

Patrick W. Kelley  
Deputy General Counsel  
Federal Bureau of Investigation  
935 Pennsylvania Avenue, NW  
Washington, DC 20535

February 9, 1999

By Telefax: (202-324-8541)  
Number of pages including this: 13

Dear Mr. Kelley,

Attached is a policy statement entitled "Competitive Intelligence and the Economic Espionage Act" which I wrote at the request of the Society of Competitive Intelligence Professionals. SCIP's Board of Directors has adopted this statement as the organization's policy and plans to make it public this April at its Annual Convention.

Also attached are letters of endorsement from Peter Toren and Mark Halligan, to be included in the publication of the statement.

I wish to inquire whether you can write a letter to me summarizing the significant points you stated in our recent meeting. Specifically, that the intention of the EEA was to foster competition, not stifle competition, that the FBI is not in the business of resolving trade secret disputes, and that by enacting the EEA, there was no intention to change the intricacies of trade secret law. My intention is for the letter to be included in the policy statement pamphlet.

The reason behind my request, which explains why SCIP asked me to write the policy statement, is that an unintended consequence of the EEA was to create a concern in the private sector that the Act poses new legal risks for American companies, placing them in jeopardy of federal investigation and prosecution. The effect of this concern on competition is the opposite of the Act's intention. I have attached the first three pages of a relevant article I wrote in Spring 1998 which discusses this development in more detail.

I believe it is important for corporate America to understand that the effect of the EEA is not to transform business torts into federal crimes. I similarly recognize that federal agencies should not become entangled in private sector disputes. I submit for your consideration that a letter signed by you discussing the issues above and not the policy statement, and addressed to me as opposed to the SCIP board, would provide the proper balance between these two concerns.

Very truly yours,

  
Richard Horowitz



U.S. Department of Justice

Federal Bureau of Investigation

Office of the General Counsel

Washington, D.C. 20535

February 22, 1999

By FACSIMILE

Mr. Richard Horowitz  
400 Madison Avenue  
Suite 1411  
New York, New York 10017

Dear Mr. Horowitz:

This replies to your letter, of February 9, requesting me to provide you with a letter concerning the Economic Espionage Act of 1996 for further distribution to the Society of Competitive Intelligence Professionals at the Society's Annual Convention in April. I regret that I am unable to comply with your request.

As you know, federal employees are governed by the Standards of Ethical Conduct for Federal Employees (5 C.F.R. Part 2635). Among other things, the Standards prohibit federal personnel from extending, or appearing to extend, preferential treatment to any individual or group. While this principle does not prevent federal employees from responding to general requests for information about agency policies or programs, it does constrain the manner in which such responses are used. Thus, while I have no difficulty in discussing the Economic Espionage Act with you or anyone else, I cannot permit a letter bearing the FBI's official seal and my official title to be used to support the views or agenda of any given individual or group, particularly when I have little information or control over the context in which the authority represented by the letter will be used.

I regret that my reply could not have been more favorable but trust you understand why I must decline your request.

Sincerely,

Patrick W. Kelley  
Deputy General Counsel