

[Redacted] (RMD) (FBI)

From: [Redacted] (SF) (FBI)
Sent: Friday, July 15, 2016 2:37 PM
To: SF-ARC
Cc: [Redacted] (SF) (FBI)
Subject: FW: First Amendment Rights re. to protests --- UNCLASSIFIED

b6 -1
b7C -1
b7E -10

Classification: UNCLASSIFIED
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Hi everyone,
I apologize if this is spam...just want to make sure you have this caveat if you're using [Redacted] in support of potential threats to any first amendment protected activity.

Thanks and enjoy the weekend,

[Redacted]

From: [Redacted] (SF) (FBI)
Sent: Thursday, July 14, 2016 3:06 PM
To: [Redacted]

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b7C -1,-5

[Redacted]

Cc: [Redacted]
Subject: FW: First Amendment Rights re. to protests --- UNCLASSIFIED

Classification: UNCLASSIFIED
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[Redacted]
SSA CTI/JTF
San Francisco Division
[Redacted] (W)
[Redacted] (C)

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b7C -1

From: [Redacted] (SF) (FBI)
Sent: Thursday, July 14, 2016 2:42 PM
To: FAIR, CRAIG (SF) (FBI); [Redacted] FISHEL, DEREK (SF) (FBI); BUCKLEY, LAWRENCE D. (SF) (FBI)
Subject: FW: First Amendment Rights re. to protests --- UNCLASSIFIED

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b7C -1

Classification: UNCLASSIFIED
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A CDC colleague got this from her JTTF and forwarded to the rest of us CDCs, given the current environment with increasing numbers of protests, it is an excellent reminder of what we can and cannot collect. Pay particular attention to the caveat in black below and please ensure your agents, IAs, SOSs and TFOs include on all ECs, Op Plans, intel and other written products which contain actual/potential IA information. It is not required but given the frequency with which we must produce investigative documents under FOIA, it puts in context the information contained in the document.

[Redacted]

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b7C -1

Supervisory Special Agent [Redacted]
Chief Division Counsel
Federal Bureau of Investigation
San Francisco Division
[Redacted] office
[Redacted] mobile

Confidentiality Statement:

This message is transmitted to you by the Office of the Chief Division counsel of the San Francisco Federal Bureau of Investigation. The message, along with any attachments, may be confidential and legally privileged. If you are not the intended recipient of this message, please destroy it promptly without further retention or dissemination (unless otherwise required by law). Please notify the sender of the error by a separate e-mail or by calling [Redacted]

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b7C -1

All,

Following is guidance from OGC relating to lawful and peaceful protest activity or other exercise of First Amendment rights.

"I've passed the below caveat to a few of you but I wanted to make sure that you all have it, particularly with the conventions coming up. Please distribute the below to your teams and DT PCORs in the field as a reminder. They can reach out to me with any questions. Thanks.

There is a fundamental principle throughout the AGG-Dom and DIOG that investigative activity may not be based solely on the exercise of rights guaranteed by the First Amendment to the United States Constitution. The Privacy Act contains a corollary principle – the government is prohibited from retaining information describing how a person exercises rights under the First Amendment, unless that information is pertinent to or within the scope of an authorized law enforcement activity. 5 U.S.C. § 552a(e)(7). In accordance with these principles, FBI Personnel must not collect, report, or ingest into FBI systems information solely relating to lawful and peaceful protest activity or other exercise of First Amendment rights. FBI personnel may collect, report, and ingest into FBI systems information reasonably related to actual or potential threats of violence, destruction of property, federal crimes or threats to the national security and should articulate the law enforcement purpose in documentation of the information. If information reported is not reasonably related to actual or potential threats of violence, destruction of property, federal crimes or threats to the national security, it must not be ingested or retained.

OGC has drafted the below cautionary statement for your awareness and internal use. Please include this in statements or emails and/or correspondence (ECs, ops plans, intelligence products, etc.) referencing the exercise of First Amendment rights in accordance with the above guidance. Additionally, please utilize caution to avoid impinging upon the free exercise of First Amendment rights. Political/social awareness group protests are protected First Amendment

activity, and the FBI may not collect or monitor the exercise of First Amendment protected activity unless for an authorized law enforcement purpose. In order to be clear about the FBI's intent for gathering information relevant to the scheduling of political/social awareness group protests, please include the following caveat on any documents containing relevant information:

Individuals or groups named in this [Alert/EC/email/ intelligence product] have been identified as participating in activities that are protected by the First Amendment to the U.S. Constitution. Their inclusion here is not intended to associate the protected activity with criminality or a threat to national security, or to infer that such protected activity itself violates federal law. However, based on known intelligence and/or specific, historical observations, it is possible the protected activity could invite a violent reaction towards the subject individuals or groups, or the activity could be used as a means to target law enforcement. In the event no violent reaction occurs, FBI policy and federal law dictates that no further record be made of the protected activity.

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