important tools in the FBI's national security investigations," according to a major audit of NSL use released yesterday.[1] The audit.*

History[ edit ] The oldest NSL provisions were created in as a little-used investigative tool in terrorism and espionage investigations to obtain financial records. A amendment removed the restriction regarding "foreign powers" and allowed the use of NSLs to request information concerning persons who are not the direct subject of the investigation. A federal judge could repeal or modify an NSL if the court found the request for information was "unreasonable, oppressive, or otherwise unlawful. The court could repeal the nondisclosure provision if it found it had been made in bad faith. Other amendments allowed the recipient of an NSL to inform their attorney about the request and the government had to rely on the courts to enforce compliance with an NSL. The act also provided the Department of Defense when conducting a law enforcement investigation, counterintelligence inquiry, or security determination. When the Director of the FBI or his designee authorizes the inclusion of a nondisclosure provision in an NSL, the recipient may face criminal prosecution if it reveals the contents of the NSL or that it was received. The purpose of a nondisclosure provision is to prevent the recipient of an NSL from compromising both the current FBI investigation involving a specific person and future investigations as well see 18 U. Under the threat of criminal prosecution, I must hide all aspects of my involvement in the case When I meet with my attorneys I cannot tell my girlfriend where I am going or where I have been. For NSLs, that is because the U. Supreme Court has held the types of information the FBI obtains with NSLs provide no constitutionally protected reasonable expectation of privacy. Because a person has already provided the information to a third party, e. According to 2, pages of documents the FBI provided to the Electronic Frontier Foundation in response to a Freedom of Information Act lawsuit, the FBI had used NSLs to obtain information about individuals who were the subject of an FBI terrorism or counterintelligence investigation and information from telecommunications companies about individuals with whom the subject of the investigation had communicated. According to a September 9, , New York Times report, In many cases, the target of a[n FBI] national security letter whose records are being sought is not necessarily the actual subject of a terrorism investigation. Ashcroft[ edit ] Letter in Doe v. Ashcroft case The lack of judicial oversight and the Supreme Court ruling in Smith v. Maryland was the core of Doe v. The action challenged the constitutionality of NSLs, specifically the nondisclosure provision. At the district court, Judge of the Southern District of New York held in September that NSLs violated the Fourth Amendment "it has the effect of authorizing coercive searches effectively immune from any judicial process" and First Amendment. However, Judge Marrero stayed his ruling while the case proceeded to the court of appeals. In March , the Second Circuit ruled that nondisclosure provisions were permissible only when the FBI certified that disclosure may result in certain statutorily enumerated harms see, e. Letter in the Doe v. Gonzales case Another effect of Doe v. Ashcroft was increased congressional oversight. Although the reports are classified, a nonclassified accounting of how many NSLs are issued is also required. During this period, the total number of NSL requests On November 30, , the unredacted court ruling was published in full.

## Chapter 4 : National Security Letters

*The National Security Letter provision of the Patriot Act radically expanded the FBI's authority to demand personal customer records from Internet Service Providers, financial institutions and credit companies without prior court approval.*

## Chapter 5 : National Security Letter | Wex Legal Dictionary / Encyclopedia | LII / Legal Information Institute

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*What federal agencies are authorized to issue national security letters? What if a company receives a letter from a federal agency that contains a request.*