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Clearance--Background Investigation : FBI Background Investigation Criteria

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FBI Background Investigation Criteria



U. S. Department of Justice
Office of the Deputy Attorney General

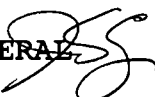
The Deputy Attorney General

Washington, D.C. 20530

February 9, 1996

MEMORANDUM

TO: THE COUNSEL TO THE PRESIDENT
THE ASSISTANT ATTORNEY GENERAL, OFFICE OF POLICY
DEVELOPMENT
THE ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGISLATIVE
AFFAIRS
THE ACTING ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION

FROM: THE DEPUTY ATTORNEY GENERAL 

RE: **FBI Background Investigations**

Over the past two years, there has been some confusion regarding the process for background investigations (BI's) conducted by the Federal Bureau of Investigation, including uncertainty as to what material is included in the summary as compared to the body of the report, the extent to which the FBI confronts a candidate with negative information learned during the investigation, and the circumstances under which the Bureau discontinues a BI. In order to clarify these and other issues, I asked the Director for a memorandum describing the BI process.

The FBI's memorandum is attached. I thought it would be useful for all of you involved in the process to have a copy.

Attachment



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

To: The Deputy Attorney General Date: February 7, 1996
From: Director, FBI
Subject: FBI BACKGROUND INVESTIGATIONS

INFORMATION MEMORANDUM

In addition to conducting BIs on its own employees, the FBI is also responsible for conducting BIs for certain other Government entities (hereinafter referred to as "clients"). These clients are the White House, Department of Justice (DOJ), Department of Energy (DOE), Nuclear Regulatory Commission (NRC), the Administrative Office of the United States Courts, Office of the Pardon Attorney, Office of Personnel Management (OPM) and certain Congressional committees, i.e., Senate and House Appropriations Committees, Senate and House Judiciary Committees, Senate Foreign Relations Committee, Senate and House Intelligence Committees, and Senate Ethics Committee.

The BI is a comprehensive inquiry designed to verify background data provided by the subject of the BI (hereinafter referred to as the "candidate") and gather information to assist the client (and others, as necessary) in the decision-making process concerning the candidate's suitability for Federal employment and/or access to classified national security information. The FBI's goal is to provide its clients complete, thorough, and impartial BIs within established time frames.

All BIs have a projected completion date (deadline), that is, a date in which the results of the BI are expected to be furnished to the client. Flexible time frames for the completion of BIs have been negotiated which each client, depending upon the nature and priority of the particular position. These time frames range from 30 to 90 calendar days, e.g., 30 days for Presidential appointment BIs and 90 days for reinvestigations. Occasionally, the standard deadlines may be shorter to accommodate the needs of the client. Although the FBI makes every effort to provide the results of BIs to the client within the established time frames, there are occasions when circumstances prevent the FBI from doing so, e.g., significant unfavorable information, unavailability of records that must be reviewed and/or persons that must be interviewed. While timeliness is a concern, it is never allowed to overshadow the primary importance of thoroughness.

Before the investigation begins, the candidate completes a Standard Form (SF-86), "Questionnaire for National Security Positions," or a Standard Form 85P (SF-85P), "Questionnaire for Public Trust Positions." The SF-86 or SF-85P is forwarded to the FBI by the client with a request for a BI. Utilizing the information provided, the FBI initiates a BI. At the outset of the investigation, the candidate is interviewed by the FBI to ensure that information provided on the SF-86 is complete and accurate. The interview also seeks to identify any information known to the candidate that could have a bearing on his or her suitability for Government employment and/or access to national security information, such as potential conflicts of interest.

The scope of a BI will vary depending upon the nature of the position for which the candidate is being considered; however, all BIs consist of personal interviews and a wide variety of records checks. Depending on the position involved, the scope of the BI can range from three years (e.g., DOJ reinvestigations) to the candidate's entire adult life (e.g., all lifetime Federal judicial appointments and Cabinet-level Presidential appointment BIs).

Areas addressed during the BIs include education, residences, military service, employments, and credit; records checks are conducted at appropriate Federal, state and local law enforcement and regulatory agencies and licensing authorities. Inquiries are also conducted to verify birth, naturalization, and divorce information, and address any issues which may develop during the BI, i.e., illegal drug use and alcohol prescription drug abuse; financial responsibility; involvement in civil suits; existence of any type bias or prejudice; psychological or psychiatric counseling (excluding marital or grief counseling); contact with foreign nationals; and any other circumstances that could have a bearing on the candidate's suitability for Federal employment and/or access to national security information.

In addressing the areas mentioned above, persons who are knowledgeable of the candidate are interviewed. These interviews typically include references, associates, superiors, colleagues, neighbors, etc. Information obtained through personal interviews may be the opinion, hearsay or personal knowledge of the person interviewed. The principal areas to be addressed when conducting interviews relate to the candidate's character, a person's general attitude and possession of characteristics such as trustworthiness, reliability, and discretion or lack thereof; associates, types of persons, groups, or organizations with which a person has been associated, with particular concern as to whether any of these associations have been of a disreputable or disloyal nature; reputation, the individual's general standing in the community; and loyalty, the person's attitude and allegiance toward the United States.

Certain BIs also address the candidate's substantive ability in the area of the prospective appointment, e.g., judicial appointees, and persons affiliated with the DOJ and the U. S. Courts.

If the BI develops information of alleged misconduct or any other type of unfavorable information about the candidate, all aspects of the allegation are thoroughly explored. Both sides of the allegation are fully reported.

If unfavorable information developed is of a serious nature, the client is notified immediately. If requested to do so, the FBI will provide the client with an interim report containing the unfavorable information while completing the remainder of the investigation. If, during the course of a BI, information is developed about the candidate which may constitute a violation of Federal law within the FBI's investigative jurisdiction, the FBI will consult with the DOJ to determine if any type of criminal investigation should be initiated. Pending that decision, any further investigation of the information which may constitute the violation of law will be held in abeyance; however, the remainder of the BI will be completed. After obtaining the decision as to whether or not a criminal investigation should be initiated, the client will be notified. If a criminal investigation is initiated, the remainder of the BI will be completed, except for inquiries addressing the criminal allegation, and the results reported to the client. If no criminal investigation is to be conducted, inquiries will be conducted, within the parameters of the BI, in an effort to substantiate or refute the information. It should be noted that the FBI does not discontinue BIs or reopen BIs unless specifically requested by the client. Also, pursuant to a recent request of the Deputy Attorney General, on high visibility DOJ BIs wherein the client has instructed the FBI to discontinue the BI, the FBI will notify the Deputy Attorney General of the discontinuance.

The FBI arranges for an interview with the candidate in an attempt to resolve the issue and/or to make as part of an official record the candidate's response to any allegations. The FBI does not adjudicate, nor does it render opinions on, the BI results provided to the client. Furthermore, the FBI does not assess the reliability or credibility of the source of the information. The FBI's function is purely fact finding.

Once the investigation is completed, the results are reviewed at FBIHQ to ensure that all facets of the investigation have been completely addressed. The results are furnished to client entities only(unless otherwise instructed by the client) in the form of actual investigative reports (referred to as "raw data") and/or summary memoranda. It is the client's responsibility to disseminate the results of the FBI's completed

BI to those involved in the appointment process. The format (investigative reports or summary memoranda) is determined by the needs and requests of each client.

When summary memoranda are prepared, they are organized into sections addressing the areas of the background investigation, e.g., birth, education, employment, interviews, agency checks, etc. If unfavorable information is developed, all pertinent information is reported within the appropriate category. For example, if a colleague of the candidate is interviewed and he or she alleges that the candidate uses illegal drugs, then that colleague's comments are summarized and reported under the Interviews section. Also, any investigation that was conducted to credit or disprove his or her statements are also included. For example, if the colleague provided the names of individuals who supposedly witnessed the candidate's illegal drug use, those individuals would be interviewed and the results reported in the summary memorandum. Lastly, the results of the interview conducted with the candidate in an attempt to resolve the issue are also reported in the summary memorandum.

Set forth below is a list of client entities, the positions for which the FBI conducts BIs, and how the results of the BIs are reported (summary memoranda or investigative reports):

<u>Client</u>	<u>Position</u>	<u>Reporting Format</u>
The White House	Presidential appointments requiring Senate confirmation (Except Ambassadorships, which are handled by the Department of State)	Summary memoranda only, except for those cases requiring Senate Judiciary Committee review. ¹ Summary memoranda and investigative reports are prepared for those cases.

¹Those that require Judiciary Committee review are: U.S. Supreme Court Justices, U.S. Court of Appeals Judges, Court of International Trade Judges, U.S. Claims Court Judges, Court of Military Appeals Judges, Court of Veterans Appeals Judges, Attorney General, FBI Director, DEA Administrator and Assistant Administrator, Deputy Attorney General, Assistant Attorney General, other Department of Justice Executives.

<u>Client</u>	<u>Position</u>	<u>Reporting Format</u>
The White House	White House staff and access employees	Summary memor- anda ²
DOJ	Presidential appointments requiring Senate confirmation, i.e., U.S. District Court Judges U.S. Attorneys U.S. Marshals Schedule C appointees DOJ Headquarters personnel (attorneys, honor recruits, staff members and paralegals) U.S. Attorney's Office staff U.S. and Assistant U.S. Trustees Chapter 13 Trustee Administrative Law Judge Immigration Law Judge Foreign Intelligence Surveil- lance Court Judges Individuals applying for a Presidential pardon after completion of their sentence	Summary memor- anda and investigative reports Investigative reports Investiga- tive reports
Administrative Office of the U.S. Courts	U.S. Bankruptcy Judge U.S. Magistrate U.S. Public Defender U.S. Circuit or District Court Executive	Investiga- tive reports

²When only summary memoranda are prepared for the White House, portions of the investigative reports may be provided in addition to the summary memorandum. The portions which are sent include results of interviews addressing matters which may impact upon the candidate's suitability for a position of trust or access to classified information. As indicated above, this format is used at the request of the client.

<u>Client</u>	<u>Position</u>	<u>Reporting Format</u>
Administrative Office of the U.S. Courts	U.S. Bankruptcy Court Trustee U.S. Probation Officer U.S. Pretrial Services Officer	Investigative reports
Congressional Committees	Staff personnel requiring access to national security information	Summary memoranda (Except for the Senate Judiciary Committee, which receives investiga- tive reports)
DOE	Select employees requiring a high-level security clearance	Investiga- tive reports
NRC	Select employees requiring a high-level security clearance	Investiga- tive reports
OPM	Key Government employees and other cases referred to the FBI by OPM as a result of a security concern	Investiga- tive reports

THE WHITE HOUSE
WASHINGTON

DATE: 12/30/96

TO: KATHY WHALEN

FROM: White House Counsel
2nd Floor, West Wing x6-2632

- ☒ FYI
- ☐ Appropriate Action
- ☐ Let's Discuss
- ☐ Per Our Conversation
- ☐ Per Your Request
- ☐ Please Return
- ☐ Other

THE WHITE HOUSE

WASHINGTON

December 30, 1996

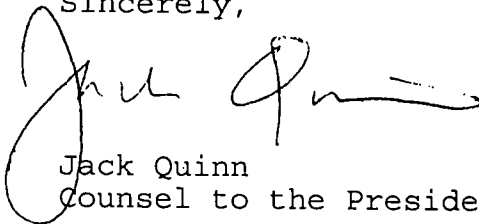
The Honorable Louis J. Freeh
Director
Federal Bureau of Investigation
Washington, D.C. 20535

Dear Director Freeh:

Pursuant to White House procedures instituted in June governing White House requests for background information from the Federal Bureau of Investigation, I am adding Peter C. Erichsen, Associate Counsel to the President, to the list of attorneys in the White House Counsel's Office whom I have authorized to approve White House requests to the FBI for background information. David Fein, who has recently left the Counsel's Office, should be removed from the list. Kathleen M. Whalen, Associate Counsel to the President, and Robert W. Schroeder III, Assistant Counsel to the President, continue to be authorized to approve requests.

Enclosed for your records are signatures of Messrs. Erichsen and Schroeder and Ms. Whalen. If you have any questions, please do not hesitate to call me.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jack Quinn", is written over a circular embossed seal. The signature is fluid and cursive.

Jack Quinn
Counsel to the President

Enclosure

Signatures of attorneys in the White House Counsel's Office
authorized to approve requests for background information from
the Federal Bureau of Investigation:

Peter C. Erichsen

Peter C. Erichsen
Associate Counsel to the President

Kathleen M. Whalen

Kathleen M. Whalen
Associate Counsel to the President

Robert W. Schroeder III

Robert W. Schroeder III
Assistant Counsel to the President