

PRIMARY INTELLIGENCE STANDARDS: FEDERAL, STATE & LOCAL

F.B.I.ⁱ

Assessments:

Must be based on an “authorized purpose” but no “particular factual predication”

May include –

- Surveillance
- Use of informants
- “Foreign intell. requirements”

Preliminary Investigations:

Requires a factual predicate (“the existence of a circumstance”) but no reasonable suspicion

Full Investigations:

Requires reasonable suspicion and may be pursuant to “foreign intelligence requirement”

CALIF. CONSTITUTIONⁱⁱ

Requires an “**articulable criminal predicate**” for all intelligence activity

“(A)bsent an articulable criminal predicate for the gathering of information it will not be possible to justify it under the general heading of intelligence activity.... Put another way, (the California Supreme Court ruling in) White is a warning to law enforcement in California that it cannot operate from the premise that it can gather information on citizens’ activities regardless of any articulable connection to unlawful action.”

No activity permitted based on foreign (non-criminal) intelligence requirements

SAN FRANCISCO P.D.ⁱⁱⁱ

Any investigative activity or information-gathering *involving* – (not merely targeting or focusing on) – any First Amendment activity must be based on:

- “**articulable and reasonable suspicion**” of ...
- significant criminal activity (i.e. more than mere non-violent, non-destructive acts of civil disobedience), and...
- the First Amendment activity must be relevant to the investigation

No activity permitted based on foreign (non-criminal) intelligence requirements

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ⁱ Based on *The Attorney General's Guidelines for Domestic F.B.I. Operations* (2008) and *Overview of F.B.I. Investigative Activities* presentation of F.B.I. General Counsel Valerie Caproni to the Portland City Council, February 15, 2011.

ⁱⁱ Based on *Criminal Intelligence Systems: A California Perspective*, California Department of Justice (2003). Quoting discussion at pg. 16-17 of California Supreme Court ruling on the state constitutional right to privacy in *White v. Davis* (1975) 13 Cal.3d 757. Emphasis in original. Article I, Section 1 of the California Constitution – enacted by voters in 1972 – declares privacy to be a distinct inalienable right. See also *California Attorney General's Model Standards and Procedures for Maintaining Criminal Intelligence Files and Criminal Intelligence Operational Activities* (2007) .

ⁱⁱⁱ San Francisco Police Department General Order 8.10, *Guidelines for First Amendment Activities*.