

REQUEST FOR RECORDS DISPOSITION AUTHORITY (See Instructions on reverse)		LEAVE BLANK (NARA use only)	
TO: NATIONAL ARCHIVES and RECORDS ADMINISTRATION (NIR) WASHINGTON, DC 20408		JOB NUMBER 71-065-03-2	DATE RECEIVED 4-4-2003
1. FROM (Agency or establishment) Department of Justice		NOTIFICATION TO AGENCY In accordance with the provisions of 44 U.S.C. 3303a the disposition request, including amendments, is approved except for items that may be marked "disposition not approved" or withdrawn" in column 10.	
2. MAJOR SUBDIVISION Federal Bureau of Investigation			
3. MINOR SUBDIVISION Records Management Division (RMD)			
4. NAME OF PERSON WITH WHOM TO CONFER Marie B. Allen	5. TELEPHONE 202-324-7231	DATE 7-12-04	ARCHIVIST OF THE UNITED STATES <i>John W. Carl</i>
6. AGENCY CERTIFICATION I hereby certify that I am authorized to act for this agency in matters pertaining to the disposition of its records and that the records proposed for disposal on the attached <u>2</u> page(s) are not now needed for the business of this agency or will not be needed after the retention periods specified; and that written concurrence from the General Accounting Office, under the provisions of Title 8 of the GAO Manual for Guidance of Federal Agencies, <input checked="" type="checkbox"/> is not required; <input type="checkbox"/> is attached; or <input type="checkbox"/> has been requested.			
DATE 03/28/2003	SIGNATURE OF AGENCY REPRESENTATIVE <i>Robert J. Garry, Jr.</i> /s/ Robert J. Garry, Jr.	TITLE Acting Assistant Director Records Management Division	
7. ITEM NO.	8. DESCRIPTION OF ITEM AND PROPOSED DISPOSITION	9. GRS OR SUPERSEDED JOB CITATION	10. ACTION TAKEN (NARA USE ONLY)
	ORIGINAL ELECTRONIC SURVEILLANCE (ELSUR) MEDIA Electronic media maintained by offices of the Federal Bureau of Investigation [FBI] are the product of a variety of audio, video and other electronic technologies. The ELSUR media addressed in this document are produced under the direction of the FBI, in accordance with statutory, regulatory and other policy requirements including, but not limited to, the following: 1) consent of one party, Title 18, United States Code (USC), Section 2511(c) [consensual monitoring]; 2) court order issued in accordance with Title 18, USC, Section 2518 (otherwise known as "Title III"); 3) court order issued in accordance with Title 50, USC, Section 1801, (Foreign Intelligence Surveillance Act); 4) court order issued in accordance with Rule 41(b) of the Federal Rules of Criminal Procedure and the All Writs Act, Title 28, USC Section 1651; and 5) Attorney General Guidelines for "Procedures for Lawful Warrantless Interceptions of Verbal Communications"		
<i>cc Agency, NIR, NWRM, NWES, NWET</i>			

7. ITEM NO.	8. DESCRIPTION OF ITEM AND PROPOSED DISPOSITION	9. GRS OR SUPERSEDED JOB CITATION	10. ACTION TAKEN (NARA USE ONLY)
	<p>NOTE: All information obtained by the FBI pursuant to the orders of a Foreign Intelligence Surveillance Court (FISC) is subject to the Standard Minimization Procedures approved by the FISC and adopted by the Attorney General. Per the Standard Minimization Procedures, FISA information may be destroyed at any time if the FBI determines that: a) the information is not pertinent to an authorized responsibility, duty, or function of the FBI, any United States law enforcement agency, or the United States intelligence community and is unlikely to become so; b) the information is not of foreign intelligence value, either currently or potentially; c) the information does not contain evidence of a criminal offense that has been, is being, or is about to be committed; d) the information does not contain material that is potentially exculpatory of a criminal defendant; e) the information does not include privileged communications; and f) the information is not subject to any rules or requirements under a FISC order which would preclude its immediate destruction.</p> <p>I. Electronic medium (i.e., analog audio and video cassettes, compact disks, and digital audio and video storage medium regardless of format) with or without sound generated during an investigation and authorized by court order or other appropriate authorizing official.</p> <p>DESTROY media and related control documents 11 years after the date of the media, when there is no longer an agency interest in the media, and after securing any necessary authorization for destruction from a court of competent jurisdiction.</p> <p>II. Electronic medium (i.e. analog audio and video cassettes, compact disks, and digital audio and video storage medium regardless of format) generated pursuant to consent of at least one of the participants.</p> <p>DESTROY media and related control documents 11 years after the date of the media, and when there is no longer an agency interest in the media.</p> <p>III. Electronic medium (i.e. analog audio and video cassettes, compact disks, and digital audio and video storage medium regardless of format) without sound authorized by the Special Agent in Charge or other appropriate authorizing official.</p> <p>DESTROY media and related control documents 11 years after the date of the media, and when the agency use has been exhausted.</p> <p>NOTE: Prior to final disposition, the FBI will evaluate the electronic surveillance material related to each case to determine whether or not the records have historical value. If so, the records will be</p>	<p>N1-65-90-03</p> <p>Superseded by: DA A-0065-2016-0001-0001 DA A-0065-2016-0001-0002 DATE (MM/DD/YYYY): <u>10/03/2018</u> <i>Court ordered collections and Title III collections only</i></p> <p>N1-65-90-03</p> <p>Superseded by: DA A-065-2016-0001-0601 DATE (MM/DD/YYYY): <u>10/03/2018</u></p> <p>N1-65-90-03</p> <p>Superseded by: DA A-0065-2016-0001-0001 DATE (MM/DD/YYYY): <u>10/03/2018</u></p>	

proposed for permanent retention under a separate disposition authority.



National Archives and Records Administration

8601 Adelphi Road
College Park, Maryland 20740-6001

Date: February 26, 2004

To: NWML

From: Kevin G. Tiernan

Subject: N1-065-03-2

Introduction

The Federal Bureau of Investigation (FBI) submits job number N1-065-03-2 to request disposition of its Original Electronic Surveillance (ELSUR) Media. Original media includes audiotapes, video tapes, computer discs, harddrives, and other material capable of recording information in the course of a criminal investigation [hereinafter referred to as ELSUR, tapes, or ELSUR tapes]. Conceptually, the FBI treats its ELSUR tapes as evidence rather than as records because the tapes often collect much more information than is useful in the prosecution of the subject of the surveillance. Agents and/or technicians conducting the surveillance operation keep logs of the participants in conversations and the topic of the conversations. Later, transcripts are made of the information relevant to the investigation, necessary for the progress of a prosecution, or valuable for intelligence purposes. These transcripts and logs are filed with the FBI case file.

Background

The FBI's authority to conduct electronic surveillance comes from several sources: 1) consent of one party; 2) a court order issued in accordance with Title 18, USC § 2518 [often referred to as Title III wiretaps]; 3) court order issued in accordance with Title 50, USC, Section 1801 (Foreign Intelligence Surveillance Act); 4) court order issued in accordance with Rule 41 (b) of the Federal Rules of Criminal Procedure and the All writs Act [Title 28, USC § 1651]; and 5) Attorney General Guidelines for "*Procedures for Lawful Warrantless Interceptions of Verbal Communications*". Title III wiretaps established strict controls on the FBI's use of electronic surveillance as an investigative technique. Prior to 1968, the FBI had conducted electronic surveillance under the direct authority of the Attorney General.

As part of its investigations, the FBI identifies the significant portions of the tapes. The FBI listens to the electronic surveillance as it is being conducted and creates logs of the conversations (time, participants in the conversation, subject of the conversation, etc...). The significant portions are then transcribed and the transcriptions are filed in the investigative case files.

Copies of the significant portions of the tapes are provided to the U.S. Attorney, Department of Justice, or other appropriate prosecutor. Depending on the case, the tape may be played in Court and be filed as evidence with the Court. However, neither the Courts nor the prosecuting agency are supposed to keep the tape. Under rules of evidence the Court would return the tape to the prosecutor, who would, in turn, return the tape to the FBI. The FBI files the returned tape in this collection. During our appraisal, we found tapes in U.S. Attorney case files, however, we cannot consider the U.S. Attorney case files as a complete collection of tapes relating to permanent case files.

Volume

As can be imagined there is a significant volume of tapes held by the FBI. The Washington Field Office (the second largest Field Office) stores about 80,000 cubic feet of tapes. We have been told that the Los Angeles and New York field offices have larger collections. Presumably, other large Field offices like Chicago and Boston have sizeable collections. Nationwide we estimate that the FBI stores over 500,000 cubic feet of tapes for closed cases going back to the passage of the Omnibus Crime Control Act of 1968 [Title 18, USC § 2518]. The larger FBI field offices (such as New York, Los Angeles, Washington, Chicago, and Boston) have warehouse space to store this material.

Although we have no empirical evidence, anecdotal evidence suggests that the overwhelming majority of the tapes relate to permanent cases. Case files are permanent for a variety of reasons including the importance of the person being investigated, all organizations investigated, and the size of the case as reflected in the size of the case file. Most cases involving electronic surveillance would meet the criteria for permanent records. The documentation justifying, ordering, and authorizing the surveillance combined with transcripts and logs would exceed the serial count for permanent records.

Access

Access to the tapes is controlled by the Courts. According to NARA's General Counsel, NARA can accession the tapes; however, we can not provide access to the tapes without a Court's permission. Permission must be sought on a case by case basis.

NARA Holdings

NARA has accessioned an extremely limited amount of FBI electronic surveillance material in its original form, and these holdings did not come during routine accessioning according to the FBI records retention schedule. NARA's custodial units can only identify the audio surveillance of civil rights leader Reverend Martin Luther King, Jr. as a collection of FBI surveillance material that has been accessioned into the permanent holdings of NARA. This material was transferred to NARA under a court order, sealed until 2027.

Similarly NARA has accessioned logs and transcripts of FBI electronic surveillance in the BRILAB investigations in the mid to late 1970s. The BRILAB investigations were pursuing corruption in labor unions involving organized crime figures. Among the targets of these investigations was Carlos Marcello, an organized crime figure in Louisiana who allegedly discussed organized crime involvement in the assassination of President John F. Kennedy. These records were reviewed under the JFK Assassination Records Collection Act and identified as "assassination-related". The Department of Justice asked the federal court in the Eastern District of Louisiana to lift the Title III seal on the specific logs and transcripts where the JFK assassination was discussed, and the records were transferred to NARA. NARA did not accession the audio recordings themselves.¹

Maintenance

As stated above the tapes include audiotapes, videotapes, hard drives, computer disks and tapes, and any other media which can record information. None of the media meet NARA preservation standards and, in fact, because of the volume the FBI uses the cheapest tapes possible. The records are stored in

¹ See Final Report of the Assassination Records Review Board, Washington, DC, September 1998, page 104.

offices and warehouses around the country in cardboard boxes. The tapes are retrieved by case number.

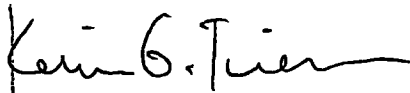
Appraisal

FBI case files are designated as permanent when the records document the law enforcement, intelligence gathering, and investigative activities of the Bureau; and when the case files provide information on individuals and organizations investigated by the Bureau. Documentation found in the case files provides evidence of the surveillance activities used during an investigation. The file contains documentation requesting the surveillance as well as the authority for the surveillance and any restrictions imposed on the surveillance. The file also documents the administration of the surveillance through the surveillance logs which record the subject of the surveillance, the location, date and time of the surveillance, and summaries of the activity captured during the surveillance. Investigative case files contain either complete transcripts of all surveillance activity or transcripts of criminal activity captured by surveillance. The complete transcripts are incredibly lengthy and largely full of mundane conversations. Even more so than the transcripts (since only relevant conversations are usually transcribed), the tapes themselves consist largely of mundane surveillance, whether audio or video.

The FBI proposes that ELSUR tapes should be destroyed eleven years after the date of media if there is no longer an investigative or prosecutorial need for the records and if a Court, when required, has authorized destruction of the records.

This appraisal comes down to whether or not transcripts of surveillance tapes provide sufficient evidence of the investigative activities of the Bureau and provide sufficient information about the individual or organization under investigation. For example, one of the most famous Washington, DC surveillance tapes is the video of Marion Barry caught on tape smoking crack cocaine in a hotel room. The case file contains the transcript of the surveillance tape and a surveillance log summarizing the tape. The video tape may have prurient interest but the tape itself adds little if anything to documenting the investigative activities of the Bureau or to the information gathered about an individual.

I recommend concurrence with FBI's proposed temporary disposition for these records. The information found on the tapes is documented in the surveillance logs and transcripts already filed in the case files.



KEVIN G. TIERNAN
Senior Records Analyst
Life Cycle Management Division (NWML)