



U.S. Department of Justice
Federal Bureau of Investigation

Washington, DC 20535

Office of the General Counsel

May 15, 2023

John H. Durham
Special Counsel
Department of Justice

Re: Report on Matters Related to Intelligence Activities and Investigations
Arising Out of the 2016 Presidential Campaigns

Dear Special Counsel Durham:

Thank you for your *Report on Matters Related to Intelligence Activities and Investigations Arising Out of the 2016 Presidential Campaigns* (Report).

The Federal Bureau of Investigation (FBI) appreciates the Special Counsel's independent review. We also appreciate your acknowledgment of the extensive cooperation FBI provided to your team throughout the review, including production of nearly 7 million pages of documents, assignment of full-time FBI Special Agents to assist in your fact-finding process, and provision of FBI technical expertise.

The activity detailed in your Report took place in 2016 and 2017 under prior leadership.¹ Since assuming the position in August 2017, Director Christopher Wray has repeatedly emphasized the importance of doing the right thing the right way. The FBI is committed to that bedrock principle and to discharging our responsibilities objectively and free from political bias. Indeed, even well before your review began, Director Wray instituted dozens of corrective actions, some of which are summarized below.

We agree that "it is important to examine past conduct to identify shortcomings and improve how the government carries out its most sensitive functions."² The primary failures discussed in your Report were examined in prior reviews by the Department of Justice's Office of the Inspector General (OIG),³ and your Report acknowledges the significant

¹ All senior executives overseeing the Crossfire Hurricane investigation have left the FBI as a result of termination, resignation, or retirement.

² Report at 18.

³ See Office of the Inspector General, United States Department of Justice (OIG), *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation* (December 8, 2019); OIG, *Management Advisory Memorandum for the Director of the Federal Bureau of Investigation Regarding the Execution of Woods Procedures for Applications Filed with the Foreign*

reforms that the FBI has instituted in the years since. In this letter, I outline several such reforms.

It merits emphasis: had the reforms implemented by current FBI leadership and summarized below been in place back in 2016, the failures detailed in your Report never would have happened.

FISA and National Security Investigations. Following reviews by the OIG, the FBI implemented wide-ranging and significant improvements to its FISA and national security program, including the forty-plus corrective actions ordered by Director Wray in 2019.

In February 2020, it became mandatory for FBI personnel seeking FISA authorities to use revised versions of two important forms, completion of which requires specific additional steps that were not mandated in 2016. First, a FISA Request Form that better ensures any information that may undermine probable cause is (1) identified and evaluated before a FISA application is made, and (2) ultimately provided to the Department of Justice’s National Security Division, Office of Intelligence (OI) for evaluation of whether it must be included in the resulting FISA application. Second, a more thorough and rigorous FISA Verification Form (i.e., the “Woods Form”) that, like the FISA Request Form, better ensures that FISA applications are complete and accurate.

The revised FISA Request Form also requires a requesting agent to identify and provide more detail than its predecessor form and specifically directs the agent to describe the material facts and circumstances relevant to probable cause. Requesting agents must identify any information that might undermine the requested probable cause finding, including any information from an interviewed target that is potentially inconsistent with a probable cause finding.

Finally, the revised FISA Request Form requires that the requesting agent provide material information about the reliability of sources, assets, or contacts relied upon in the application—even those operated by other U.S. government agencies or foreign governments—in every case in which that information is available. Significantly, that includes whether a source relied on sub-sources.

In May 2021, the undersigned and the Assistant Attorney General for the National Security Division issued joint guidance for all OI attorneys and FBI personnel entitled *2021 Guidance to Ensure the Accuracy and Completeness of Federal Bureau of Investigation Applications under the Foreign Intelligence Surveillance Act*. The detailed guidance was designed to ensure that submissions to the Foreign Intelligence Surveillance Court (FISC) are accurate and complete, and that the Court is provided with timely notice of any material misstatements or omissions. The guidance applies to “all personnel who work on FISA applications, including all FBI field office personnel who are part of the investigative team; FBI personnel who handle CHSs whose information is used in a FISA application; FBI personnel who provide

Intelligence Surveillance Court Relating to U.S. Persons (March 30, 2020); and OIG, *Audit of the Federal Bureau of Investigation’s Execution of Its Woods Procedures for Applications Filed with the Foreign Intelligence Surveillance Court Relating to U.S. Persons* (September 30, 2021).

operational, linguistic or other technical assistance to the investigative team; as well as FBI Headquarters personnel who support the field through operational, analytic, technical or linguistic assistance, liaison with the Intelligence Community (IC), or outreach to personnel located overseas or international partners.”⁴

Woods Files Maintenance. The FBI has enhanced its policy concerning the creation and maintenance of the files containing documents supporting FISA applications, commonly referred to as “Woods Files.” Specifically, on July 6, 2021, the FBI published a revised *Foreign Intelligence Surveillance Act and Standard Minimization Procedures Policy Guide* that governs the creation and maintenance of Woods Files by:

- Requiring that Woods Files be maintained electronically unless otherwise prohibited (e.g., at a higher classification);
- Mandating separate Woods Files for each initiation, amendment, and renewal application;
- Providing guidance to address circumstances in which FISAs are transferred between offices to ensure Woods Files are reviewed and compliant; and
- Requiring the maintenance of Woods Files pursuant to the established record retention schedule for the main case file.

Supervisory Review of Woods Files. As of July 6, 2021, supervisors must:

- Review each factual assertion and its corresponding supporting documentation in the Woods File, regardless of whether it is an initiation or renewal;
- Ensure that subordinates adhere to all FISA accuracy and documentation requirements; and
- Attest to the provision of all information to OI that might reasonably call into question the accuracy of the information in the application or otherwise raise doubts about the probable cause findings or the relationship to a foreign power.

Training. The FBI has implemented significant new training modules related to FISA and the use of Confidential Human Sources (CHSs), among other topics. Training includes lessons learned from the OIG and other reviews to ensure that all FBI operational personnel will apply those lessons to every aspect of their work. The FBI has also developed training with the Department of Justice’s National Security Division, tailored to FBI personnel who work on FISA applications. The goal of this training is to guarantee that every FISA application is accurate and complete.

No FISA application may be submitted by an agent who has not completed FISA training.

⁴ John C. Demers and Jason A. Jones, Memorandum, *2021 Guidance to Ensure the Accuracy and Completeness of Federal Bureau of Investigation Applications under the Foreign Intelligence Surveillance Act* (May 11, 2021).

Oversight. In addition to the external oversight conducted by the Department of Justice, FBI considerably strengthened and expanded its internal oversight and auditing program. These improvements include:

- Changing the selection criteria for legal reviews so that Headquarters attorneys identify applications for review based on an established process, which precludes the Field from self-selecting files for review;
- Adding more documentation requirements to the reviews so that attorneys must document each corrective action taken in response;
- Requiring Headquarters attorneys to provide analysis to the Field on the results of their review and incorporate the results into trends analysis and additional training, as appropriate; and
- Including FISA Business Records and Pen Register Trap and Trace applications within legal reviews.

In addition, with the authorization of the Attorney General, Director Wray created the FBI Office of Internal Auditing (OIA) in August 2020. OIA is led by an assistant director and is devoted to ensuring rigorous and robust auditing of the FBI's use of its national security authorities, including auditing the accuracy and completeness of FISA applications and queries of FISA information.

Headquarters Investigations. FBI executive management has instructed that investigations should be run out of the Field and not from Headquarters. FBI's Inspection Division conducts annual audits to ensure that investigations are properly assigned to the field.

Confidential Human Sources. We are encouraged by the Report's acknowledgment that, following various Crossfire Hurricane reviews, the FBI undertook a "comprehensive review" of the FBI's CHS Guidelines "to ensure that the FBI's source validation process was wholly refocused, revised and improved across the FBI,"⁵ and we appreciate your support of those improvements.

The improvements include:

- Updated Attorney General Guidelines implemented by then-Attorney General Barr in December 2020 authorized the FBI to shift from a long-term source validation model to a risk-based model. These revisions better aligned current FBI resources, personnel, and policies to create a more cohesive and comprehensive risk-based source validation strategy;
- The new validation risk model allows the FBI to promptly identify high-risk sources and address concerns earlier than ever. In developing the model, the FBI initiated a statistically driven study to determine the greatest risk factors in operating sources. Data scientists then conducted a correlation analysis to identify the most significant

⁵ Report at 28, quoting Stephen C. Laycock, Memorandum to the Attorney General, *Proposed Revisions to the Attorney General Guidelines Regarding the Use of FBI's Confidential Human Sources* (December 23, 2020).

factors that might indicate higher risk levels and a need for enhanced scrutiny, a significant improvement over utilizing long-term continuous handling as the sole criteria for enhanced review of sources;

- In February 2021, the FBI deployed technical updates allowing for automated workflow to ensure all agents request and document Special Agent in Charge (SAC) approval or disapproval for the continued handling of sources in excess of five years;
- All Headquarters and Field Office agents and analysts were required to complete a training course entitled *CHS Policy Updates and the 2019 OIG Reports* by December 31, 2020. The course included specific instruction regarding the source validation process and roles and responsibilities, and has been incorporated into new agent training at Quantico going forward;
- The FBI implemented an enterprise-wide tradecraft assessment to guide personnel in determining the level of tradecraft to be applied when managing a source, including for extraterritorial travel (operational and personal);
- Changes were made to the composition of the Human Source Review Committee (HSRC) to ensure the participation and oversight by personnel with appropriate skills for approving the continued use of FBI sources and methods. Since December 2020, this includes high-level DOJ and FBI officials, including an FBI Section Chief, a Supervisory Special Agent, an FBI Office of the General Counsel attorney, two attorneys from the DOJ's Criminal Division, and two Assistant United States Attorneys;
- The FBI Directorate of Intelligence has been given authority to direct validation, additional testing, and closure of any source; and
- Sub-sources must be tracked (i.e., identified and documented in the case file).

Sensitive Investigative Measures (SIMs). The FBI made significant changes to its handling of SIMs following the Attorney General's February 5, 2020, memorandum entitled *Additional Requirements for the Opening of Certain Sensitive Investigations*. These changes included: establishing and implementing heightened FBI approval requirements for opening certain SIMs, identifying which types of SIMs warrant coordination with senior Department officials, transferring Headquarters SIMs to the appropriate Field Offices, mandating that a SIM should be run out of Headquarters only in the rarest of circumstances and with the prior approval of the Deputy Director and the applicable Field Office, and training FBI personnel to ensure that the workforce implements these new procedures.

Defensive Briefings. The Report notes that the OIG Crossfire Hurricane reviews addressed defensive briefings for those who may be targets of foreign powers and suggested that senior Department leadership have the opportunity to consult with the FBI regarding whether to conduct a particular defensive briefing. As the Report acknowledges, "[t]he Department and the FBI have taken steps to address this issue."⁶

⁶ Report at 30.

In August 2020, the Attorney General directed the FBI to “promulgate procedures, in consultation with the Deputy Attorney General, concerning defensive briefings.”⁷ The FBI promulgated such procedures and established the Foreign Influence Defensive Briefing Board (FIDBB). As the FBI noted to OIG in 2019, and as the Report highlights, we are

[c]ontinuing to refine the FBI's newly implemented review process for malign foreign influence defensive briefings, and in particular briefings to Legislative and Executive Branch officials. This will encompass actions taken after receipt of specific threat information that identifies malign foreign influence operations - that is, foreign operations that are subversive, undeclared, coercive, or criminal - including convening the [FIDBB] to evaluate whether and how to provide defensive briefings to affected parties. To determine whether notification is warranted and appropriate in each case, the FIDBB uses consistent, standardized criteria guided by principles that include, for example, the protection of sources and methods and the integrity and independence of ongoing criminal investigations and prosecutions.⁸

The FBI appreciates the Special Counsel’s review and remains committed to ensuring that our work is done with rigor and objectivity, as evidenced by the significant, widespread reforms we implemented over the past several years since the events at issue. We also share your concern with any proposals that would “curtail the scope or reach of FISA or the FBI’s investigative activities ... in a time of aggressive and hostile terrorist groups and foreign powers.”⁹

Thank you for your support of the dedicated men and women of the FBI and for its mission to protect the American people and uphold the Constitution.

Sincerely,



Jason A. Jones
General Counsel
Federal Bureau of Investigation

⁷ Attorney General Memorandum, *Supplemental Reforms to Enhance Compliance, Oversight, and Accountability with Respect to Certain Foreign Intelligence Activities of the Federal Bureau of Investigation* at 3 (August 31, 2020).

⁸ FBI Response to Office of Inspector General, *Review of Four FISA Applications and Other Aspects of the FBI’s Crossfire Hurricane Investigation* at 433 (December 6, 2019).

⁹ Report at 289.