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UNCLASSIFIED

NATIONAL COUNTERTERRORISM CENTER

NCTC GUIDELINES: Understanding Acquisition, Retention, and Dissemination of USP Information and other issues in EO 12333

The overall classification of this presentation is SECRET//NOFORN

NATIONAL COUNTERTERRORISM CENTER

JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE Wednesday, March 24, 2010

State Department Employee Sentenced for Illegally Accessing Confidential Passport Files

A State Department employee was sentenced today to 12 months of probation for illegally accessing more than 60 confidential passport application files, Assistant Attorney General Lanny A. Breuer of the Criminal Division announced. Debra Sue Brown, 47, of Oxon Hill, Md., was also ordered by U.S. Magistrate Judge John M. Facciola in the District of Columbia to perform 50 hours of community service. Brown pleaded guilty on Dec. 11, 2009, to a one-count criminal information charging her with [redacted]unauthorized computer access.

Goal

- To provide an overview of NCTC authorities
- This training:
  - Supplements the IC-wide USP training
  - Complements [redacted] and Privacy Act training (b)(1)

The procedures described here <u>do not</u> apply to NCTC

[redacted] (b)(1)

Module Objectives

At the end of this presentation, participants will be able to:

- Describe NCTC's mission
- Identify NCTC's authorities and its legal and policy framework
- Define NCTC collection authority under E.O. 12333
- Define "terrorism information" under IRTPA
- Describe NCTC's ability to access, acquire, retain, and disseminate information under HR 7-1 and the new AG-DNI Guidelines
- Identify the different tracks for access to information under the AG-DNI Guidelines

NCTC's Mission

- To serve as the primary organization in the USG for analyzing and integrating all intelligence possessed and acquired by the USG pertaining exclusively to terrorism and counterterrorism, excepting exclusively domestic terrorism and counterterrorism

- To serve as the central and shared knowledge bank on known or suspected terrorists

- To conduct strategic operational planning for counterterrorism activities

Sources of NCTC's Authorities

- Executive Order 12333, as amended
- National Security Act of 1947, as amended
- IRTPA, 2004

Legal and Policy Framework

- E.O. 12333 requires each IC element to have procedures implementing authorities

- CIA's HR 7-1 "Law and Policy Governing the Conduct of Intelligence Activities" (as adopted by ODNI/NCTC)

- Guidelines for Access, Retention, Use, and Dissemination by the National Counterterrorism Center and Other Agencies of Information in Datasets Containing Non-Terrorism Information (2012 Guidelines)

- NCTC Policies for access to information (Policies 3 & 4)

NCTC Authority Overview

- NCTC can receive and analyze all terrorism information possessed by the USG
- HR 7-1 provides authority for retention, use, and dissemination of USP information that is terrorism information
- NCTC may receive or access non-terrorism datasets and exclusively domestic terrorism data to determine if they contain international terrorism information (per AG-DNI Guidelines)

Acquisition - How does NCTC get the data?

- NIM/ISPPO leads the acquisition process

- Acquisition, retention, and dissemination are controlled by two documents:
  - HR 7-1
  - 2012 Attorney General – DNI Guidelines

Acquisition - Which Guidelines Control?

- Datasets composed of terrorism information will presumptively be covered by HR 7-1
- Dataset "inherently USP in nature" will presumptively be covered by the 2012 Guidelines
- Determination made based on:
  - where it was gathered from
  - direct knowledge of the records in the database, or
  - by reasonable implication based on the type of activity that resulted in the collection of the data

- Determination made by ISPPO in consultation with NCTC Legal and the Civil Liberties and Privacy Officer (CLPO)

2012 AG-DNI Guidelines Overview

- The 2012 AG-DNI Guidelines permit:
  - NCTC to ***access*** or ***acquire*** US Person information for the purpose of determining whether the information is ***reasonably believed*** to constitute terrorism information
  - To ***retain*** US Person information when it is ***reasonably believed*** to constitute terrorism information

Terrorism Information

- Broad meaning of "terrorism information" (IRTPA)
  - Existence, organization, capabilities, plans, intentions, vulnerabilities, means of finance or material support, or activities of foreign or international terrorist groups or individuals, or of domestic groups or individuals involved in transnational terrorism
  - Threats posed by such groups or individuals
  - Groups or individuals reasonably believed to be assisting or associated with such groups
  - Includes WMD information

How does NCTC get the data under the AG-DNI Guidelines?

Track 1: Role-based Access

- Access to datasets containing non-terrorism information
- Access essentially the same as that of employees of the data holder
- Once information is identified as terrorism information, NCTC may retain and use for authorized purposes
- US Person information that is not terrorism information will be purged from NCTC systems

How does NCTC get the data under the AG-DNI Guidelines?

Track 2: Queries Performed by Other Agencies

Data provider retains custody and control of the data

- Performs searches at the request of NCTC
- Queries must be based on terrorism data-points
- Queries should be reasonably expected to return terrorism information results
- Terrorism information discovered through this process may be retained and used for authorized purposes

How does NCTC get the data under the AG-DNI Guidelines?

Track 3: Data set replication/Ingestion

- NCTC may acquire and replicate portions or the entirety of datasets when necessary to identify the information that constitutes terrorism information
  - Reasonable efforts to mark USP information
  - USP information may be retained and assessed for up to five years
  - Subject to agreements with data providers, other restrictions
  - Subject to baseline safeguards, possibly enhanced safeguards
  - USP information that is terrorism information may be used for NCTC purposes, as outlined under the Guidelines

Track 3 - Dataset Replication/Ingestion (cont'd)

- These datasets are maintained in restricted-access repositories and:
  - Are subject to monitoring, recording, and auditing requirements
    - Tracking of logons/logoffs
    - Tracking of queries executed

Track 3 - Baseline Safeguards

- Queries are conducted solely to identify information that is reasonably believed to constitute terrorism information
- Queries shall be designed to minimize the review of information about US Persons that does not constitute terrorism information
- ***Once terrorism information is identified*:**
  - Retain, use and disseminate in accordance with NCTC authorities
  - Adhere to any data handling requirements attached to the dataset in which the terrorism information was identified

Track 3 - Enhanced Safeguards

- The Director of NCTC -- in consultation with ODNI/OGC and ODNI/CLPO -- decides whether enhanced safeguards are warranted for a given dataset
- Types of enhanced safeguards include:
  - Additional procedures to restrict searches, access or dissemination
  - Use of privacy-enhancing technologies

Dissemination of USP Information Under Track 1,2, and 3

- Reasonably appears to be TI or necessary to understand or assess TI

- NCTC may disseminate US person information to the IC and foreign or international entities
  - In support of FBI and DHS to other federal (Title 50), state, local, tribal entities

Dissemination (cont'd)

- Dissemination of non-TI for a limited purpose (to assess if TI)
  - Must consult with ISPPO and Legal

- Dissemination of a bulk dataset or significant portion

Compliance, Oversight, and Reporting

- *2012 AG-DNI Guidelines include enhanced controls, audit procedures, and monitoring*
  - NCTC must conduct periodic reviews of compliance, including spot checks, reviews of audit logs, etc.
  - NCTC must report "significant failures" to comply with applicable requirements
  - NCTC must prepare a comprehensive annual compliance report

Compliance, Oversight, and Reporting (cont'd)

- USP information erroneously obtained by NCTC will be promptly removed from NCTC systems unless otherwise prohibited by law

- NCTC cannot access, retain or disseminate USP information solely for the purpose of monitoring the exercise rights protected by the Constitution or other laws

Data Covered by HR 7-1

- USP Information that is acquired by means other than through the methods described in the AG-DNI Guidelines are governed by HR 7-1 *Guidance for CIA Activities within the United States*

- *For retention and dissemination purposes HR 7-1 distinguishes between information about USPs and USP Identity information*

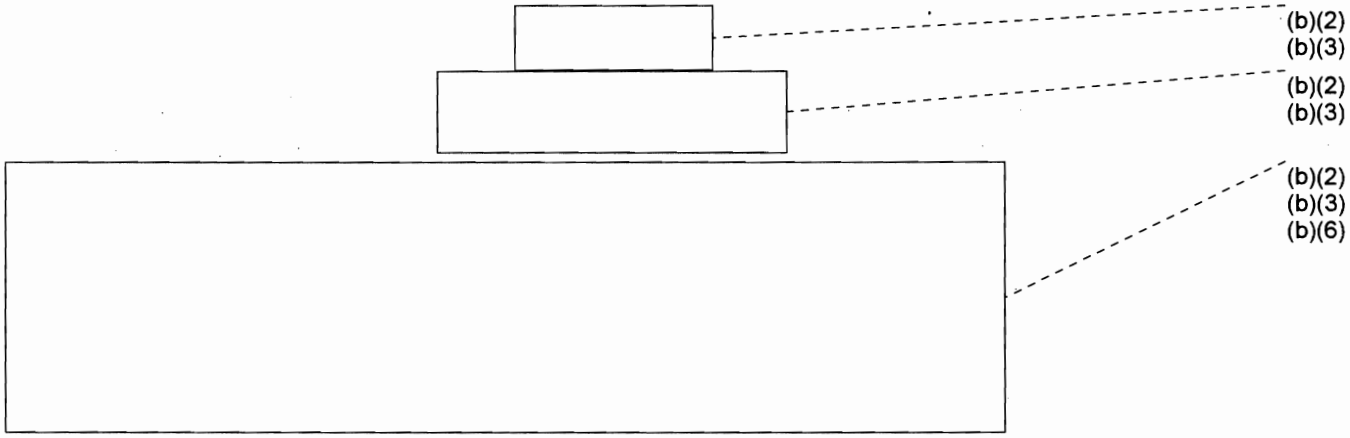
- *Two Requirements to Disseminate Identity information outside the IC:*
  - Is it foreign intelligence?
  - Is the identity information necessary to understand or assess the intelligence?

DO	DON'T
Use only established procedures to disseminate information	Don't use the 'buddy network'
Consult with NIM/ISPPO if you receive data through non-standard means	Don't inadvertently retain non-TI USP information in email and personal folders
Review the Data Catalog requirements for the dataset you're working with	Don't assume requirements are the same for different data sets or access is the same for different groups
Only use unclassified search terms when seeking publicly available information	Don't process access/data if you're not sure NCTC is authorized to possess it
Report violations of these rules to NCTC Legal	Don't use NCTC systems to search for friends, relatives, neighbors

If you're not sure, ask Legal

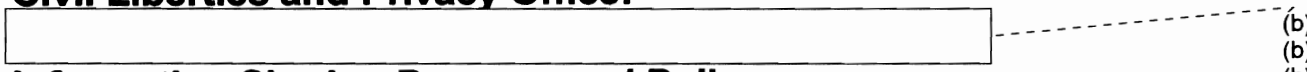
Questions?

How to Find NCTC Legal

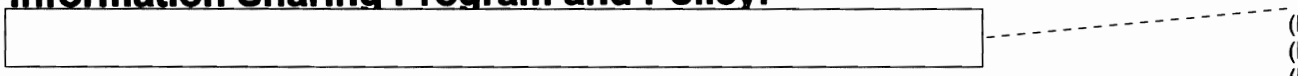


Additional Resources

Civil Liberties and Privacy Office:



Information Sharing Program and Policy:



Backup Slides

Refresher: Definition of US Person

	Text of EO 12333	IS	IS NOT
1	A United States citizen…	One born in the US or naturalized as a citizen; includes dual citizen	Foreign citizen; Visa holder
2	…an alien known by the intelligence element concerned to be a permanent resident alien…	Green card holder; where "known" with due diligence	Student visa holder; most immigrants (asylee or refugee)
3	…an unincorporated association substantially composed of United States citizens or permanent resident aliens…	Not-for-profit group or social club with USP majority	Not-for-profit group or social club where USPs are not majority
4	…a corporation incorporated in the United States, except a corporation directed and controlled by a foreign government or governments.	US legal corporation. US legally established subsidiary of a foreign (non-gov't) corporation.	Foreign corporation or foreign gov't directed/controlled.

12333 and NCTC Collection

REMEMBER:

"OVERTLY OR THROUGH PUBLICLY AVAILABLE SOURCES"

- Remember Undisclosed Participation rules…
- Apply similar rules for on-line registration as conference registration
- Overt means you must disclose ODNI affiliation when interacting with US Persons on-line to obtain information
- Publicly available means information that is published or broadcast for public consumption, accessible on-line or otherwise to the public, or is available to the public by subscription or purchase

Undisclosed Participation

Per EO 12333:

- No one acting on behalf of an element of the IC may join or otherwise participate in any organization in the US on behalf of any element of the IC without disclosing their intelligence affiliation to appropriate officials of the organization
- Prohibited from influencing the activity of the organization or its members

- Applies to participation in the US
- Must disclose if required as a condition of attendance.

12333 and NCTC Use of the Internet

REMEMBER:

"OVERTLY OR THROUGH PUBLICLY AVAILABLE SOURCES"

- Web Searches/Data Aggregation/Social Sites
  - Must be services that are generally available to the public
    - Still requires terrorism predicate
    - Must be cognizant of CI and operational concerns
    - What browser are you using?
- Cannot use classified information for search terms
- May not use alias/pen names
- May not obscure IC affiliation to register and view information not otherwise available to the general public

12333 and NCTC Use of the Internet

- May not browse for information based on the exercise of constitutionally protected rights
- Remember that HR 7-1 rules for retention and dissemination of USP information apply to collected publicly available information